

**REMEMBERING THE TRUTH:
AN ORAL HISTORY PERSPECTIVE ON THE VICTIM
HEARINGS OF THE TRUTH AND RECONCILIATION
COMMISSION OF SOUTH AFRICA, 1996-1998**

by

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PREFACE

The value of history lies in its provision of an important memory base that shapes people's values. Memory of the features, legacy and meaning of the past may help to provide a sense of identity and therefore provide a vital aid against social amnesia. Every individual, family and place has a history of its own which may contribute knowledge and understanding to the study of history. Written sources are not always readily available on all themes or periods and/or are at times inadequate. Oral history can provide a type of historical source to gain information, fill gaps and add to a more balanced view of events and occurrences.

The use of oral history leads to new methodological approaches of recapturing the past and reassessing it. By using oral history methods the researcher may obtain, from the lips of the living survivors/victims, a fuller record of their participation in events of historical significance by tending to the complex legacy of memory. Through oral history the invisibility of the formerly marginalised may be redressed and formerly subjugated voices heard in recovering suppressed or neglected voices. In this process human experience in all its richness is collected, as well as a record of the past gained.

The Truth and Reconciliation Commission of South Africa (TRC) shone a profoundly illuminating spotlight on South Africa's past. The Commission's mandate, as contained in the Promotion of National Unity and Reconciliation Act No. 34 of 1995, had to provide the space within which victims could share the story of their trauma with the nation. The Human Rights Violations Committee (HRV Committee) filled this vacuum, providing a more complete picture of the past as it emanated from the larger narratives of victims, while confronting the present generation of South Africans with its harsh realities.

These victim hearings in particular, meant that thousands who experienced human rights violations could convey their story. The public nature of these hearings broke the silence, lifted the veil of secrecy and gave authority to the voices of ordinary people. By distinctively focusing on victims, including the neglected victims, the Commission had a form better suited to meet the complex needs of the South African population. Through the process of personal recollection, the Commission could provide more answers for more people to gain ultimately a more complete picture of what constituted the past.

Thus, using the TRC as a case study, this research attempts to illustrate and analyse the value of oral history in reconstructing the past. Through oral accounts the silenced memories, experiences, testimonies and histories of the people who were involved in gross violations of human rights in the period investigated by the TRC (1960-1994), may be critically assessed. Therefore, by investigating the personal experiences and emotional responses of the narrators, this research endeavours to develop a more inclusive history.

Although much has been written by political and social scientists alike on the TRC, a systematic analysis of the impact of the oral narratives as provided through the HRV Committee on the South African society from a historical viewpoint, has yet to be undertaken. Furthermore, a historical understanding of oral history with its merits, as well as limitations, is crucial to understanding the value of the information gathered from the TRC's victim hearings.

By using victim hearings as a case study, this research brings another perspective and dimension to the reliability of oral testimonies made before the TRC. Thus, making this research of historical importance as it will provide answers and original information to an underexplored area.

More specifically, the proposed study aims to highlight the importance of oral history by using the victim hearings of the South African TRC as a case study where ordinary people were given an opportunity to tell their

stories, thus giving a 'voice to the voiceless'. To assess the workable successes of oral evidence, the challenges facing oral history must be explored by examining the problematic nature, limitations and usefulness of memory as a potential source of oral evidence. Furthermore, the limitations of memory should be taken into account to test the reliability of oral accounts when striving for the creation of a more representative all-inclusive history. Within this context, the significance of the establishment of a Commission on Truth and Reconciliation for South Africa as the formal genesis of another process of confronting the past through official truth-seeking, should be emphasised. Against this background, the victim hearings of the TRC where ordinary people could express their views and illuminate a fragment of the past transmitted by word of mouth, should be evaluated.

The qualitative research method was employed, as the study is concerned with the recordings of those victims who experienced events during the period 1960-1994, which was under investigation by the TRC. Through analysing the personal narratives one will not only receive verbal articulations, but also non-verbal behaviour clues. Therefore, oral history methodology is also employed as the study is about the personal memories and narratives of the victims.

The researcher also made use of the traditional method of historical research. This required consultation with various sources and the collection of all possible information dealing with oral history, the limitations of memory, and the TRC. The focus was on primary and secondary sources, including special reports, archival collections, newspapers, the internet, magazines and journals, books and audio-visual material, oral testimonies, as well as personal interviews.

The thesis is structured into three main parts: Chapter 1 explains the nature of oral history and highlights its value as an example of reconstructing and examining the past. Taking into account that the historian has an obligation to truth, the authenticity and validity of oral

evidence is also explored. Chapters 2, 3 and 4 focus on the setting up of a unique Truth Commission for South Africa and on how to deal with human rights violations. The public victim hearings of the Human Rights Violations Committee and the testimonies/narratives of the people appearing before this Committee, are particularly assessed. Chapter 5 analyses the limitations of memory in searching for reliability in verifying oral accounts.

The documents of the TRC are housed in the National Archives and Record Service of South Africa, Pretoria. Unfortunately, not all the documents are accessible and are protected by Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000). To gain access a request must be made to the Department of Justice and Constitutional Development. However, the bulk of the material on the TRC remains outside the public domain and substantial systemic barriers limit the accessibility thereof. Researchers and the public may gain access to all the video tapes of the Human Rights Violation Hearings, as well as the TRC Special Report SABC programme that is housed at NARS. Fortunately, the translations of all the victim hearings are available on the internet and it is through these translations that the wider public may gain access to the TRC victim hearings.

It is important to note that this study is not about the whole TRC process. It is not about the process of dealing with amnesty applicants or the process of reparation and rehabilitation – although aspects of these issues are included when they impact on the way victims were dealt with. The primary focus of this research is the process of dealing with victims and in particular, the work of the Human Rights Violations Committee. While the background to the TRC, its formation, the Amnesty Committee, the Reparations and Rehabilitation Committee and other general issues are considered, it is done only by way of contextualising the process the Human Rights Violations Committee employed its powers, its decisions, its interactions with the rest of the TRC and how this Committee contributed to the TRC's overall objectives.

Furthermore, although it was the Truth *and* Reconciliation Commission, the study is more concerned with the truth recovering process of the Commission than with the emphasis and promotion of reconciliation. Reconciliation is a difficult process and there are different views on how to go about it. Apart from this, reconciliation as such, is a long-term process which a single commission, with limited resources and functioning over limited period of time, cannot achieve. Therefore, the parameters of the study are confined to the truth-seeking process of the TRC.

The study covers the period 1996-1998. Although the TRC formally came into being with the Act in 1995, it started its activities only in 1996 and the first victim hearing was held in April 1996. These public victim hearings continued until 1997 and still had to go through further processes of collaboration to determine victim status and to form part of the findings and recommendations as presented in the *Final Report*, presented in 1998.

Moreover, the TRC itself had a limited time frame (1960-1994) as imposed by the Act. It is thus self-evident that the victim hearings covered a mere fraction of the Apartheid-era, dealing only with human rights abuses as set out by the Act, which included only killing, abduction, torture or severe ill treatment. Against this background, the focus and proceedings covered by the study were also limited to these time frames, as well as specific human rights abuses.

The contemporary nature of this study makes it at once fascinating. The majority of role players are still alive and interviews can be conducted and relevant documentation is still available to researchers. Irrespective of extensive and repeated attempts over a long period at interviewing the main role players, due to their particularly full and hectic programs (and in cases illusive nature) this was to no avail. Nonetheless, Dr. Alex Boraine agreed to be interviewed but only in June 2007. The set date of the interview makes it impossible to fully assess the information and be

in time to submit this study. Dr. Boraine played a pivotal role in the processes of the TRC and an interview with him would obviously be of value to this study. If, during the interview, standpoints or conclusions are affected to such an extent that these will need to be changed dramatically, it will be indicated thoroughly in the revised document. Any further publications that may arise from this study will take full cognizance of this interview. Whereas this study deals with oral history and as such the concept of interviews is of importance, it is imperative to note that the writer did extensive research into the original oral testimonies of the victims which speaks directly to the thematic crux of this study.

To understand the issues of memory, one has to be willing to engage intellectually across disciplines. Memory as such, is an infinite subject, influenced by many differing psychological viewpoints. This complicates the situation, finding a professional that may be knowledgeable on all the various aspects of memory. Thus, it was impossible to conduct interviews with the vast body of people in this profession. Furthermore, the researcher was also advised to rely rather on specific books and articles dealing with the different aspects of memory. In investigating memory, the researcher summarised the best thinking and writing on the subject, while articulating specific viewpoints thereof applicable to the TRC process.

The TRC was a process which covered a large number of activities and aspects. Given the magnitude of information on the TRC, only a fraction of the material available was used. This resulted in a process of careful selection; what to choose to emphasise, according to particular strategies of inclusion and exclusion, without oversimplification or distortion of the original analysis. Therefore, the activities and testimonies examined in this study were by no means the only processes with which the TRC was involved.

The problem with writing about such a broad theme as the TRC is that it may have the very real possibility of evolving into a never-ending story. It is impossible to attempt to encapsulate every single activity, hearing and testimony that had an effect on the process examined in this study. Although references are made to different events and processes that are important to the study topic, it was simply too extensive to discuss in full everything within the parameters of this research. For this reason, what follows needs to be emphasised.

Though this study has tried to give some account of the history of the TRC in the period covered, it should not be regarded in any sense, as a complete or final history. The aim is not to provide answers, but to stimulate further debate. There are still unanswered questions concerning the role of memory in conveying oral narratives and their truthfulness/validity. It is not the whole story, but provides a perspective on a section of the past that is still extensive and complex.

Thus, at no stage does this study propose to be the last word on the TRC process and the role that oral narratives played. Rather, it is hoped that, this study will stimulate further historical investigation into this extensive subject as information is made available and the evidence gathered by the Commission is used and reinterpreted by researchers in the reconstruction of events.

The most obvious value of the research is that it is a fresh and specific appraisal of a particular process of which the accompanying debate still continues. Only if one understands oral history, with its focus on memory and narrative, can one begin to try to fathom the oral narratives made before the TRC's Committee on Human Rights Violations as a broader process of events and an account of human experience that took place in the South African history.

As such, the study highlights human rights issues, recognising the suffering of victims and realising the acts of perpetrators, with the aim of establishing a more accurate picture. Using the TRC as a model for

confronting a tormented and divided history, the study provides deeper insights into and a greater analytical understanding of past human rights violations and the process of coming to terms with it. This may be a step towards learning from history while keeping memory alive; of contributing to South Africa's contemporary challenge of reconciling the living past.

* * *

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Father, Lord, the applause is Yours. You give gracious leading, wisdom and strength. “Oh, the depth of the riches and wisdom and knowledge of God! How untraceable are His ways. For from Him and through Him and to Him are all things. To Him be glory forever.” (Romans 11:33, 36)

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Chapter 1

TO REMEMBER AND TELL: THE NATURE OF ORAL HISTORY

1.1 INTRODUCTION

History plays a role in the growth of human culture through which one discovers the world and past societies, adding to knowledge of the other, the unfamiliar and the different. History helps to explain and judge contemporary issues continually within the powerful context of a past, forming one's passing or permanent opinions. In the process 'history marks us for life'.

The value of history lies in its provision of an important memory base that shapes people's values. Memory of the features, legacy and meaning of the past may help to provide a sense of identity and may therefore provide a vital aid against amnesia. Although history forms a journey through time and space, everybody's memory changes with time and moving images from the past change as knowledge and ideologies develop and alter within society. In this process official history and collective memory confronts each other giving, sometimes, diverse images of the past.

Every individual, family and place has a history of its own which may contribute knowledge and understanding to the study of history and wider themes. Unfortunately, written sources are not always available on all themes or time periods and/or are, at times, not adequate enough. Oral history may provide a type of historical source among others, to gain information, fill the gaps and add to a more balanced view of events and occurrences.

The use of oral history leads to new methodological approaches to the recapturing of the past and a reassessment thereof. By using oral history methods, the researcher may obtain from the lips of the living survivors/victims, a fuller record of their participation in events of historical significance by attending to the complex legacy of memory. Through oral history the invisibility of the formerly marginalised may be redressed and formerly subjugated voices may be heard in recovering suppressed or neglected voices. In the process, human experience in all its richness is collected, as well as a record of the past gained and even more, through oral history interviews, an on-going discussion about the meaning of the past may continue.

This chapter will focus on the nature of oral history, by giving prominence to defining it, as well as investigating its current status. The value of oral history will be highlighted to inform the historian, the researcher and the educator of the workable successes that may be achieved when using/implementing oral history. The challenges facing this field with the specific limitations of memory, will only be mentioned here, as it will be explored in more detail in Chapter 5. Taking into account that the historian has an obligation to the truth and should be a critical analyst of historical evidence, the chapter will end with a view to endeavouring to ensure the authenticity and validity of oral evidence. Examples will focus on South Africa and more specifically on the Truth and Reconciliation Commission of South Africa (TRC) which is the focus of this study, to make oral history even more context-sensitive within the South African environment.

1.2 DEFINING ORAL HISTORY

The use of oral history is not new; it is as old as history itself and predates the written record. Oral history already existed when academic history was developing among the educated strata of society. The use of

personal testimony¹ in the gaining of knowledge about society has never ceased. It was a community-based tradition, since most societies have always recognised the worth of preserving and passing on some kind of knowledge of the past, protecting an accumulating heritage.²

Stricklin and Sharpless remind us that the 'inexhaustible voice' "precedes and will outlive the written word as the deepest and most permanent expression of the human heart".³ Still and Thompson add even more power to the spoken word when reasoning that: "words from the heart are more alive than your scribblings. When we speak, our words burn".⁴ It is true that one would rather listen to someone speaking directly, than reading about him/her through another's words. Words, therefore, have an authenticity and effectiveness which is difficult to match. These authors go further and give authority to oral testimony when explaining that: "The spoken word cuts across barriers of wealth, class and race. It is as much the prerogative of ordinary people as of those in positions of power and authority. It requires neither formal education, nor the ability to read and write, nor fluency in any national or official language".⁵ Grele confirms all these ideas by concluding that even in our age of general literacy and pervasive media communication "the real and secret history of humankind" is shared in conversations. In other words, most people

¹ "'Testimony' derives from the Latin for 'witness'. In turn, 'witness' draws on notions of seeing and becoming conscious or aware. Becoming aware entails the interpretation and attribution of meaning to experience. To testify is therefore to make knowledge, both about oneself and about one's world." N. R. White, "Marking absences. Holocaust testimony and history" in R. Perks and A. Thomson (eds), *The oral history reader*, p. 177.

² S. Caunce, *Oral history and the local historian*, pp. 100–101; D.A. Ritchie, *Doing oral history. A practical guide*, pp. 19–20; V.R. Yow, *Recording oral history. A practical guide for social scientists*, p. 3; *The Sunday Independent*, 3.5.1998, p. 22; S.E. Everett, "Oral history techniques and procedures", <<http://www.army.mil/cmh-pg/bodcs/oral.htm>>, 1992.

³ D. Stricklin and R. Sharpless (eds), *The past meets the present. Essays on oral history*, p. v.

⁴ H. Slim *et al.*, (eds), *Listening for a change. Oral testimony and community development*, p. 1.

⁵ *Ibid.*

still form their “basic understanding of their own past through conversations with others”.⁶

Oral history differs from oral tradition, which works not only on the level of fact, but also on that of myth and applies both to a process and to its products.⁷ The products of oral tradition are a collection of oral messages and narratives passed down and transmitted verbally, and only verbally, from person to person and from generation to generation, beyond the lifetime of any one individual. Jan Vansina⁸ describes oral tradition as “reported statements from the past beyond the present generation”.⁹

Oral traditions are not contemporary and include oral traditional accounts of past events, stories, sayings, memorised speeches and songs – spontaneous expressions of the customs, purposes, functions, identity and generational succession of the group of people among whom they emanate.¹⁰ Moss contends that oral tradition is: “broad understandings of the past that originate organically in and out of the cultural dynamics of an evolving society. They come about and exist quite apart from any written language or recording devices and do not depend on them for durability. Oral traditions are the experiences of a whole ethos of previous generations, acquired from the last immediate one and retold in the present, as they are understood by the present generation. They contribute to the social cohesion, dynamic evolution, and durability of the culture they represent. They are changed by the changes in the culture around them, and in turn they serve to shape and mold the

⁶ R.J. Grele *et al.*, *Envelopes of sound. The art of oral history*, p. xv.

⁷ M. Ferro, *The use and abuse of history or how the past is taught*, p. 14; J. Vansina, *Oral tradition as history*, p. 3; W.W. Moss, “Oral history: What is it and where did it come from?” in Strickin and Sharpless (eds), p. 10. With oral tradition there is no written evidence available to support and/or cross-check the oral evidence where problems with validity are encountered in the process of transmission. This leads to the situation where oral tradition is not known for the unquestionable reliability of facts.

⁸ From the 1950s, led by the Belgian scholar Jan Vansina, historians began to collect their own oral material in the field in Africa, alongside anthropologists, exchanging experience of methods and interpretation. Jan Vansina's first recording was in the Congo in 1953, of a Bushong poet-historian who told him, ‘we carry our newspapers in our heads’. P. Thompson, *The voice of the past: Oral history*, p. 326.

⁹ Vansina, p. 27.

¹⁰ Texas Historical Commission, “Fundamentals of oral history. Texas preservation guidelines”, <<http://www.thc.state.tx.us/publications/guidelines/oralHistory>>.

evolving culture”.¹¹ In contrast to this, oral history is the direct, immediate, personal experience of those who hold them in memory and involves the eyewitness accounts of events and experiences during the lifetime of the narrator being interviewed; in other words, a type of “immediate history”.¹²

Oral history, on the other hand, is nothing more than a branch of historical research. In this context, oral history arises from history’s most ancient technique, as well as its most modern technology. The technique of collecting eyewitness accounts of history had already been used by the ancient Greek historians more than two thousand years ago and the tape recorder, which is part of the modern age,¹³ is now used to record oral history. It is an activity that draws upon the most sophisticated skills of professional historians, but it may also be undertaken productively by weekend amateurs, simply by using the basic skill of human conversation.¹⁴

Oral history is a dynamic and creative field, which defies easy definition, because it is found in several activities outside the world of the academic disciplines. This “living memory of the past”¹⁵ involves collecting memories and personal commentaries of historical significance by means of recorded interviews.¹⁶ In the process of obtaining historical information and evidence, memory forms the core of oral history.

A basic definition of oral history interviewing would be: “A systematic collection, arrangement, preservation and publication (in the sense of making generally available) of recorded verbatim personal accounts, opinions and reminiscences of historical importance of people who were

pdf>, s.a.; Moss, pp. 9-10; L. Witz, *Write your own history*, p. 40; *The Sunday Independent*, 3.5.1998, p. 22; *New Era*, 8-15.6.1995, p. 8.

¹¹ Moss, pp. 9-10.

¹² Vansina, p. 13.

¹³ Tape-recorded interviewing was possible only after World War II, when portable mechanical recording machines became available.

¹⁴ C. Davis *et al.*, *Oral history. From tape to type*, pp. 1-4.

¹⁵ Slim *et al.*, (eds), p. 11.

¹⁶ The word ‘interview’ literally means a ‘seeing between’ or a ‘view between’ which embodies the idea of a particular perspective worked out or created between two parties. Slim *et al.*, (eds), p.149.

witnesses to or participants in events or experiences they recount.”¹⁷ Trevor Lummis adds to this, providing a formal definition of oral history as: “an account of first hand experience recalled retrospectively, communicated to an interviewer for historical purposes and preserved on a system of reproducible sound”.¹⁸ Consequently, it is primarily a record of perceptions of the person interviewed, whatever that person’s position, occupation or circumstances. It provides a record of language and of eyewitness accounts giving insights into society, its changing attitudes and values.¹⁹ According to the American historian Donald A. Ritchie, “availability for general research, reinterpretation and verification defines oral history”.²⁰

Beyond these functional definitions, there are a number of differences in emphasis. Several terms are used interchangeably with oral history which includes: life history, self-report, personal narrative, life story, oral biography, memoir, taped memories, the recorded narrative and life review.²¹ However, the fact remains that oral history involves the tape-recording of what the narrator can recall from first-hand knowledge and through pre-planned interviews, where the interview is a unique and personal way in which the past and present intersect.²²

Oral history makes use of the relatively painless medium of relaxed conversations based on well-planned questions to gather information regarding why, how and through what things came to pass. It is about asking questions; questions that, perhaps, have not been asked before, where the information is captured in question and answer form. “The questions of the interviewer, deriving from a particular frame of reference or historical interest, elicit certain responses from the narrator,

¹⁷ W.W. Moss, *Oral history program manual*, pp. 6-7; D. Lance, *An archive approach to oral history*, p. 2; Ritchie, p. 19; *The Leader*, 5.8.1988, p. 6.

¹⁸ T. Lummis, *Listening to history. The authenticity of oral evidence*, p. 27.

¹⁹ J. Worthington and P. Denis, *Working draft. Training manual. Oral history project*, p. 1.

²⁰ Ritchie, p. 24.

²¹ Yow, p. 4.

²² W.K. Baum, *Oral history for the local historical society*, p. 7; Stricklin and Sharpless (eds), p. vii; A. Thomson, “Fifty years on: An international perspective on oral history” in *The Journal of American History* 85(2), September 1998, p. 584.

deriving from that person's frame of reference, that person's sense of what is important or what he or she thinks is important to tell the interviewer. ... The questions can encourage the narrator to remember details, seeking to clarify that which is muddled, making connections among seemingly disconnected recollections, challenging contradictions, evoking assessments of what it all meant then and what it means now."²³

Tapes of the interview are transcribed, summarised or indexed and placed in a library or archive. The recorded document is then available for future use as a source to be examined for historical analysis. It thus represents the 'preservation of otherwise perishable historical data' with the human memory as the raw material, to collect reminiscences, which only survives as long as its possessor lives.²⁴

What is captured by oral history is a segment of human experience in the context of a remembered past, a dynamic present and an unknown, open-ended future. In the process, oral history becomes a connection from the immediate present to the immediate past, in an understandable and very human way. As such, oral history, "the history built around people"²⁵ as a source, becomes a social challenge and an adventure in searching for historical evidence in such a source, with both opportunities and limitations.²⁶

The way in which an individual recalls the past, may provide revealing insights where the human memory becomes a unique source of historical information. By the personal witnesses of those who took part in the events and even crises, the historical evidence may, through critical discussions and by implementing a variety of verification methods, be tested and re-evaluated. When thoroughly gathered, cautiously processed, and critically evaluated, oral history may add moderately to

²³ L. Shopes, "Making sense of oral history", <<http://historymatters.gmu.edu/mse/oral.htm>>, *s.a.*

²⁴ Ritchie, pp. 19, 46; Davis *et al.*, p. 4; Moss, "Oral history: What is it ...", p. 11; J. Moyer, Step-By-Step guide to oral history", <http://www.dohistory.org/on_your_own/toolkit/oralHistory.htm>, 1999.

²⁵ Thompson, p. 23.

the quantity, and distinctively to the quality, of what we understand about the past.²⁷ Oral history is consequently capable of complementing and contributing to the many branches of formal academic history.

1.3 THE CURRENT STATUS OF ORAL HISTORY

The status of oral history has increased tremendously over the past few decades and the discipline has gained considerable ground. Leopold von Ranke and his followers' view of history by the late nineteenth century as a discipline depending on the precise use of evidence, where oral evidence was suspiciously deemed as "too subjective; shoddy memories told from biased point of view",²⁸ has definitely changed.

After the first organised oral history project in 1948 by Allan Nevins²⁹ from Columbia University in New York, who began a systematic and disciplined effort to tape-record the spoken memories of the white male elite, the interest in recording memories of ordinary people became dominant.³⁰ In the post-war context, oral history developed into a serious and widely accepted process. Its scope widened even more from the 1960s and onwards because of the growing interest in the experiences of the 'non-elites'.³¹

David Dunaway indicates four generations of oral historians who have emerged in the last few generations of development in the oral history field. Allan Nevins pioneered the first generation where, oral history was

²⁶ Baum, pp. 7-9; Moss, *Oral history program ...*, p. 9.

²⁷ Lance, p. 3; Davis *et al.*, p. 4.

²⁸ Ritchie, pp. 20-21; Yow, p. 5; N.J. Wilson, *History in crisis? Recent directions in historiography*, pp. 69-70.

²⁹ Allan Nevins – biographer, historian, and journalist – suggested the establishing of "some organization which made a systematic attempt to obtain, from the lips and papers of living Americans who have led significant lives, a fuller record of their participation in the political, economic, and cultural life of the last sixty years". A. Nevins, "Oral history: How and why it was born" in D.K. Dunaway and W.K. Baum (eds), *Oral history. An interdisciplinary anthology* (2nd edition), pp. 8-9.

³⁰ Yow, p. 3; Thomson, p. 581; Shopes; L.M. Starr, "The art of the oral historian", <<http://www.library.ucsb.edu/speccoll/oralhlec.html>>, *s.a.*

³¹ For a more detailed description of the history of oral history see A. Seldon and J. Pappworth, *By word of mouth. 'Élite' oral history*, pp. 6-11; Slim *et al.*, (eds), pp. 12-15; D. Henge, *Oral historiography*, pp. 7-22; Thompson, pp. 25-81.

conceived as “a means to collect otherwise unwritten recollections of prominent individuals for future historians, for research, and as a tool for orally based biography”.³² The second generation became evident after the establishment of basic archives in the mid-1960s. This generation found its roots in the social history movement and their focus was to “employ oral history techniques to describe and empower the non-literate and the historically disenfranchised”.³³ Through the 1970s, oral history research was used to document and promote ethnic diversity and community cohesion.

The 1980s led to the third generation, which was a highly educated and proficient group of driven oral historians who emphasised the importance of the process of oral inquiries. The new, fourth generation marks the shift in the purpose of oral history. This group of historians employ the most up-to-date technology and place different significance on oral history’s usefulness as an historical inquiry. According to these oral historians “oral interviews – and their construction – *themselves* represent history: compiled within a historical frame negotiated by the interviewer and the narrator, within contemporary trends, within certain definable conventions of language and cultural interaction”.³⁴ The progression in oral history has moved from a defence of the method to refining the method and purpose of oral history to play a prominent role in the further shaping of history.³⁵

A number of organisations have, for some time, been engaged in the systematic collection of oral testimony. Oral history associations and societies and oral history journals and circulars have been debating and discussing ideas and problems regarding oral history. Furthermore, many academic historians have used oral sources in their work. It is no longer an activity pursued by only a few individuals, but is also utilised

³² D.K. Dunaway, “Introduction: The interdisciplinarity of oral history” in Dunaway and Baum (eds), pp. 8-9.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*; Moss, “Oral history: What is it ...”, p. 6.

by historical societies, museums, schools, reminiscence therapists, archives and academic historians. In the process, it is the 'discovery' of oral history as one of many kinds of historical sources again, but also a 'recovery' of giving back to historians the oldest skill of their own craft.³⁶

The recording of conversations on tape has captivated the public attention and has also led to increased governmental interest. This oral history 'boom' is leading to a dramatic increase of oral history programmes around the world, the expansion of oral history instruction at tertiary level and the uses thereof within local historical groups. People are drawn to oral history because of their interest in collecting and preserving the past through interviewing. At the same time, oral history reveals a personal, private world that produces bridges between regions, races, gender and age groups that bind people together from all over the world. This situation has led to "thousands of practitioners, tens of thousands of hours of recorded interviews, and millions of pages of transcript".³⁷

Prominent oral historians are pointing to the 'globalisation of oral history', stating that there is not a place on the globe where people are not doing oral history at present. The digital information revolution, together with worldwide political and social changes, has accelerated the need and even demand, for oral history. Historians are confronted with the inadequacy of archival documentation; whereas newly emerging nations in especially Asia and Africa use oral history to recover forgotten national identities. Certain countries use personal testimonies to re-evaluate and rewrite discredited official histories and/or to understand the experiences of those who lived under dictatorships or state terrorism.³⁸

³⁶ Thompson, p. 81.

³⁷ Davis *et al.*, p. 1; C. Davis, "Success and excess: Oral history at high tide" in Strickin and Sharpless (eds), p. 77; Henge, p. 108.

³⁸ Ritchie, pp. 13, 23; T. Sideris, "Recording living memory in South Africa. The need for oral history in South Africa" in *Critical Arts* 4(2), 1986, p. 50; *The Leader*, 5.8.1988, p. 6; *New Era*, 8-15.6.1995, p. 8; Slim *et al.*, (eds), pp. 12-13.

The need for the collection of oral history in Southern Africa has been widely recognised since mid-1970. Particularly since the 1980s in South Africa, oral history has been recognised and used as an important method for documenting the experiences and oppression of those who lived under Apartheid.³⁹ Emphasis was placed on attempts to document a 'history from below'; to 'uncover what might otherwise be hidden'; to 'answer questions and gain insights'; to 'uncover', with the primarily focus to 'gain a fuller understanding of the lives and struggles, experiences and consciousness of the ordinary working man and woman' in South Africa.⁴⁰ According to Luli Callinicos, oral history is a particularly necessary medium in South Africa, because "of our dearth of documents written by ordinary people".⁴¹

From a local to a national level, government has come to realise the value and potential of oral history. In South Africa, the government of the day values oral history and has emphasised the importance thereof, through the establishment and funding of specific projects and by making it part of governmental policy.⁴² The part oral history may play in the reconciliation, reconstruction, development and transformation processes in the country have also been highlighted recently by various museums and prominent groups, academics and individuals, as well as

³⁹ Sideris, pp. 41, 50; A. Manson *et al.*, "Oral history speaks out" in *Social Dynamics* 11(2), 1985, p. 1.

⁴⁰ P. Denis (ed.), *Orality, memory & the past. Listening to the voices of black clergy under colonialism and apartheid*, pp. 1-2.

⁴¹ *Ibid.*, p. 1.

⁴² Ritchie, p. 13; Sideris, p. 50; Denis (ed.), pp. 1-3; *Volksblad*, 25.3.2000, p. 19; *The Leader*, 5.8.1988, p. 6; *Natal Witness*, 3.7.2002, p. 9. Amongst other initiatives the South African government has also established the South African Democracy Education Trust's (Sadet) Oral History Project, which captures the experiences and memories of the struggle against apartheid. On local levels archives and libraries are also reaching out to communities and sectors of society that were previously excluded from these institutions' public programmes. The Free State Provincial Archives launched some topical and life history oral history projects, which include the Military and Stalwart Veterans Project (focusing on the veterans of the military struggle) and the Griqua Project (focusing on the Griqua people of the Southern Free State). During 2002 the Free State Provincial Library and Information Service launched the *Save Our Oral Tradition Programme* to form part of the *Libraries for all Project*. The aim of this project was to return a sense of self-worth to the illiterate and disadvantaged people from the poor rural areas of Qwa-Qwa.

the government, especially through the workings of the Department of Arts, Culture, Science and Technology.⁴³

Looking at the tendencies in the oral history field, it will be safe to argue that the rising interest in this field, combined with the interdisciplinarity characteristics thereof, will continue in the future. As long as the historian is focused on using a multitude of evidence, even though it might be conflicting evidence, to set the narrative in a historical context in an effort to make sense of the past, oral history will have an important contributory role to play.

1.4 ORAL HISTORY SHIFTS THE FOCUS AND TRANSFORMS THE CONTENT OF HISTORY

Oral historians claim to write, rewrite and add to history from the bottom up, taking into account the historical significance of this approach and tapping into the experiences of ordinary people. In the process, oral history may change the focus of history itself, becoming a means of transforming the purpose and content of history, breaking down barriers, opening up new areas of inquiry, allowing evidence from a new direction, and finally, giving all people, through their own words, a central place.⁴⁴

⁴³ According to the Department of Arts, Culture, Science and Technology (DACST) discussion document, Legacy Project 1996, "every effort should be made, through research into surviving documents, photographs and particularly oral history, to trace the direct involvement of all concerned with a particular memorial. In particular, the formerly silenced voices must be heard. Commemorations of conflict and war should include multiple perspectives – there should be a feeling amongst all South Africans that their own history is respected and reflected, directly and indirectly in commemorations". S. Field, "Memory, the TRC and the significance of oral history in post-apartheid South Africa". Paper presented at the History Workshop "TRC: Commissioning the past", University of Witwatersrand, Pretoria, 11-14.6.1999, p. 9.

⁴⁴ Thompson, pp. 3, 6.

The elitist, political focus of history, which divided up historical time according to reigns and dynasties, has shifted radically in recent years. Initially, oral history was used in the sense of adding to the profuse written records of celebrities and other important people. However, many historians are now deliberately concentrating on the stories of ordinary people and there is an ever-increasing interest in recording social history. Here, the historical focus is on 'ordinary people', and not on 'great men' such as heads of government, military leaders or politicians. A change in focus was necessitated by the general trend throughout the history profession towards interviewing ordinary people who had previously been considered too unimportant to merit much attention and to record their history. Increasingly, interviews have been conducted with blue-collar workers, women, labour and political activists, racial and ethnic minorities, together with a heightened interest in the lives of factory hands, migrant workers and ghetto dwellers, as well as a variety of local people whose lives typify a given social experience.⁴⁵ The emphasis is thus on a more socially oriented history, purpose and consciousness, where social history may benefit immensely from the ability of oral history to throw light on certain topics.

The South African historian Tim Keegan argues that “in the narratives of ordinary people’s lives we begin to see some of the major forces of history at work, large social forces that are arguably the real key to understanding the past”.⁴⁶ In the process, oral history allows the emergence of heroes, not just from the leaders, but also from the unknown majority of ordinary people.⁴⁷

Joseph Gould collected the stories of average people in Manhattan in the 1940s and called it *An Oral History of our Time*. He explained his shift in focus in the *New Yorker* in 1942 as follows: “What people say is history ...

⁴⁵ Davis *et al.*, p. 2; Ferro, p. x; *The Natal Witness*, 20.8.1998, p. 19; Shopes; Wilson, pp. 69-73.

⁴⁶ G. Minkley and C. Rassool, “Orality, memory, and social history in South Africa” in S. Nuttall and C. Coetzee (eds), *Negotiating the past: The making of memory in South Africa*, p. 91.

⁴⁷ Thompson, p. 23.

What we used to think was history – kings and queens, treaties, inventions, big battles, beheadings, Caesar, Napoleon, Pontius Pilate, Columbus, William Jennings Bryan – is only formal history and largely false. I'll put down the informal history of the shirt-sleeved multitude – what they had to say about their jobs, love affairs, vittles, spree, scrapes and sorrows – or I'll perish in the attempt".⁴⁸

The shift is not only from political to social history, but the focus of history has also moved to local history. In view of the grass-roots level at which oral history functions, it has a higher potential for influencing the more limited scope and subject matter of local history. This may lead to a better perspective on the events and forces that have shaped local life and thinking, which, in turn, not only lead to a better understanding of the past of a particular community, but also of the past of a region or nation. Local history thus serves as a microcosm of a nation's history.⁴⁹ According to South African historian Tony Cubbin, local history is "a powerful means of restoring academic history to the realm of the active, relevant and real in our community lives".⁵⁰

There is also a definite relationship between history and the community. Through oral history, historical information may be given to the community for interpretation and presentation. The shift in focus to an active community-oriented approach may bring history into and out of the community, broadening the knowledge of what constitutes a community's history. In view of its focus on the day-to-day reality of lived experience and the smaller details of family and community subsistence, oral history lends itself well to community-based activity and collective ways of producing history. Apart from its contribution to political and institutional structures, it also adds to the economic development and

⁴⁸ Ritchie, p. 22.

⁴⁹ B. Allen and L. Montell, *From memory to history. Using oral sources in local historical research*, p. 6.

⁵⁰ T. Cubbin, "The opportunity of local history in rehabilitating the relevance of history in our emerging society." Paper presented at the Biennial Congress of the South African Historical Association on "History: Its problems and its challenges with the

the occupational and ethnic composition of its population. Some community-based local history projects have made much progress in bridging the gap between the experts and ordinary people. Members of these community projects not only provide information, but are also integrally involved in the writing, production and consumption of historical material.⁵¹

The active community-oriented approach is of crucial importance in view of the lack of even the most basic recorded information regarding significant segments of South African society. Cubbin stresses that in the light of this barren field of research, all communities – whether urban, rural, industrial or commercial – are potential subjects for oral history projects. It is within this context that the strong relationship between oral history and community history should be emphasised. Therefore, the most effective way to utilise oral history as a teaching tool, is to use it specifically for the teaching of community history.⁵²

Oral history may also be important to families specifically and to society at large. Family sagas and the events that shaped them illustrate the role of the family in the larger social structure of the community. Family history is also important for identity formation and the way in which a sense of culture and heritage is imbibed.⁵³ Through history, people seek to comprehend the changes, uncertainties and upheavals they experience in their own lives. Oral history becomes essential in this ‘people/family-

advent of the new millennium”, University of the North, Pietersburg, 28.6.-1.7.1998, pp. 2-3.

⁵¹ Sideris, p. 44; Ritchie, p. 223; Thompson, p. 17; Slim *et al.*, (eds), pp. 14-15; Allen and Montell, pp. 64-65.

⁵² Cubbin, p. 4; S.J. Esterhuizen, “Plaaslike geskiedenis – ‘n geleentheid om kreatief te onderrig” in M.H. Trümpelman (ed.), *Kreatiewe Geskiedenisonderrig*, pp. 54-60; S. Krige *et al.*, *History for the future: Taking another look at “What is history?”*, p. 23.

⁵³ Thompson, p. 8; *Natal Witness*, 11.7.2000, p. 9; *The Sunday Independent*, 3.5.1998, p. 22; Ritchie, pp. 231-233; R. Brooks *et al.*, *The effective teaching of history*, pp. 30, 153; I.M. Olmedo, “Family oral histories for multicultural curriculum perspectives” in *Urban Education* 32(1), March 1997, pp. 52-53; P. Dillon, “Teaching the past through oral history” in *The Journal of American History* 87(2), September 2000, pp. 602-605. See also Yow, pp. 192-214 for detailed information on how to do family research for oral history projects.

centred' method of collecting information.⁵⁴ By presenting this personal dimension, oral history may modify and enrich people's understanding of the historical process in their family, community and country, by encouraging people to see the world through the eyes of other people and connecting real people to the past.

The shift in the focus of history was necessary in South Africa, particularly after 1994. The country's official history focused chiefly on political history, which was often biased and partial. There was a need for a more realistic reconstruction, a more balanced account of the past as substantial groups of people who had been ignored, needed recognition and acknowledgement for their role. Paul Thompson, the well-known British oral historian, sees this shift in focus as "setting in motion a cumulative process of transformation. History becomes, to put it more simply, more democratic".⁵⁵

History as a subject in its educational form also had to be freed from its institutional retreats and limitations so that it could move forward by opening up new skills for learners. Since 1994, education in South Africa has experienced dramatic and far-reaching changes. The advent of a new political dispensation demanded that the old apartheid-based "Bantu education" be abolished and a new curriculum implemented for learners of all races.⁵⁶

Prof. Kader Asmal, former Minister of Education in South Africa, launched the South African History Project during August 2001, to investigate officially the state of History in South African schools and to suggest possible solutions. The main aim of the project was to improve History teaching in schools, to provide new textbooks and to establish oral

⁵⁴ H.J. du Bruyn, "Oral history: the key to unlocking our Community History" in *Free State Libraries*, October-December 2003, p. 7.

⁵⁵ Thompson, pp. 8-9.

⁵⁶ For more detail on the position of history as a subject after apartheid, see H.E. Stolten, "History writing and history education in post-apartheid South Africa". Paper presented at the Network for Research and Evaluation on Education and Development (NETREED) Conference on "Disseminating and using research results from the South", University of Oslo, Norway, 8-10.12.2003, pp. 1-20.

history and history writing projects. Particularly noteworthy was the project's objective "to encourage the recording of unwritten histories ... to have a fresh focus on ordinary people, oral history and indigenous knowledge systems".⁵⁷

Studies conducted in both Britain and the USA since the 1950s have indicated that learners and students of all ages and at all stages of social and intellectual development, respond more positively to oral history as a teaching tool.⁵⁸ Alistair Thomson of the University of Sussex, England, believes that the principles underlying oral history teaching "embrace notions of learning being active, participatory and interactive; of theory being integrated with practice; of critical thought about the nature and use of knowledge; and of reflection by both teacher [and learner] and taught in the processes and outcomes of learning".⁵⁹ Oral history thus offers the opportunity of allowing active participation in the collection of evidence and ultimately the learning process.

Ritchie argues that oral history helps learners to break loose from their textbooks and become their own collectors of information. Learners appear to learn best from what they have researched themselves. Oral history interviewing turns learners into historical investigators: they must be able to choose a topic, identify suitable interviewees, do the research, conduct the interviews and transcribe the interviews themselves. During this process, they acquire numerous essential skills that are usually neglected in many schools.⁶⁰

Within the South African context, one can safely argue that oral history fits in with the modern teaching trend of focusing also on social history.

⁵⁷ Ministry of Education, *The South African history project progress report 2001–2003*, pp. 4, 54; Department of Education, *The South African history project* (pamphlet); *The Cape Argus*, 28.8.2001, p. 10; *Mail and Guardian*, 6.9.2001, p. 13; *Business Day*, 27.8.2001, p. 3; *Die Burger*, 11.9.2001, p.10; Cubbin, pp. 2-3.

⁵⁸ Ritchie, p. 188; Davis, "Success and excess...", p. 77; A. Thomson, "Teaching oral history to undergraduate researchers", <<http://www.bathspa.ac.uk/history2000/oralhist.htm>>, *s.a.* For more detail on the teaching of oral history on each level of education see Ritchie, pp. 188-221.

⁵⁹ Thomson, "Teaching oral history ...".

⁶⁰ Ritchie, pp. 188, 197.

Oral history succeeds in bringing history “home, by linking the world of textbook and classroom with the face-to-face social world of the student’s home community”.⁶¹

In order to bring history in line with outcomes-based education of ‘active-learning’, to make learners more responsible for their learning, the focus of the subject should also shift to a field related to social history, namely community history or micro-history. The history of everyday life, the role of the ordinary citizen in shaping events and the importance of social issues such as racism, reconciliation and women’s rights, are undoubtedly gaining prominence in current curriculum developments. It is in this regard that oral history as a teaching tool is coming to the fore. As a teaching device, oral history allows learners to meet, listen to and engage in discussions with people who have played a personal role in certain social issues. In this way, oral history presents learners with different viewpoints and exposes the individual beliefs, opinions and experiences that underlie people’s social concerns and opinions. Oral history projects will not only shed light on the social lives of the so-called under-classes, but will also provide important insights into the history of popular consciousness. Furthermore, projects of this nature can emphasise the role that social experience plays in the making of history.⁶²

This shift in focus and transformation in content are as described, for several reasons important to the ordinary person, as well as to the learner – especially in the South African context. Oral history offers the general public and the learner/student a way to situate themselves in the history of their own community. A gateway is thus provided for these groups to the rich cultural resources outside the academic history books and the classroom.

⁶¹ Dunaway, p. 11.

⁶² Sideris, pp. 42-43; Ritchie, p. 199; J. Porter, “Contextualising teaching and learning: the history curriculum for the future”, <<http://www.bathspa.ac.uk/history2000/skillsdevhistcurric.htm>>, *s.a.*

1.5 THE PROCESS INVOLVED IN GAINING INFORMATION THROUGH ORAL TESTIMONY

Oral testimony may be used in a variety of contexts. For the purpose of the study, this particular section will be dealt with in Chapter 3, to make it more applicable to the methods and processes implemented by the South African Truth and Reconciliation Commission's context of obtaining information from oral testimonies.

Whatever the context in which the oral testimony will be conducted, it is nevertheless important to plan the project properly, setting out the aims and objectives, as well as the best ways to accomplish them.⁶³

An oral history project should be established, planned and performed carefully in order to obtain all the information required. Key steps in which to engage for a successful oral history project will include: proper background research on the chosen topic; determining the scope of the project; balancing objectives with resources; identifying suitable interviewees; compiling well-prepared questionnaires; planning and conducting the interview; using suitable interviewing equipment; outlining the completed tape; preparing the written transcripts; and arranging for storage and distribution.⁶⁴

In preparation for an oral history project, an essential part of it includes learning about the norms of what is described as "people's 'communicative repertoire': its particular forms, its special events, its speech categories and its taboos. The most fundamental rule is to be

⁶³ See the following sources for more detail on how to set up an oral history project: Ritchie, pp. 47-75; Yow, pp. 32-35; Worthington and Denis, pp. 24-42; Moss, *Oral history program ...*, pp. 19-31; Baum, pp. 10-44; Lance, pp. 7-16.

⁶⁴ For more detail on these steps see H.J. du Bruyn, "How to conduct an oral history project: the basic steps" in *Free State Libraries*, July-September 2005, pp. 28-30; Yow, pp. 32-80; Ritchie, pp. 47-109; Slim *et al.*, (eds), pp. 61-94; Seldon and Pappworth, pp. 56-88; B.M. Frank, "A Do-it-yourself, oral history primer", <<http://www.au.af.mil/au/awc/awcgate/oral.usmc.htm>>, 1996; Women's Memorial Foundation, "How to do oral history", <<http://www.womensmemorial.org/historyandcollections/oralhistory.html>>, *s.a*; B. Truesdell, "Oral history techniques: How to organize and conduct oral history interviews", <<http://www.indiana.edu/~cshm/>>, 1999; Henge, pp. 23-65.

sensitive to customary modes of speech and communication and allow people to speak on their own terms.”⁶⁵

The interview itself forms a crucial part of gaining information. The North American oral history pioneer, Charles T. Morrissey, emphasised the value of “preparation for an oral history interview; the need to establish rapport and intimacy, to listen, to ask open-ended questions, and to refrain from interrupting; the importance of allowing pauses and silences, avoiding jargon, probing, and minimizing the presence of the tape recorder”.⁶⁶

Without doubt this is good and relevant advice to ensure success in the interview process. However, it is noteworthy, especially in an African context, to adhere to Alistair Thomson’s recognition that “the interview is a relationship embedded within particular cultural practices and informed by culturally specific systems and relations of communication. Therefore, there is no single “right way” to do an interview, and the “common-sense” approach to interviewing members of a white, male political elite may be entirely inappropriate in other cultural contexts”.⁶⁷ In other words, subtle cultural differences may influence disclosure.⁶⁸ Slim and Thompson support this view and conclude that it is “critically important to be aware of these different conceptual and cultural dimensions to interviewing and historical information”.⁶⁹ Perhaps it is worthwhile remembering that the interview technique may be summed up as follows: “Interviewing is rather like a marriage: everybody knows

⁶⁵ Slim *et al.*, (eds), p. 63. For more detail on how to be sensitive to the African culture and customary modes when conducting interviews, see H.J. du Bruyn and T. Challa, “The dos and don’ts of interviewing in the African culture: An introductory guide”. Paper presented at the Oral History Workshop “Doing oral history in the African context”, Bloemfontein, 29-30.7.2004, pp. 1-9.

⁶⁶ Thomson, “Fifty years on ...”, p. 581.

⁶⁷ *Ibid.*

⁶⁸ Cultural norms may prohibit women from testifying. This situation occurred at the TRC special women’s hearings. Women were afraid to speak of their torture. Observations were made that “suffering tends to make people inarticulate”, that “pain destroys language” and that “women are afraid to talk about sexual assaults”. See L.S. Graybill, *Truth and Reconciliation in South Africa. Miracle or model?*, pp. 103-104.

⁶⁹ Slim *et al.*, (eds), p. 63.

what it is, an awful lot of people do it, and yet behind the closed front door there is a world of secrets".⁷⁰

In the process of gaining information, the oral history interview rewards both the interviewer and the narrator. The latter may make sense of events, may learn a different perspective, understand afresh events that have happened and the prospect of resolution or at least acceptance. On the other hand, the interviewer has an opportunity to broaden his/her understanding and knowledge of another world of events and experiences.⁷¹ For Paul Thompson, it is especially a learning process for the historian: "The historian comes to the interview to learn: to sit at the feet of others who, because they come from a different social class, or are less educated, or older, know more about something ... By giving a central place in its writing and presentation to people of all kinds, history (and the historian) gains immensely".⁷²

Ultimately the oral historian/interviewer should gain the most from the narrator's testimonies without abusing confidence or twisting meaning.⁷³ For everyone to benefit from the information and knowledge gained through oral testimonies there should be an awareness of the complexities and responsibilities involved in an oral history project.

1.6 THE VALUE OF ORAL HISTORY

In 1950 Louis Gottschalk explained the complex process of recording the past as follows: "Most human affairs happen without leaving vestiges or records of any kind behind them. The past, having happened, has perished with only occasional traces. To begin with, although the

⁷⁰ Yow, p. 55.

⁷¹ *Ibid.*, p. 137.

⁷² Thompson, p. 12.

⁷³ The International Oral History Association has documented principles and standards on ethics, as well as its evaluation guidelines to "encourage those who produce and use oral history to recognize certain principles, rights, technical standards, and obligations for the creation and preservation of source material that is authentic, useful, and reliable". To consult these guidelines and codes of ethics, see Yow, pp. 252-

absolute number of historical writings is staggering, only a small part of what happened in the past was ever observed ... And only a part of what was observed in the past was remembered by those who observed it; only a part of what was remembered was recorded; only a part of what was recorded has survived; only a part of what has survived has come to historians' attention; only a part of what has come to their attention is credible; only a part of what is credible has been grasped; and only a part of what has been grasped can be expounded or narrated by the historian".⁷⁴

In the process of recording these narratives into a more inclusive history, oral history may increase the scope of historical writing, making it a valid and valuable source of historical information. When used carefully and scientifically, oral history can be a complementary and supplementary tool of the historian's trade.

The value of oral history lies on different levels, particularly in the following aspects, evaluated against the background of the changing socio-political environment in South Africa since 1994.

1.6.1 Oral history records unwritten and/or lost history

Oral history has performed an important service in providing access to the history of groups whose heritage might otherwise be lost. This is particularly true of groups and cultures that have a predominantly oral tradition, rather than a written one. Among illiterate and semi-literate societies, oral traditions are still the chief form of historical awareness and cultural continuity from generation to generation. Even in literate, record-keeping societies, much information goes unrecorded and in the current century, many transactions and business are done orally. For some decisions there are no written records and in such cases, oral history becomes a fundamental and sometimes the only tool, making a

264; Ritchie, pp. 252-255; Oral History Association, "Evaluation guidelines", <www.ac.www.edu/~ccfriday/tools/Oralguide.htm>, s.a.

⁷⁴ L. Gottschalk, *Understanding history. A primer of historical method* (2nd edition), p. 45.

substantial contribution by providing information that historians would not otherwise be able to acquire. In the process, oral history may foster appreciation for little-known or rapidly vanishing ways of life and verify the historicity of events which cannot be determined by traditional methods of historical research. In this regard, oral history recovers and preserves important aspects of a human experience that would otherwise go undocumented and provides information that is original in character for distinct subject areas.⁷⁵

If weighed carefully, this value of oral history to provide information about the past that exists in no other form, is potentially its most valuable attribute and yet, until now, the one least exploited in local history research. Countless unrecorded topics of historical interest could be fruitfully pursued if people's memories were tapped. Without the use of orally communicated material, the task of researching these topics may never be successfully undertaken. For instance, a large part of our history will be lost if the stories of old people are not recorded now. When these people die, the stories are lost forever. Old people may be seen as "libraries"⁷⁶ in their own right and their unwritten stories need to be preserved for the future. Oral historians can assist in producing lasting documents of a subject under study by interviewing the living informants.⁷⁷

There is another dimension to this when taking the situation in South Africa into consideration. Tina Sideris, who was a member of the Oral History Project of the South African Institute of Race Relations (1982–1984), argues that, for a number of reasons, the history of popular organisations has not been well documented. Illiteracy has militated against the systematic documentation of activities and organisations amongst certain groups. The informal nature of some popular organisations led to the non-existence of records and archival storage of the organisations' activities. If, for example, trade unions or political

⁷⁵ Lance, p. 3; Moss, *Oral history program ...*, p. 8; Vansina, pp. 198–199; Texas Historical Commission; Starr.

⁷⁶ "An old man dies ... a book is lost." An African saying.

organisations did keep official records, these were often confiscated and destroyed by the former security forces. Many sources of historical investigation have also been removed and repressed in the form of censorship and banning. Academic writings about black people in general, have concentrated almost exclusively on their roles as fighters for or against the white authorities. Thus, material on black social history is very scarce. In addition, almost no material is available on the day-to-day lives of black people, particularly those who lived in rural areas. It is these areas, inaccessible to conventional methods of investigation, that the method of oral history allows the historian to explore.⁷⁸

The TRC was confronted with the destruction of huge volumes of documentary records by the former security forces in an attempt to remove certain evidence. This process gained momentum in the 1980s and developed into a co-ordinated endeavour to destroy any access to certain documents entailing the functions and activities of the former State. By May 1994, an immense expunging of State documentary memory within the security establishment had been achieved.⁷⁹ In an attempt to reconstruct this loss of evidence, oral history methods may be used to recover these memories.

In the endeavour to construct a more comprehensive picture of the past, taking into account certain problems and the bias of official history and official records, oral testimony is, very often, the only alternative source for obtaining information to correct and augment an incomplete and inadequate official history. It often represents all we can learn about the lives of ordinary people. In South Africa, large sections of our history have been distorted and hidden. A lot of information about the past can be salvaged only by tapping the memories of those who have lived

⁷⁷ Witz, p. 14; Allen and Montell, p. 20; *The Sunday Independent*, 3.5.1998, p. 22.

⁷⁸ Sideris, p. 41; *The Sunday Independent*, 3.5.1998, p. 22; *Sunday Times*, 5.9.1993, p. 21.

⁷⁹ Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, Vol. 1, pp. 201, 229. For more detail on the TRC's view and handling of the destruction of records, see Truth and Reconciliation Commission, Vol. 1, pp. 201-243.

through it, or who remember hearing older members of the family or community talk about it. Academic history may be enriched in the process.⁸⁰

With regard to the process of identifying significant sites in South Africa, for which there is no recorded history, oral history also plays a vital role in bringing together strands of South Africa's heritage. A specific place may have significance in people's memories and beliefs. If all the narratives concur, the researcher can find an interesting story to tell and the heritage of South Africa is bound to be enriched by this contribution.⁸¹

Oral history may also lead to the discovery of entirely new information. The interviewee can draw the researcher's attention to documents whose significance might otherwise not have been so obvious or through interviewing, new information can be published that would otherwise remain unknown and/or unwritten. Oral history can also become invaluable in areas where documentary evidence is particularly weak on occasions that were considered, at the time, to have been failures or to have been embarrassing. The fact that the researcher has direct and close contact with the interviewee as an historical source, may sometimes provide 'fresh' insight into an event.⁸²

Furthermore, oral history may make a contribution in supplying information on personal roles and how personal and organisational relationships functioned and developed in practice. Written documents seldom convey people's thoughts and rarely reveal the human side of the past. Thus, the oral history interview provides the chance to transmit this type of character information, making it very personal. Interpretations gained from this kind of information that 'does not get into official records' must be carefully examined and considered, but may be of

⁸⁰ Sideris, pp. 41-42; Allen and Montell, p. viii; *Volksblad*, 25.3.2000, p. 9.

⁸¹ *Business Day*, 28.2.2001, p. 25; Ritchie, pp. 225-226.

⁸² Seldon and Pappworth, pp. 38, 44, 48-49.

substantial value.⁸³ In this way, a broader perspective into organisations, roles, characters and events may be achieved.

The spoken reminiscences of ordinary people have helped historians to rediscover history and use it more effectively. In the process, one may come to appreciate the less fateful, but nevertheless important role played by ordinary people in the shaping of history.

1.6.2 Oral history complements recorded sources

Oral history is a valuable source of historical information, since it complements other recorded sources of information. Historical gaps of interest and importance may be filled by using oral history methods to provide an intimate view and complete the picture of the events described, in order to create records which otherwise would not have been available.

It is important to note that oral history cannot, and is not intended to take the place of the written document. Written documents will remain important sources of historical information where documentary history is the mainstay of archives. Oral history therefore, makes no claim to exclusivity. However, oral history can make a valuable contribution by supplementing and enriching the written record.

Historical written records are deliberately prepared in an objective and impersonal manner, giving the researcher only the 'bare bones', which means that the tension and influences often underlying the historical data are not reflected in the official records. The personal and anecdotal

⁸³ Yow, p. 13; Seldon and Pappworth, pp. 39-42, 49; Shopes. It's self-evident that not all oral history falls into the category of social history. Oral history interviews are also conducted with business leaders, politicians and their associates, as well as cultural celebrities. Apart from gaining information on the perspectives of those in power positions, the interview may also give the 'story behind the story' of personal rivalries and alliances, motives and the intricacies of decision-making that are also generally absent from the public record.

characteristics of recorded oral history interviews may provide flesh for the sometimes arid bones of history.⁸⁴

Written sources usually provide the who, what, when, and where of history, while oral history can add better insights into the how and why, thereby giving a fuller historical record. Written records relate the facts of *what happened*, while oral sources provide insights into *how people felt about what happened*. Oral history often expresses how people felt about certain important events and movements, how they reacted to them, and how these events affected or even dramatically changed their lives. It can provide information on people's contribution to society, what guided people's decisions and choices and what people believed in and why. Oral history tells the researcher about events, but even more, about their meaning. Details of what happened, as well as the emotional responses of individuals to the event itself, provide a human dimension to eyewitness accounts of historical occurrences.⁸⁵

This relationship between oral and written sources may be summed up as follows: "Alone, each one is incomplete, but together they form a harmonious union, with the one offering objective interpretation based upon sound evidence, and the other giving a personalized immediacy, a sense of being there and of participation".⁸⁶ Alessandro Portelli agrees on this relationship between written and oral sources as being 'not mutually exclusive'. He explains that both sources "have common as well as autonomous characteristics, and specific functions which only either one can fill (or which one set of sources fills better than the other)".⁸⁷ Trevor Lummis yields to this perspective of written and oral sources where they do not contradict one another but rather enhance the value of one

⁸⁴ Lance, p. 3; University of Kentucky oral history program, "The importance of oral history", <http://www.uky.edu/Libraries/Special/oral_history/introduction.html>, *s.a.*

⁸⁵ Ritchie, p 45; Allen and Montell, pp. 21, 58; Yow, p. 15.

⁸⁶ Allen and Montell, p. 3.

⁸⁷ A. Portelli, "What makes oral history different" in Perks and Thomson (eds), p. 64. For Paul Thompson the difference between the oral and written forms is more striking: "Written language is grammatically elaborate, linear, spare, objective, and analytical in manner, precise yet abundantly rich in vocabulary. Speech on the other hand is usually grammatically primitive, full of redundancies and backloops, empathetic and subjective, tentative, repeatedly returning to the same words and catch-phrases". See Thompson, p. 279.

another when used together, because “they have been set down at different times and were subject to different personal biases, contemporary pressures and social conventions. They should be used to illuminate the defects of one another”.⁸⁸

Apart from providing the interpretation of events, personalities and relationships through oral history interviewing, the latter may also assist the researcher in the use of documents themselves. For example, oral history may provide clarification in cases of factual confusion. If documents appear to contradict one another, interviews may help to clear the blockage. Documentary evidence may also fail to provide all the detail and answers the researcher need. Using oral history interviews, the underlying unrecorded assumptions and motives can be revealed.⁸⁹

Secondary sources may not be adequately revealing and through oral history methods, the researcher can reach below the surface and discover what is fundamental and what is insignificant. Thus, both written and oral histories serve as existing histories and also as historical sources, from which evidence may be obtained to give a clearer picture of the events of the past.

1.6.3 Oral history gives a ‘voice to the voiceless’

The value of oral history lies specifically in the broadening of sources of historical information to include the voices and perspectives of ordinary people, thus expanding the historian’s database of evidence and information. Oral history’s potential lies here in “restoring the recording of the voices of the historiographically – if not the historically – silent”.⁹⁰ An attempt is made to ‘give a voice’ to the experiences and everyday stories of ordinary people and these historical narratives, as communicated through oral testimony, are a means of overcoming the silence. Oral history provides a voice to the voiceless, to the poor, the

⁸⁸ Lummis, p. 155.

⁸⁹ Seldon and Pappworth, pp. 43-45.

⁹⁰ Shopes.

marginalised and the illiterate. This is particularly important in South Africa, where repression and discrimination have muted the voice of the majority of people.⁹¹ A former resident of District Six, in Cape Town, once remarked: "We have a voice. We want to be heard. They don't have to give us anything. We just want someone to listen to us".⁹²

Still and Thompson elaborate on the reasons for these 'hidden voices', explaining that "people are not consulted enough because the main debates take place in meetings which they do not attend or in documents which they do not write. Oral history can correct the situation by giving volume and power to the voices of people who are outside the development establishment".⁹³

This could allow those who have limited access to formal channels of expression, to communicate their points of view to a public audience. At the very least, this oral evidence could then be presented in a form that is accessible to a wide range of people. For example, during the Truth and Reconciliation Commission in South Africa, it was also ordinary people who appeared before the Commission to tell their stories unhindered to all. With slogans such as, "The Truth Hurts, But Silence Kills",⁹⁴ (sic) the TRC wanted all South Africans to realise that they had the opportunity to tell their stories. The stories told at the TRC exposed, apart from the silenced voices, also the methods implemented in silencing them. Antjie Krog describes it as follows: "Many voices of this country were long silent, unheard, often unheeded before they spoke, in their own tongues, at the microphones of South Africa's Truth Commission. The voices of ordinary people have entered the public discourse and shaped the passage of history. They speak here to all who care to listen".⁹⁵

In this sense, oral history makes a social contribution, assisting the less privileged in their journey towards dignity and self-confidence. This

⁹¹ Allen and Montell, pp. 21, 58; Moss, *Oral history program ...*, p. 9; Minkley and Rassool, pp. 90-91; *Natal Witness*, 23.9.2003, p. 4.

⁹² *Democracy in Action*, 1.6.1995, p. 32.

⁹³ Still *et al.*, (eds), p. 4.

⁹⁴ D.M. Tutu, *No future without forgiveness*, p. 81.

⁹⁵ A. Krog, *Country of My Skull* (2nd edition), p. viii; *Rapport*, 23.5.2003, p. 24.

value of oral history became apparent for Alex Boraine the day when the TRC handed over the final report and the victims came to take their seats in front at the ceremony and his mind went back to the hearings: “I heard again their simple but powerful stories and knew that nothing could take away from them the restored dignity and the breaking of silence which had made them prisoners for so long”.⁹⁶

Oral history gives ordinary people confidence in their own speech as a means of expressing themselves, from their own memories and interpretations of the past and their ability to contribute to the writing of history. Approaching a person to record his/her story conveys the message that his/her life is of value and of significance in itself. This process captures an alternative view of History and reveals a great deal about an individual and about a culture.⁹⁷

Oral history can assist the interviewee in understanding people’s fragmented memories and help to review and re-value them. By adding an ever widening range of voices to the story and by seeing and hearing their stories in the public realm, ordinary people may experience that they are not alone and actually have shared memories, which connect them to others. Through oral history the points of view of ordinary people can be presented in a form that is accessible to a wide range of people. Every person has a story and many people are willing to tell their stories, while many are eager to listen.

1.6.4 Oral history adds to the sensory and personal

One dimension that is missing from written documents may be provided by oral history, namely sound. No written language is identical to its spoken counterpart. Seldon and Pappworth explain it as follows: “Even if every fact of conceivable historical interest was recorded on paper, there

⁹⁶ A. Boraine, *A country unmasked. Inside South Africa’s Truth and Reconciliation Commission*, p. 315.

⁹⁷ Thompson, pp. 20–23; Caunce, p. 25; *Democracy in Action*, 1.6.1995, p. 32; Slim *et al.*, (eds), pp. 8–9.

would still be a role for oral history because of its unique advantage of providing historical material that can be reproduced in sound. Oral history interviews can thus be used in a variety of ways: on television, radio, pre-recorded educational cassettes, in museums and exhibition presentations".⁹⁸ The use of words and the structures of sentences, from the voices of the past, can significantly affect the meaning conveyed and may bring history in a clear form to an extensive audience, some of whom might never have been introduced to the same material, if presented only in writing.

Sensory information obtained from sound recordings contains oral qualities, where the core of the information is in the medium which carries it, as well as in the information itself. Oral history records and conveys, apart from information, the emotions and feelings of the narrator, thus adding to an essential human understanding.⁹⁹

Moreover, oral history uniquely provides the atmosphere, mood, character and colour of a particular episode or series of events or of a whole period. This 'flavour' of a personality or an occasion is not conveyed over when reading written documents. Documentary evidence is often drained of human detail, resulting in colourless, impersonal collections of documents which limit the impact on the audience and carry little or no mark of a person's personality. Unlike documents, which seldom convey the way people think, interviewing offers insight into the respondent's personality and thought processes, as well as into the feelings of the person being interviewed through the tone of voice, the usage of language and emphasis, thus providing the opportunity of assessing an interviewee's character.¹⁰⁰

Additionally, it is important to remember that people engage with the past in deeply personal ways. Linda Shopes explains that people "draw

⁹⁸ Seldon and Pappworth, p. 52.

⁹⁹ Lance, p. 3.

¹⁰⁰ Seldon and Pappworth, pp. 47-49; W.W. Cutler, "Oral history. Its nature and uses for educational history" in *History of Education Quarterly* 11(2), Summer 1971, pp. 186, 188.

upon the past as a resource for enhancing identity and explaining experience ... their deeply personal, often emotionally resonant accounts of individual experience draw listeners – or readers – in creating interest and sympathy".¹⁰¹ When oral history is carefully contextualised, it can contribute to the reader/listener's understanding of personal experiences.

1.6.5 Oral history develops a variety of skills

Through conducting oral history, a new set of skills is required and obtained, while numerous skills are developed. Engaging in oral history encourages a whole range of skills which are essential to the growth of a society of informed and capable citizens.

The main focus of current curriculum strategies in South African, as well as in most Western educational institutions, is the promotion of so-called 'transferable skills'. Transferable skills, which include both subject-specific and generic skills, are basically skills that are seen as relevant to the needs of the contemporary world. Not only do the principles underlying oral history teaching closely reflect current ideas about effective learning and teaching, but oral history also lends itself to the development of a wide range of personal and transferable skills.¹⁰²

The following skills may be developed:

- *Research skills:* Researchers involved in oral history are exposed to the value of primary sources leading to searches in libraries and archives. Research and questioning skills are developed when confronted with contradictory evidence. Different people give different versions of the same event and the interviewee's story may differ from the written accounts. In the process, the ability to verify

¹⁰¹ Shopes.

¹⁰² T. Hitchcock and B. Shoemaker, "Skills and the development of the history curriculum", <<http://batspa.ac.uk/history2000/skillsdevhistcurric.htm>>, s.a.; Thomson, "Teaching oral history ...".

the different sources are developed and it also leads to the realisation that historical events do not affect all people the same way.¹⁰³

- *Language skills:* The development of language skills includes both the written and spoken language. Formulating questions, conducting interviews and transcribing them develops language skills. In addition, listening skills are developed since the researcher has to focus on the interviewee's speech during an interview. By interviewing others, one can also gain confidence with regard to expressing oneself in words.¹⁰⁴
- *Technical skills:* These skills are acquired mainly through the handling of equipment. The uses thereof for recording and transcribing an interview and how to use it in combination with other equipment, such as video cameras, are developed. An oral history project may also lead to the collecting of related artefacts and photographs. The researcher should gain knowledge of how to handle such items, take care of them and how to reproduce photographs.¹⁰⁵
- *Social skills:* The interview process develops some important social skills during the researcher's interaction with interviewees. He/she should communicate with a variety of people from different social classes and age groups, should develop tact and patience, experience feelings of empathy towards others when confronted with conflicting values and attitudes to life.¹⁰⁶
- *Cognitive and other skills:* Some of the most important skills acquired through oral history are the cognitive skills. These include an understanding of historical concepts and timelines, genealogy, cause and effect relationships and problem-solving skills. Writing reports

¹⁰³ Thompson, p. 192; Ritchie, pp. 196, 199; Krige, *et al.*, p. 12; G. Timmins, "Progression and differentiation in history teaching", <<http://www.bathspa.ac.uk/history2000/progressdiff.htm>>, *s.a.*

¹⁰⁴ F.E. Graves, "Sound and the teaching of history" in Trümpelman, (ed.), p.116; Thompson, pp. 192-193; Krige, *et al.*, p. 12.

¹⁰⁵ D. Weitzman, *My backyard history book*, pp. 56-57; Thompson, p. 193.

about individual oral history experiences also develops analytical and composition skills. The by-products of developing these skills are the opportunities for self-revelation and the development of self-worth.¹⁰⁷

By obtaining a variety of new skills, everyone involved may benefit from oral history. It develops not only the individual in a diversity of new skills, but also fosters a consciousness and understanding between different communities, social classes and generations. Ultimately, it may encourage improved human relations, as oral history may serve to unlock the barriers between societies in as far as they share their part of the greater human experience.

1.6.6 Oral history - political reconciliation and nation-building

Oral history additionally has vital political importance, aims and outcomes. Understanding the past from the point of view of the oppressed people in South Africa, is a powerful way to uncover the 'past-present relationship' through memory. Oral history may assist societies and individuals to remember and understand better the trauma of the past. This can play an important role in restoring a sense of pride and confidence in these people. While they give words and meaning to their experiences, which had previously been ignored and/or silenced, they may gain support and attain public attention and recognition and ultimately, also find a form of therapeutic benefit in sharing their stories. Reconstructing past struggles, from the point of view of the ordinary people involved, may help to obtain a more comprehensive picture of their roles in the resistance period.¹⁰⁸

For example, the Truth and Reconciliation Commission in South Africa uncovered the past by using the politics of historical and personal

¹⁰⁶ Thompson, pp. 12, 193; Ritchie, pp. 193, 197; Brooks *et al.*, p. 30; Weitzman, pp. 56-57.

¹⁰⁷ Ritchie, pp. 197, 199-200.

¹⁰⁸ Sideris, p. 43; Thomson, "Fifty years on ...", pp. 590-591.

memory for the purpose of reconciliation in the future. The TRC broke the silence imposed by Apartheid through an official recording of memories. Oral history was also used as a resource and a way of restoring the rights of the victims. In the search for truth and healing, oral history became an important tool in confronting the experiences of ordinary people living under Apartheid during the period 1960-1994.¹⁰⁹

The stories told by ordinary people during the TRC wiped out the possibility of denial and personalised the acts human beings did to other human beings. People used the platform given by the TRC to express their pain and grief in public. It resulted in a shared understanding of knowledge, but was also an acknowledgement. In the process, the past was recorded, making these narratives part of national memory.¹¹⁰ Krog describes this situation of shared stories and pain at the TRC as follows: “Now that people are able to tell their stories the lid of the Pandora’s box is lifted; for the first time these individual truths sound unhindered in the ears of all South Africans ... The personal pain puts an end to all stereotypes. Where we connect now has nothing to do with group or colour, we connect with our humanity ...”.¹¹¹

Oral history may thus stimulate a ‘cathartic release’ of long-term repressed emotions and sometimes, not always, become a means of emotional support. However, it is important that the oral historian should keep in mind that the recollection of painful memories may have therapeutic, but also traumatic effects.¹¹² According to Bongani Finca, a Commissioner at the TRC, talking about the past and their experience had a healing effect on the victims and he calls it the ‘blessing of memories’. This blessing lies in the process where the people were alienated from the memories and their experiences were initially painful, but “it is when

¹⁰⁹ Minkley and Rassool, pp. 89–90; Ritchie, p. 23; *Rapport*, 23.3.2003, p. 24; *Democracy in Action*, 1.6.1995, p. 32; Thomson, “Fifty years on ...”, p. 591.

¹¹⁰ *Independent on Saturday*, 14.8.1999, p. 8; *Weekend Argus*, 22-23.10.1994, p. 3; *The Star*, 29.7.1999, p. 18.

¹¹¹ Krog, p. 45.

¹¹² Ritchie, pp. 234-237; B. Finca, “Learning to bless our memories” in Denis (ed.), p. 15.

you are being reconciled with yourself and feeling bruised and poorer but proud, that you begin to bless your memory”.¹¹³

The history of political resistance and political organisation may be documented systematically through oral history, so that it may be used for a greater political purpose. Communities who have gone through forced removals offer a good example. Under the threat and conditions of forced removal, communities develop a strong sense of their history and their right to land ownership. Recording the history of these communities and making it widely available, may help to justify their claims to the land.¹¹⁴

It is important to note that “no one group has an exclusive understanding of the past”.¹¹⁵ Especially in cases where oral history is used in a process of political reconciliation and nation-building, the interviewer should ‘cast the nets wide’ and record as many different participants to an event or members of a community as possible, to make the oral evidence more valid.¹¹⁶

Oral history has an important part to play in the reconstruction of the South African past where the “land belongs to the voices of those who live in it”.¹¹⁷ It corrects other perspectives just as much as other perspectives correct it. It may provide a sense and even form of empowerment for individuals and groups, through the process of remembering and reinterpreting the past. Oral history may then form the connection between the past and the political struggle, between power and knowledge, between political and social history, and between memory and history.¹¹⁸

Taking into account all the different values of oral history, it is clear that it opens a way for everyone to become more engaged and participatory

¹¹³ Finca, p. 15.

¹¹⁴ Sideris, pp. 51–52.

¹¹⁵ Ritchie, p. 24.

¹¹⁶ *Ibid.*

¹¹⁷ Krog, p. 210.

in history. To involve the public in the creation of past events, may lead to a shared sense of what happened; contributing to a more realistic, critical historical reconstruction of the past.

1.7 CHALLENGES CONFRONTING ORAL HISTORY

Although many practitioners of oral history feel it is “time to hand the mike to the people”¹¹⁹ and there are large numbers of ordinary people who still need to share their significant stories and memories, opposition to oral history still exists and doubts are still expressed in this regard. Some academic historians still perceive oral evidence as being too subjective, since human memories are incomplete, inaccurate, open to distortion, subject to subsequent changes in people’s perspectives, subject to fluctuating access and recounted from a biased point of view.¹²⁰

History is the ‘life of memory’, with memory forming the core of oral history. What makes oral history so distinct and sets it apart from other branches of history, is its reliance on memory and not on text. Unfortunately, memory can never be absolutely certain and therein lies its weakness as a source of knowledge of the past.¹²¹

All memory, short- as well as long-term, is stored through a process of selection and interpretation. Immediately after an event, sifting and shaping occurs to a large degree and continues in the long term in a more slow and subtle way. Ordering, discarding, combining and selecting is a continual process, resulting in memory bringing together the objective and subjective, facts, opinions and interpretations. Therefore, the

¹¹⁸ Minkley and Rassool, p. 93.

¹¹⁹ Ritchie, p. 13.

¹²⁰ Sideris, p. 42; Caunce, pp. 214-219; R.J. Shafer, *A guide to historical method*, p. 117.

¹²¹ Ritchie, p. 20; See also P. Burke, “History as social memory” in T. Butler (ed.), *Memory. History, culture and the mind*, p. 97.

researcher can never assume that the information produced from memory to be unadulterated fact.¹²²

This particular problem area of oral history concerning the retrieval of memories connected with the unreliability of the interviewee's memory with regard to hard and specific facts and the chronological order thereof, is highlighted by the historian Peter Oliver: "It seems to me that those who prepare and use oral record have not yet given sufficient weight to the tricks that memory can play...".¹²³ This view is supported by historian Patrick O'Farrell who wrote in 1979 that oral history was moving into "the world of image, selective memory, later overlays and utter subjectivity ... And where will it lead us? Not into history, but into myth".¹²⁴

Considering the variables influencing and shaping memory, such as perception, age, the narrator's health, the topic under consideration, the way questions are asked, emotion, the willingness of the narrator to participate in the interview, etc., one can obviously not ignore the problematic nature of memory as a reliable historical source. Oral historians cannot treat memory as simply 'a set of documents in a person's head'. Although oral history may be as unreliable or reliable as any other research source, an awareness of the special nature of memory as a source of historical information and evidence needs to be highlighted. Certain factors contributing directly and indirectly to a person's recollection of his/her memory and the influence thereof on gaining historical evidence, is described in detail in Chapter 5 against the background of how memory operates and the kind of information it produces. Furthermore, the challenges memory poses to the researcher using oral history methods are set out and evaluated.

1.8 THE AUTHENTICITY OF ORAL SOURCES

¹²² Slim *et al.*, (eds), pp. 140-141.

¹²³ Seldon and Pappworth, p. 16.

¹²⁴ Thompson, p. 159; Thomson, "Fifty years on ...", p 585.

Concerning the problematic nature of oral history with memory as a potential source of evidence, there are numerous factors that may negatively affect and dilute its reliability. Contrary to what many historians believe, these factors are not insurmountable and they may be overcome by employing reliable techniques developed by historians, who are involved with oral history, over the years.

History is about people, making it complex and many-faceted. When using oral history with memory as the core, it is crucial to be aware of the unique nature of memory as a source of evidence per se. Memory should not be treated as a source in the same way as written documents. Just as oral history is different from written history, memory, as the main source of oral history, is intrinsically different and therefore specifically useful, from written records as the main source of written history. Both types of sources require different and specific interpretative instruments, as both have common, as well as autonomous characteristics.¹²⁵

Neither oral nor written evidence may be taken as superior, because the difference is not so much in the integrity and reliability of the sources, as in their format and context. Fentress and Wickham describe memory and the written text as two different types of vehicles that both contain information about the past.¹²⁶ Furthermore, Vansina argues that oral sources are unique (and therefore, irreplaceable), since they are - as he describes it - "sources from the inside".¹²⁷ These sources provide us with insights of a "different kind of past that no written source uncovers, even if it remains itself a limited and biased view".¹²⁸ Thus, in searching for the authenticity of oral history, one must understand oral history as, apart from an exercise in fact finding, an interpretive exercise of past events.

To add to the above-mentioned viewpoints, other oral historians have also highlighted the unique advantages of oral history against the written

¹²⁵ Portelli, p. 64.

¹²⁶ J. Fentress and C. Wickham, *Social Memory*, p. 2.

¹²⁷ Vansina, p. 197.

¹²⁸ *Ibid.*, p.198; See also I.M.L. Hunter, "Memory in everyday life" in M.M. Gruneberg and P.E. Morris (eds), *Applied problems in memory*, pp. 11-14.

document, where the latter is definitely not ‘problem-free’¹²⁹ as a source. Written documents may be as deceptive as memory where “even the most genuine of documents should be regarded as guilty of deceit until proven innocent”.¹³⁰ Non-participants usually compose written documents and normally the documentation process happens after the referred event. Contrary to this situation, an oral history interview leads to direct and personal involvement where the narrator makes an effort to make sense of the past and place it in the appropriate historical context. The researcher may also return again and again to the source to tell more.¹³¹

On the other hand, the true distinctiveness of oral history evidence lies in the fact that it presents itself in an oral form. The recording may be a more reliable and accurate account of an interview than a purely written record, with the interview bringing the information much closer to the human condition. The speaker can be challenged immediately and even more importantly, all the precise words used are there, as they were spoken, with the “social clues, nuances, humor or pretence as well as the texture of dialect that was used. It conveys all the distinctive qualities of oral rather than written communication”.¹³²

Allen and Montell argue the trustworthiness of memory by pointing to research among groups of people around the world who have “a marked propensity for retaining historical truths over long periods of time”.¹³³ Especially in favourable social and cultural conditions, people in countries like Africa, the American Indians and South Asian groups, preserved their orally communicated history with significant accuracy.

¹²⁹ Written records may carry personal and/or social biases and may occur within a social context. It may also be viewed through the screen of contemporary experiences, making it partial and distorted and causing it to suffer from historical inaccuracy.

¹³⁰ Gottschalk, p. 144.

¹³¹ Portelli, pp. 68-69; Grele, p. 141.

¹³² Thompson, pp. 125-127.

¹³³ Allen and Montell, p. 69.

Jan Vansina maintains an interesting viewpoint on the subjectivity issue of oral evidence against the more objective view of documented records. As one of the most prominent advocates of oral tradition and the virtues of the oral history method and who was involved with this discipline in Africa, he is of the opinion that oral sources may sometimes be more objective than written sources. Oral sources and specifically oral traditions, are subject to a sequence of interpretations, as the messages are being passed on. Most written sources, however, go through only a single interpretation. As a result, there is a natural inclination to regard written sources as more objective than oral sources. Vansina believes that there is a safeguard that often makes the apparently more subjective oral sources more objective than the apparently less subjective written sources. According to him, the first interpretation limits the scope for the second, whereas nothing limits the interpretation of direct evidence, i.e. written sources. Therefore, Vansina argues that oral sources should be seen not only as an historical source, but rather as an account of how people have interpreted the past.¹³⁴

Allen and Montell debate that truth in oral history doesn't always lie in its factual accuracy. "What people *believe* happened is often as important as what actually happened, for people think, act, and react in accordance with what they believe is true."¹³⁵ Underlying truths embodied in beliefs, attitudes, values, exaggerations, distortions and seeming contradictions of historical fact, should consequently be identified by the researcher. Slim and Thompson confirm this idea by explaining that these "not factually exact or literally true" stories of people who combine and re-order their memories, may actually often be regarded as the "clearest indicators of people's consciousness, their ways of thinking and sense of self".¹³⁶ For them, the very mixture of the subjective with the objective

¹³⁴ Vansina, pp. 194-196.

¹³⁵ Allen and Montell, p. 89.

¹³⁶ Slim *et al.*, (eds), pp. 144-145.

makes oral testimony such a “rich source of information revealing as much about values and perceptions as about material realities”.¹³⁷

Thompson adds to this, stating that history is not only about structures or events, but also about how these are experienced and remembered in the imagination. “...what people imagined happened, and also what they believe *might* have happened – their imagination of an alternative past, and so an alternative present – may be crucial as what did happen”.¹³⁸ Joan Sangster goes even further with this idea and contends that: “When people talk about their lives, people lie sometimes, forget a little, exaggerate, become confused, get things wrong. Yet they are revealing truths ... the guiding principle for [life histories] could be that all autobiographical memory is true: it is up to the interpreter to discover in which sense, where, and for what purpose”.¹³⁹ Alessandro Portelli attaches even more controversy to this view, when he states that memory as a form of consciousness is in itself an historical fact; that errors in facts may be more revealing than factually accurate accounts and that there are no 'false' oral sources. “Once we have checked their factual credibility with all the established criteria of historical philological criticism that apply to every document, the diversity of oral history lies in the fact that 'untrue' statements are still psychologically 'true'. ... The credibility of oral sources is a different credibility ... The importance of oral testimony may often lie not in its adherence to facts but rather in its divergence from them, where imagination, symbolism, desire break in.”¹⁴⁰

Although the above viewpoints are controversial and are, in fact, disputed by many historians, there is an element of truth in them. The fact is that not all oral sources are unreliable by implication, even though all have limitations. Therefore, all oral sources should be assessed with a critical approach, but tempered by a realisation of what these sources

¹³⁷ *Ibid.*, p. 141.

¹³⁸ Thompson, p. 162.

¹³⁹ J. Sangster, “Telling our stories. Feminist debates and the use of oral history” in Perks and Thomson (eds), p. 87.

¹⁴⁰ A. Portelli, *The death of Luigi Trastulli and other stories. Form and meaning in oral history*, p. 51. See also Thompson, p. 161.

may contribute. Because of the capacity of human memory as a storage mechanism, the spectrum of oral sources and genres of oral traditions in oral societies are as diverse as those of written documents in literate societies.¹⁴¹

Consequently, one may conclude, taking into account the limitations and imperfections of the historian and the objects of investigation, that complete neutrality and total objectivity in history are not possible. The historian should research his/her topic as thoroughly as possible and apply the principles of historical criticism to all sources to pursue truth and objectivity, as far as possible.¹⁴² Gottschalk reminds the researcher that what is meant by calling a particular credible, is not that “it is actually what happened, but that it is as close to what actually happened as we can learn from a critical examination of the best available sources”.¹⁴³

As is the case with all historical sources, oral evidence should also be subjected to consistency in the testimony (reliability) and accuracy (validity) in relevant factual information.¹⁴⁴ Oral historians agree that oral evidence should not only be convincing, but also verifiable with other sources for corroboration and authentication. The general rules for examining all evidence for reliability and objectivity may be applied to oral sources as well. Peter Burke agrees with this stance when he argues that historians need to study memory as a historical source and this implies that they should produce a critique of the reliability of

¹⁴¹ Vansina, p. 197.

¹⁴² J.P. Brits, *“Doing history”: A practical guide to improving your study skills*, p. 10.

¹⁴³ Gottschalk, p. 139.

¹⁴⁴ “Validity refers to the degree of conformity between the reports of the event and the event itself as reported by other primary source material, such as documents, diaries, letters or other oral reports. Reliability, on the other hand is the consistency with which an individual will tell the same story about the same event on a number of different occasions.” A.M. Hoffman and H.S. Hoffman, “Reliability and validity in oral history: The case for memory” in J. Jeffrey and G. Edwall (eds), *Memory and History. Essays on recalling and interpreting experience*, p. 109. See in detail this chapter where the wife-husband team, historian A.M. Hoffman and psychologist H.S. Hoffman, discuss their project on the reliability of memory, in which they compare documented fact with individual long-term memory.

reminiscence, similar to the traditional critique of historical documents.¹⁴⁵

It is obvious that any oral historian needs to be aware of the basic processes of human memory and how these processes will determine the information that will be recalled by an interviewee. Memory is a selective process and the interviewer should therefore, accept that memory implies both remembering and forgetting. Human memory will never provide the complete record and it therefore depends on other sources for reconstructing the past.¹⁴⁶ For Thompson, the historian should be aware of memory's impact on the information gained from the narrator and should confront such information gained "neither with blind faith, nor with arrogant scepticism, but with an understanding of the subtle processes through which all of us perceive, and remember, the world around us and our part in it. It is only in such a sensitive spirit that we can hope to learn the most from what is told to us".¹⁴⁷

It is worthwhile remembering that documents by themselves may be as misleading as human memory. The characteristics of selectivity and interpretation forms part of all messages, as every person, either with writing or speaking, chooses information to convey, orders it and colours it. Just as recorded documents should be examined for relevance and accuracy, so will oral sources require judgement and discernment. Memory is a form of historical evidence, which needs to be evaluated, like any other type of historical evidence and both forms of evidence should undergo careful scrutiny. Internal tests which evaluate the material in terms of its own self-consistency and external tests, which compare and contrast oral information to written documents and physical evidence, may be applied to oral sources.¹⁴⁸

¹⁴⁵ Burke, p. 99. See also Sideris, p. 42.

¹⁴⁶ Ritchie, p. 119; Allen and Montell, pp. 15-22; A. Parkin, *Memory. A guide for professionals*, p. 19; T. Butler, "Memory: A mixed blessing" in Butler (ed.), p. 14; Lummis, p. 147.

¹⁴⁷ Thompson, p. 172.

¹⁴⁸ Allen and Montell, p. 71; Vansina, p. 191; Lummis, p. 130.

Paul Thompson believes that the factual credibility of oral sources should be checked against all the established criteria of historical critique that actually apply to every document. He goes further by explaining that there are no absolute rules, but rather a number of factors to be taken into account. As with all sources, the researcher should be aware of potential bias. The conscientious researcher should adopt a sceptical view towards all data and sources should be checked for internal consistency, as well as substantiated by cross-checking them against all available written and oral evidence. This evidence should be weighed against a wider context, where oral evidence may in some cases, be the best or be supplementary or complementary to that of other sources. Methods may also be implemented to question and assess eyewitnesses while the evidence is being given. Interpretation becomes a task without end or certainty.¹⁴⁹

The challenge, especially in the case of memory, is not so much the nature of the container, but how to retrieve the information from the container. Most oral historians claim that the unique nature of memory and its related processes require an appropriate methodology that is suitable for effectively accessing information stored in people's memories. The oral history interview in all its forms may thus be the most suitable methodology.

It seems, though, that one's approach to the subjectivity issue and whether or not one regards memory as a reliable historical source, depends greatly on how one defines a 'reliable historical source' and 'what you value in a source'. The value of any source also depends upon the questions the researcher seeks to answer and/or the information he/she wishes to acquire.

When using any type of source, the researcher should take into account the issue of underlining bias in all sources, i.e. the tendency to favour a viewpoint in the retelling of an event. In every source, the information is

¹⁴⁹ Thompson, pp. 119, 153, 160-161.

shaped, filtered and selected through a distinctive view.¹⁵⁰ The reasons for bias in sources lie on different levels, which may include that the source was produced for its time, to meet the purposes or needs of that specific time; and/or shaped by the beliefs of the researcher who could also have had limited access to information. When evaluating any type of source, the researcher should determine how reliable the sources are for his/her specific purpose and if the sources contain facts or opinions. The following questions need to be answered: Is the topic of the researcher addressed directly or just mentioned vaguely? Can the source give a usable account of the event or part of the event? Is the evidence presented the informant's own personal assessment? Under what circumstances was the informant able to make the observations on which his/her assessment is based? What are the underlining conditions for the informant's assessment? What biases might have shaped the original perceptions? What subsequent incidents might have caused interviewees to rethink and reinterpret their past? How closely do their testimonies agree with other documentary evidence from the period and how do they explain the discrepancies?¹⁵¹

Against this background, the historian should work his/her way through the information he/she has in order to get to the facts of the events. Nevertheless, according to Thompson, it is in all fairness impossible to get to these facts, because "... information lies between the actual social behaviour and the social expectations or norms of the time - therefore, neither contemporary nor historical evidence is a direct reflection of physical facts or behaviour".¹⁵² The question of subjectivity immediately arises again. Thompson elaborates on this issue that "the very subjectivity which some see as a weakness of oral sources can also make them uniquely valuable. For subjectivity is as much the business of history as the more visible "facts". What the informant believes is indeed

¹⁵⁰ Worthington and Denis, p. 21.

¹⁵¹ *Ibid.*, pp. 19-21; D.A. Ritchie, "Foreword" in Jeffrey and Edwall (eds), p. viii. See also W. Moss, "Oral history: An appreciation" in Dunaway and Baum (eds), pp. 117-118 where the author lists a number of questions that may be applied to an interview or group of interviews when evaluating the content.

¹⁵² Thompson, p. 128.

a *fact* (that is, the *fact* that he/she believes it) just as much as what "*really*" happened".¹⁵³ Valerie Yow supports this view, maintaining that there is "never absolute certainty about any event, about any fact, no matter what sources are used. No single source or combination of them can ever give a picture of the total complexity of the reality. We cannot reconstruct a past or present event in its entirety because the evidence is always fragmentary".¹⁵⁴ This, however, does not mean that the researcher should not try to get to the facts of the events he/she is recording. It is rather the observation that one will get close to the facts, but seldom to the entire 'truth' of an event.

Oral sources may indeed convey 'reliable' information, but to treat them as 'simply one more document' is to ignore the special value which they have as subjective, spoken testimony.¹⁵⁵ Taking into consideration that the purpose of any piece of evidence is essential in making accurate evaluations, one should realise that no source is either reliable or unreliable for every purpose. Every source may be used by someone in some way, either to prove or disprove findings. In other words, it is necessary to understand precisely what it is the researcher is about to evaluate. Besides, all data of any sort should not be trusted completely, because all sources need to be evaluated and tested against other evidence. As already noted, oral testimony as evidence and the limits of memory, make it appropriate for some enquiries, but unsuitable for others. The historian has to make a choice of which sources he/she sees as reliable (or unreliable and not useful) for his/her specific purpose and research.¹⁵⁶

By checking the reliability of a source, the researcher can gain greater knowledge and understanding of a source and the role it plays in the recording of the event under study. Certain steps and methods may be implemented.

¹⁵³ Portelli, *The death of ...*, p. 50. See also Thompson, p. 160.

¹⁵⁴ Yow, pp. 21-22.

¹⁵⁵ Thompson, p. 118.

¹⁵⁶ Worthington and Denis, p. 21; Ritchie, p. 26; Caunce, p. 103.

The first step in pursuing the reliability of a source will be through background research on the life history of the interviewee, as well as on the chosen subject. For oral history, this is absolutely essential before conducting an interview. Ritchie believes that oral historians should conduct proper preparatory research, not only to acquaint themselves with the sources already available, but also to assist interviewees by giving some context and structure to the dialogue.¹⁵⁷

If an interviewer is informed about the existing oral and written sources, it will be considerably easier to assess the integrity and objectivity of those sources gained from an interview. Background information about the interviewee who recounts the information needs to be gathered. Attention should be given to who the interviewee is; whether they have a personal or social agenda and what kind of event is being discussed. By gaining as much information as possible from the person supplying the evidence, the researcher can discover why a particular statement has been made. Considering the cultural background of an interviewee is of great advantage to any oral historian. During the research and preparation phase, the oral historian should acquaint him-/herself with the values and norms of a specific culture and consider them when reconstructing the past.¹⁵⁸ Needless to say, being informed of the available sources will also make the cross-checking of the oral sources more effective.

The second step will be to cross-check the source with other sources and may be done on the corresponding subject and/or a similar period. Especially in cross-checking the researcher should be aware of any bias that may be present in the sources. By cross-checking all the sources against one another, the researcher is able to explore the sources and evaluate each of them on their worth and flaws, in the light of the aims of the historical study. If documented and oral evidence contradict each other, the researcher should dig even deeper to determine their

¹⁵⁷ Ritchie, p. 32. See also Lummis, p. 22.

¹⁵⁸ Vansina, pp. 173-176, 187; Allen and Montell, pp. 26-29; Sideris, p. 46; Seldon and Pappworth, p. 125.

accuracy.¹⁵⁹ Thompson emphasises the role of cross-checking: "If the study of memory 'teaches us that *all* historical sources are suffused by subjectivity right from the start', the *living* presence of those subjective voices from the past also constrains us in our interpretations, allows us, indeed obliges us, to test them against the opinion of those who will always, in essential ways, know more than ourselves".¹⁶⁰

While cross-checking, the researcher can accordingly search for internal consistency in the sources. If the pattern of evidence is consistent and drawn from more than one viewpoint, the historical account or interpretation becomes credible. In searching for the source's reliability, the researcher should be aware of the type of source he/she is using, since in oral history, the researcher encounters not only the facts of an event, but also the emotions and feelings of the people involved. Apart from this, the truth as known by its narrator is represented in each oral account. The researcher thus has to evaluate carefully the oral accounts and determine if they are based on personal experience or second- or third-hand reports. Although first accounts may also be fallible, they are usually more reliable than those derived from hearsay. The evidence therefore, also needs to be weighed against a wider context, where in some cases oral evidence will be the best and in others, will be supplementary or complementary to other sources.¹⁶¹

The interview itself is also crucial, as it is the response to a particular person and set of questions, as well as to the interviewee's attempt to make sense of past experiences. Grele describes the interview as a conversational narrative: "conversational because of the relationship of interviewer and interviewee, and narrative because of the form of exposition – the telling of a tale".¹⁶² During the interview, the interviewer

¹⁵⁹ Allen and Montell, p. 85; Worthington and Denis, p. 22; Ritchie, p. 119.

¹⁶⁰ Thompson, p. 172.

¹⁶¹ Allen and Montell, pp. 77, 81; Worthington and Denis, p. 22; Thompson, p. 288; Ritchie, p. 34.

¹⁶² Grele, p. 135. See also pp. 136-138 where the author describes the relationships in this conversational narrative, which is of three types or sets, one internal and two external.

should be alert to biases, contradictions and inconsistencies in the interviewee's answers. The content of oral sources depends to a large extent on what the interviewer puts into the interview in terms of questions, dialogue and forging a personal relationship. Thus, the interview needs to be evaluated as text, as types of content and as evidence.¹⁶³

Before even starting with the interview, the ultimate purpose of the questionnaire or interview guide is to structure the interview and to guide the interviewee carefully through the interview process. In a sense, the questionnaire also helps the interviewee to organise his/her memory. The structure of the questionnaire, as well as the phrasing of the questions, are of crucial importance and may ultimately determine the outcome of an interview. Of particular importance is the fact that the way questions are phrased may alter what people think they saw or experienced.¹⁶⁴

For this reason, the interviewer should take special care when compiling a questionnaire. Attention should be given to structuring the questionnaire chronologically and thematically; to using a combination of closed and open-ended questions; to formulating questions from the interviewee's point of view; to not asking leading questions; or asking questions of which the wording presupposes a certain state of affairs; not asking questions of which the wording implies a desired answer; not asking questions that are emotionally loaded, vaguely defined or unspecific; and finally, by asking questions that are simple and straightforward.¹⁶⁵

During the interview, the interviewer should be aware of the bias or influence he/she may bring to the interview. To minimise bias on his/her

¹⁶³ Portelli, "What makes oral history ...", pp. 70-71; Thompson, pp. 272-273; Lummis, p. 158; Shopes. See Moss, "Oral history: An appreciation" in Dunaway and Baum (eds), pp. 118-119 where the author sets out a number of questions that the historian should ask about the way in which any given interview or group of interviews was conducted.

¹⁶⁴ Parkin, p. 136; Ritchie, p. 93.

part, the interviewer should establish a sense of rapport with the interviewee so that he/she does not feel intimidated by the interviewer.¹⁶⁶

To deal with the problem of bias and subjectivity on the part of the interviewee, the so-called cognitive interview may be used. The purpose of this type of interview, originally developed for eyewitnesses, is to reinstate the context of certain events. The cognitive interview and variations thereof may be used successfully for oral history purposes as well. This type of interview involves a set of retrieval strategies, including the following: firstly, mentally reinstating the environmental and personal context that occurred at the time of the event; secondly, encouraging the recounting of every detail, regardless of how peripheral it is; thirdly, attempting to recount the event both forwards and backwards; and lastly, attempting to report the event from a range of different perspectives, including that of other prominent characters involved in the event. The first two strategies are based on the premise that the greater the correspondence between the reinstated and the initial event, the better the recall. The other two strategies are based on the premise that the observed information may be retrieved by means of more than one route.¹⁶⁷

Furthermore, the skills and motivation of the interviewer, as well as the relationship between the interviewer and the narrator may affect the quality of the evidence. The interviewer's special interests and the asking of adequate questions will determine the interview's direction and flow. To prevent any distortion of information, the interviewer should be careful not to guide the interviewee's memory too much. The interviewer should therefore control the interview by maintaining a balance between the people involved and by preventing any distortion of information,

¹⁶⁵ Worthington and Denis, pp. 27-30.

¹⁶⁶ Sideris, p. 43.

¹⁶⁷ Parkin, p. 140; A. Baddeley, *Human memory. Theory and practice*, p. 289; Slim *et al.*, (eds), p. 147.

with the desired outcome being the best possible recollection of memory.¹⁶⁸

Another strategy for dealing with the aforementioned problems is, of course, probing (asking follow-up questions). This should be standard practice among oral historians, but it requires a certain level of skill that is developed only over time. To probe effectively, the interviewer should be a good listener and intervene with appropriate follow-up questions. This should be done with sensitivity, so that the interviewee will not experience the interview situation as an interrogation.¹⁶⁹

Ritchie offers yet another possible approach. He is of the opinion that, after the interview, the interviewer and interviewee should mutually address any obvious misstatements and contradictions in the testimony. During the informal discussion after the interview, the interviewer may use the opportunity to clarify any inconsistencies and vague statements.¹⁷⁰

Seldon & Pappworth propose some interesting ways for the researcher to question and assess with 'serious considerations' eyewitnesses while the evidence is being given. A variety of steps and methods may be used by interviewers to help them evaluate the evidence. These methods include the interviewer steering a narrator closer to the truth by asking follow-up questions and/or approaching the same topic/issue from several different lines of inquiry at different stages in the interview. To test how precise the informant's memory is in general and if necessary, for specific facts/periods, the skilled interviewer may mark out in advance, some specific facts to ask at certain stages during the interview. By doing this, the interviewer can compare and contrast information. Lastly, the interviewer can examine the interviewee with close attention. By not being too obvious and using eye contact, the interviewer may assess the

¹⁶⁸ Worthington and Denis, pp. 5-6; Seldon and Pappworth, pp. 27-28; Ritchie, p. 34; R.J. Grele, "Movement without aim. Methodological and theoretical problems in oral history" in Perks and Thomson (eds), pp. 43-45.

¹⁶⁹ Ritchie, pp. 94-95.

¹⁷⁰ *Ibid.*, p. 32.

interviewee's responses. Here the interviewer is focused on the interviewee's non-verbal behaviour, such as gestures and voice quality. In order to read and understand these clues, the researcher should develop sensitivity to the social pressures which have bearing on them.¹⁷¹

According to L. Gottschalk in his book *Understanding History. A primer of historical method*, any detail that passes all of the following tests, may be viewed as credible historical evidence, namely: was the interviewee *able* to tell the truth; and if able, was he/she *willing* to do so? Is the primary witness reporting *accurately* with regard to the detail under examination? Is there any *independent corroboration* of the detail under examination.¹⁷²

By evaluating memory for historical evidence, the researcher should also focus on the degree to which the memories of the narrator are set into a context of time and place. If the informant can tie personal experience to a specific time and can also accurately place it within the recalled material context of social factors, there are more grounds to accept these memories as valuable historical evidence.¹⁷³

All details surrounding a specific event in the past may very seldom recalled by only one respondent. An oral historian therefore, should interview as many candidates as possible on the same subject, in order to get to the truth. The way in which the oral historian approaches the interviewee, the wording of the questions and the interviewing style and technique may all be used to ensure the most objective response from an interviewee. The oral historian should also analyse the distinct descriptions, subtexts, non-verbal behaviour and silences in the interview and then cautiously contextualise it. By documenting evidence from a number of interviewees, detailed information may be gained, patterns uncovered and trends noted; facilitating the emergence and

¹⁷¹ Seldon and Pappworth, pp. 127-128; Davis, *et al.*, p. 6; Thompson, p. 169.

¹⁷² Gottschalk, p. 150.

¹⁷³ Lummis, p. 130.

discernment of the truth.¹⁷⁴ In the end, the information gained from the interview should be, if available and possible, compared with other interviews on the same subject and with related documentary evidence to test its veracity.

In the search for the reliability and validity of oral sources, it is important to take note of the 'unfinishedness' of oral sources that will have an affect on all other sources. The fact that oral sources (concerning a historical time, for which living memories are available) are inexhaustible, the ideal goal of going through 'all' possible sources to complete the research, becomes impossible. Even written records tend toward the illusion of completeness when they are 'sealed up in all the seriousness of a printed book'. Nonetheless, after the book is published, ideas are still developing and new discoveries lead to changes in the experiences which have been described, ultimately leading to new interpretations. Therefore, Portelli believes that historical work using oral sources will be unfinished, because of the nature of the sources. This will result in the fact that historical work, excluding oral sources (where available), will also be incomplete by definition.¹⁷⁵

Thus, to have relative success with oral history interviews, the researcher should be aware of the peculiarities of memory and at the same time, be acutely conscious of its limitations, be imaginative in his/her methods of dealing with it and open to its multiple riches. With the intensive practice of oral history methodology, combined with a critical and self-reflective approach to this field of history where the oral historian *really* listens and observes, may eliminate and reduce the dangers of testimonial complexity, unintended suppression, unconscious manipulation and unintentional historical imposition. Oral historians can

¹⁷⁴ Allen and Montell, p. 77; Lummis, p. 156; Sangster, p. 88.

¹⁷⁵ Portelli, "What makes oral history ...", p. 71; See also Slim *et al.*, (eds), p. 157.

further 'add' to authentic oral history if they become even more willing to subject their work to serious collaborative evaluation.¹⁷⁶

It may be appropriate to end with the following cogent advice from Paul Thompson: "As every experienced oral historian knows, however, the simple assertion and counter-assertion that oral history sources are reliable or not, true or false for this or that purpose, obtained from this or that person, obscures the really interesting questions. The nature of memory brings many traps for the unwary, which often explains the cynicism of those less well informed about oral sources. Yet they also bring unexpected rewards to an historian who is prepared to appreciate the complexity with which reality and myth, 'objective' and 'subjective', are inextricably mixed in all human perception of the world, both individual and collective".¹⁷⁷

1.9 CONCLUSION

In the continuous process of interpreting the past, oral history, with its focus on memories and narratives, may provide a deeper insight into and greater analytical understanding of the world of the past. It forms part of the wider field of history across disciplinary barriers, contributing to a broader view of human experience. It is a means, amongst others, of mastering the past and coming to terms with it.

Collecting, preserving and distributing oral histories may convey knowledge from one generation to the next and strengthen our understanding of the past, by describing personal experiences. It remains a useful and unique way of gaining access to information by using the human memory as an historical source. As a research method into the events of the past, oral history can confidently stake its claim as a training and development tool and make significant contributions to education and heritage strategies.

¹⁷⁶ Jeffrey and Edwall (eds), p. xi; A. Skotness, "The people's archives and oral history in South Africa: a traveller's account" in *South African Archives Journal* 37, 1995, p. 69.

¹⁷⁷ Thompson, pp. 156-157.

Oral history allows ordinary people to express their views and enlightens a fragment of the past transmitted by word of mouth. In this process, ordinary people take part in the course of creating historical awareness. For this reason, it has an important role to play in the reconstruction of South Africa's past and especially in the lives of the ordinary people who lived it. Since the value of memory as a potential source of evidence is particularly relevant in the oral cultures of Africa, oral historians working in the African context should be aware of the value of this source of information.

To make the most of oral sources requires a deep and broad critique of the possibilities and limitations thereof. Historians need to be aware of the challenges and understand the characteristics of these sources. Researching oral sources thoroughly, managing and using them efficiently, increases the chances of controlling the process to minimise problems and inaccuracies.

Oral history may accordingly be accepted alongside documentary evidence as part of the available material for research. One can concur with Paul Thompson that "if the full potential of oral history is realised it will result in an underlying change in the way in which history is written and learnt, in its questions and judgements and its texture".¹⁷⁸

The long-term future of oral history depends on asking questions and utilising all the appropriate methodologies, both within history and outside its traditional boundaries. It is impossible to exclude oral history from serious consideration, since all sources can be queried. Most importantly, there are numerous ordinary people with important stories and memories to add to the richness of South Africa's history.

It is crucial to note that oral history is not a panacea, providing a 'purer' version of the past, but the fact remains that oral accounts from the people who experienced specific situations may provide irreplaceable and unequalled evidence. The narratives of eyewitness participants in

events of the past have a significant role to play for the purposes of historical reconstruction.

The Truth and Reconciliation Commission of South Africa shone a profoundly illuminating spotlight on South Africa's past. The Commission's mandate, as contained in the Promotion of National Unity and Reconciliation Act No. 34 of 1995, had to provide the space within which victims could share the story of their trauma and the Committee on Human Rights Violations filled this vacuum. By distinctively focusing on victims, including the neglected victims, the Commission broke the silence and gave authority to the voices of ordinary people. Through personal recollections the Commission could provide more answers to more people, to gain, ultimately, a larger and more complete picture of what constituted the past as it emanated from the larger narratives of its victims.

A poem by Antonio Mússapi, called *Remembering*, grasps the idea of remembering the past and telling it to those who will listen:¹⁷⁹

*"I talk,
Talk with people,
The people who speak to me
Of time past
Which falls and does not germinate
If I don't talk.
I listen carefully.
I converse
with people.
I speak
To the little old woman,
to grandpapa, to brothers and sisters,
At dusk
Around the red light,
Bright and hot,*

¹⁷⁸ Thompson, p. 82.

¹⁷⁹ Witz, p. 15.

*Which encourages us,
The light which brings back
Time past and the time before that,
Which falls without germinating
If, when we talk,
Nobody listens.
I, you and they,
We,
All gathered round,
Talking, asking, looking,
I with pencil and paper,
By the tiny lamps of the sky,
The dark sky,
Recording the conversation.
Time past
Which lights up today
And tomorrow,
Making it clear."*

Chapter 2

SETTING UP A UNIQUE TRUTH COMMISSION FOR SOUTH AFRICA

2.1 INTRODUCTION

Like other countries, South Africa has been confronted with a past withered by gross human rights violations that occurred during centuries of colonialism, racism and repression. Against this setting, the world expected the transition period in South Africa in the early 1990s to turn into a bloodbath. Instead, a reasonably peaceful transition was made from apartheid to democracy.

The question with which the newly elected South African government was confronted was how to deal with the atrocities of the past. The decision was made to deal with the past in the form of a unique Truth Commission against the background of the epilogue of the Interim Constitution which made provision for a process of amnesty. In addition, the National Executive Committee of the African National Congress (ANC) called upon a commission to investigate violations of human rights that had occurred within a specific period in South Africa.

Despite calls for a process of amnesia, emphasis was placed on the necessity that the past should be remembered. Philosopher George Santayana explains it as follows: "Those who cannot remember the past, are condemned to repeat it".¹ Richard von Weizsacker, one-time President of West Germany, goes further: "Whoever closes his eyes to the past, becomes blind to the present. Whoever does not wish to remember

¹ D.M. Tutu, *No future without forgiveness*, p. 32.

inhumanity, becomes susceptible to the dangers of new infection”.² Archbishop Desmond Tutu, chairperson of the South African Truth and Reconciliation Commission, explains that: “unless our past was acknowledged and dealt with adequately, it could blight our future”³. Furthermore, for Kader Asmal, Minister of Water Affairs and Forestry at the time the Truth and Reconciliation Commission was set up, the danger of not dealing with the past lies in the fact that “we are thereby ripping the foundations of justice from beneath new generations”.⁴

One year after the first democratic elections in 1994, a Truth and Reconciliation Commission for South Africa⁵ was established where amnesty would be granted in exchange for truth. People came from all walks of life to tell their stories – from victims to perpetrators. It was an event and process of which the world took notice, learnt from and could not dismiss as insignificant.

However, the process of establishing this unique truth commission involved certain challenges, processes and decisions. This had to be accomplished with a central objective in mind; that of overcoming the injustices of the past by promoting national unity and reconciliation.

The purpose of this chapter is to place the TRC in perspective by analysing the term, ‘Truth Commission’. It will be done by accompanying examples of truth commissions that were instituted in other parts of the world in their pursuit to come to terms with the violations of human rights. The role of the early commissions of inquiry into the abuses of human rights in the ANC exile camps and the outcome thereof, as well as

² A. Boraine, *A country unmasked. Inside South Africa's Truth and Reconciliation Commission*, p. 366.

³ Tutu, p. 32.

⁴ A. Krog, *Country of my Skull* (2nd edition), p. 268. See also Boraine, p. 4 where he quotes Lev Tolstoy from Cathleen Smith's book *Remembering Stalin's Victims*, where her argument follows the same lines: “People say: why recall the past? What is the good of remembering what has been swept away? What is the good of irritating the nation? How can one ask such questions? If I suffered from a serious and dangerous disease and recovered or was cured from it, I would recollect the fact with joy. I would be disturbed by it only if I was still ill or if I'd taken a turn for the worse and wanted to deceive myself”.

⁵ Hereafter referred to as ‘the TRC’ or ‘the Commission’.

the influence of the negotiation process for a democratic dispensation in South Africa, will be examined with the aim of understanding how these processes influenced the formation of the TRC. The conferences and debates that led to answers on how to deal with the past will be highlighted. Within the context of the legislative framework in which the South African Truth and Reconciliation Commission was operating, prominence will be given to 'the Act'; the structure of the commission; its objections and functions; as well as the appointment of the Commissioners. The controversial compromise of amnesty will also be explored. Finally, the TRC was not met with universal approval and acceptance and some of the criticism levelled against the formation of this Commission will be accentuated.

2.2 TRUTH COMMISSIONS IN GENERAL

Truth commissions are phenomena that have re-echoed around the world in many different contexts and surroundings. Interest in truth commissions has increased sharply in recent years due to the institution of truth commission-like bodies in various conflicts all around the world and the growing belief that past human rights violations and crimes cannot be ignored.

In the past thirty years, truth commissions were the result of political transitions, in one form or another, to democracy and away from civil war or repressive dictatorships and/or from colonial rule. According to Patricia Hayner, these political transitions may be in the form of a negotiated settlement of civil war, as in El Salvador, or a gradual democratisation, as in Chile and South Africa, or a rapid democratic opening after repressive military rule, as in Argentina and Uruguay, or a military victory by rebels, as in Uganda and Chad.⁶ It is disputed that truth commissions have become an important method in which these new states and governments seek to uncover the 'true' past, while reassessing their memories of history and what constitutes that history

in the midst of transition. This is done with an attempt to create a new and politically acceptable version of the past in an effort to heal and reconcile the wounds that have been afflicted on various sectors of society.⁷

Truth commissions as such are not unknown in the international arena. Since the Nuremberg and Tokyo trials were instituted at the end of the Second World War with the defeat of Nazi Germany and of Japan, the world has been wrestling with the effects and results of the past.⁸ Many societies are struggling to overcome a heritage of collective violence and severe human rights violations. The process of searching for truth and the disclosure thereof, by providing information about a nation's traumatic past, seems to be an ongoing cause. Since 1974 over twenty⁹ official truth commissions have been established in various states such as Germany, Argentina, Chile, Bolivia, Uruguay, El Salvador, Uganda, Zimbabwe, Rwanda, Chad, Ethiopia, Sri Lanka, Haiti, Guatemala, the Philippines, South Africa and elsewhere.¹⁰

A commission of truth usually forms part of a society that is emerging from periods of repressive, traumatic and violent systems of human rights abuses. As a result of specific circumstances, truth commissions are generally set up at the beginning of a political transition period within a country, which in turn, determines the nature of the commission itself.¹¹ The truth commission in South Africa was strongly influenced by the nature of negotiations leading to the first democratic election in 1994 and the accompanying transfer of power.

⁶ P.B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A comparative study" in *Human Rights Quarterly* 16(4), 1994, p. 608.

⁷ K. Christie, *The South African Truth Commission*, pp. 2, 37.

⁸ The Nuremberg and Tokyo trials were a watershed for recognising that not merely states, but individuals are responsible for violations of human dignity, and that officials who order or commit such abuses must be held accountable. S.R. Ratner and J.S. Abrams, *Accountability for human rights atrocities in international law. Beyond the Nuremberg legacy*, pp. xxxi, 163-164.

⁹ The precise number depends on how strict a definition of truth commissions is applied.

¹⁰ Hayner, pp. 600-603; Christie, pp. 1-2, 37-38; A.R. Chapman and P. Ball, "The truth of truth commissions: Comparative lessons from Haiti, South Africa, and Guatemala" in *Human Rights Quarterly* 23, 2001, p. 1; *The Cape Times*, 6.7.1994, p.8.

¹¹ Christie, p. 61; Hayner, p. 608.

There is no commonly accepted definition of what truth commissions are or what they should do. In broad terms, a truth commission may be defined as a “temporary, officially sanctioned body, possessing sufficient authority to perform investigatory and advisory functions into a past history of violations of human rights in a particular country – which can include violations by the military or other government forces or armed opposition forces, and to render a comprehensive official account of these past human rights violations, consistent with state obligations under international law”.¹²

Accordingly, truth commissions allow victims, their relatives and perpetrators to provide testimonies and evidence of human rights abuses, supplying an official forum for their accounts. The purpose therefore is to provide an authoritative account of a specific regime and/or period, by determining the major causes of the violence and to make recommendations about measures to implement, so as to avoid a repetition in the future.

Generally, from a comparative perspective, such commissions tend to be autonomous of the state, even though they receive a mandate from the state. The composition of a commission will intensely influence its functioning and ultimate impact. Truth commissions are normally established, vested with authority, sponsored, and/or funded by governments, or international organisations or non-governmental organisations. In most instances, truth commissions are also required by their mandate to provide recommendations on actions to prevent a repetition of such abuses.¹³

These commissions are not judicial bodies and should not be considered a replacement for trials, as they hold fewer powers than do courts. The activities of truth commissions usually lack the authority and solemnity of judicial proceedings. There is, in the formal sense of the word, no necessary legal accountability for the past through the prosecution of

¹² Hayner, pp. 600, 604. See also Christie, p. 60.

individuals responsible for abuses and to pronounce them guilty of crimes. They do not make a true judicial determination of responsibility and cannot directly punish perpetrators. Therefore, most truth commissions will not interfere with and/or duplicate any of the tasks of the judiciary. However, in spite of the limited legal powers of truth commissions, their broader mandate often allows them to do deeper, detailed investigations than is generally possible in any trial of individual perpetrators.¹⁴ Chapman and Ball explain that a truth commission may actually go beyond a court of law and render a moral judgement about what was wrong and unjustifiable.¹⁵ Martha Minow adds to this by stating that a moral assessment helps to “frame the events in a new national narrative of acknowledgement, accountability, and civic values”.¹⁶

According to Hayner, truth commissions are of a “fundamentally different nature from courtrooms trials, and function with different goals in mind”.¹⁷ Thus, there is not one best model based on established legal norms or general principles on which to pattern a truth commission, nor a set of universal rules/guidelines or recommendations to guarantee its success.¹⁸ Thus, each truth commission is unique in structure, form and mandate. Hayner emphasises that official truth-seeking, it turns out, is a “cumbersome and complicated affair”, whereas truth commissions are “difficult and controversial entities; given a mammoth, almost impossible task, where they must struggle with rampant lies, denials, and deceit and the painful, almost unspeakable memories of victims to uncover truths”.¹⁹ Ratner and Abrams add to this by warning that commissions remain “*ad hoc* institutions that must build their acceptability and *modus*

¹³ Christie, p. 61; Hayner, pp. 610-611; Ratner and Abrams, p. 195.

¹⁴ P.B. Hayner, *Unspeakable truths. Facing the challenge of truth commissions*, p. 16; Ratner and Abrams, p. 37.

¹⁵ Chapman and Ball, p. 3.

¹⁶ M. Minow, *Between vengeance and forgiveness. Facing history after genocide and mass violence*, p. 78.

¹⁷ Hayner, *Unspeakable truths ...*, p. 7.

¹⁸ Hayner, “Fifteen Truth Commissions ...”, p. 652; Hayner, *Unspeakable truths ...*, p. 14.

¹⁹ Hayner, *Unspeakable truths ...*, pp. 8, 23.

operandi almost from the ground up, and are likely to be greeted with a combination of hope and distrust".²⁰

Taking this reality into account, Hayner points out that there must be four primary, essential elements which characterise and constitute a truth commission: "it focuses on the past; it does not focus on a specific event, but attempts to paint an overall picture of human rights' abuses, or violations of international humanitarian law within a specific time frame; it usually exists temporarily and has a limited and predefined period of time, ceasing to exist with the submission of a report of its findings. Lastly, it is always vested with some sort of official authority (by the government or by the opposition, where relevant) which allows it more access to information and greater security when investigating sensitive issues. This usually serves to give its report wider impact."²¹

Apart from these essential elements, truth commissions normally have five overlapping goals/aims which include discovering, clarifying, and formally acknowledging past abuses by creating an authoritative record of what happened; providing a platform for the victims to tell their stories and to obtain some form of redress; recommending legislative, structural or other changes to avoid a repetition of past abuses; establishing who was responsible and providing a measure of justice and accountability for the perpetrators; and promoting reconciliation and reducing conflict over the past.²² In the process, truth commissions may play a crucial role in a country struggling to come to terms with a history of human rights violations.

It appears likewise, that two leading objectives determine truth commissions in recovering the truth. Firstly, there is the concern to investigate, document, record and perhaps prosecute the various human rights violations incurred under a previous regime.²³ Rehabilitation and reparations for victims may also form part of this objective. With the

²⁰ Ratner and Abrams, p. 204.

²¹ Hayner, "Fifteen Truth Commissions ...", p. 604. See also Christie, p. 60.

²² Hayner, *Unspeakable truths ...*, p. 24; Christie, p. 61. See Hayner, *Unspeakable truths ...*, pp. 24-30 for more detail on each of these goals/aims.

second objective, the country is focussed on how to move forward in a “pro-active attempt to rectify the ‘structural causes of the abuses’ by trying to purge and transform the institutions of state to ensure that they protect and promote human rights”.²⁴ By building and reconstituting political institutions, a more stable and fair political system may follow with combined efforts to maximise economic resources to foster growth in order to achieve even more political stability.

Taking all aspects into account, Hayner proposes the following minimum requirements for a more successful commission of truth: it must operate independently from political forces and be impartial; it must have free access to information and have the resources to do a complete investigation; it should be implemented as soon as possible after a political transition and change; it should operate for a specified, limited period of time with the power to make recommendations that must be given serious consideration; and the report must be finalised and published with the aim that the public may have ready access to it.²⁵

Moreover, Hayner argues that it is impossible for a truth commission to carry out a complete investigation, documenting all cases that might fit within its mandate. Therefore, a commission should focus on the essentials with the aim of providing an overall picture of the human rights violations that occurred within the specified period.²⁶ In the process the truth commission may still offer the state and the international community an authoritative, unbiased and detailed account of past events, including identifying specific victims and perpetrators.²⁷

It is obvious from the term ‘truth’ commission that the main reason for the establishment thereof is to engage in an effort to find the true facts

²³ Christie, p. 57.

²⁴ *Ibid.*

²⁵ Hayner, “Fifteen Truth Commissions ...”, p. 652. See also R. Carver, “Called to account: How African governments investigate human rights violations” in *African Affairs* 89(355), pp. 411-415, where he indicates similar and more arguments for requirements to be implemented that may add to the effectiveness of a truth commission.

²⁶ Hayner, “Fifteen Truth Commissions ...”, pp. 652-653.

and produce an institutionalised version of an accurate, fair record of a country's past. Or as Michael Ignatieff observes, the process is "an attempt to reduce the number of permissible lies in circulation".²⁸ Hayner finds the 'fact-finding' process rather an inaccurate description and points to the investigation for truth as sometimes being a "confirming of widely-held beliefs about what has happened and who is responsible".²⁹ In other words, a truth commission does not always find new truth so much as rather lifting the veil of denial about widely known, but unspoken truths.³⁰

Kenneth Christie argues however, that although truth commissions are "grounded in a truth-seeking exercise", truth as such "may not emerge as a necessary outcome of a truth commission".³¹ Truth commissions, clearly, serve also in other ways. The outcome thereof lies not only in the gaining of knowledge of a country's difficult and disturbing past, but even more important, in leading to the official *acknowledgement* of the knowledge of a traumatic, long-silenced past by all sections of society. Consequently the public, officially sanctioned report represents for many victims the first sign of acknowledgement that their testimonies are credible.³²

Such a truth commission may then serve a 'cathartic' influence in the society. Christie emphasises this line of argument further, by using a quotation from Karl Marx which states that: 'The tradition of the dead generations weighs like a nightmare on the minds of the living', and argues that the role of truth commissions is precisely to hinder the traditions of these dead generations festering in the minds of the living and to rather seek to assuage these nightmares and offer some sort of

²⁷ Ratner and Abrams, p. 300.

²⁸ Christie, p. 57.

²⁹ Hayner, "Fifteen Truth Commissions ...", p. 607.

³⁰ Hayner, *Unspeakable truths ...*, p. 25.

³¹ Christie, p. 49.

³² A. Neier, "Why deal with the past?" in A. Boraine, *et al.*, (eds), *Dealing with the past. Truth and reconciliation in South Africa*, p. 6; Christie, p. 57; Hayner, *Unspeakable truths ...*, p. 16.

healing to provide for a better future.³³ Thus, officially acknowledging 'truth' may play an important psychological role in the healing process.

One must realise that the existence of a truth commission is no assurance that the repetition of human rights abuses will necessarily deter future occurrences thereof. It also does not necessarily indicate a commitment to real change. Truth commissions as such should not be perceived as something of a panacea. At least the intention of most truth commissions is to reduce the possibility of the reoccurrence in future of these atrocities. The hope exists that with the publishing of an honest, accurate record of the violence, a society will learn from its past, and its more knowledgeable citizens will recognise the signs and prevent any future abuses. Especially where specific recommendations for reform forms part of a truth commission's final report and contributions to constructive changes for the future can be made.

2.3 AN OVERVIEW OF SOME TRUTH COMMISSIONS ESTABLISHED IN OTHER COUNTRIES

There are abundant illustrations of how other countries have chosen to deal with human rights abuses committed by former regimes. To date, most truth commissions have been established in Latin America and Africa.

The nature of political violence in Latin America and Africa differs. In the former it is normally between right and left political sectors, with the military and security forces who have engaged in severe, violent repressive tactics. In Africa, political violence is in the form of conflict between ethnic 'tribal', social and religious groups. Here the violent conflict is often the result of the deliberate manipulation of group identities by political leaders.³⁴

³³ Christie, p. 8.

³⁴ Hayner, "Fifteen Truth Commissions ...", pp. 653-654.

Some of the most recent commissions that were established include: Bolivia (1982-85); Argentina (1983-84); the Philippines (1986); Uganda (1986 & 1994); Chile (1990-91); Chad (1990-92); Germany (1992); El Salvador (1992-93); Guatemala (1994-99); Haiti (1994-96); South Africa (1995-98); and Sierra Leone (1999-2004).³⁵

For the purposes of this study, where the focus is on the South African Truth Commission, detail on every truth commission that has been created worldwide will not be provided. A brief overview of certain truth commissions will be used to accentuate the processes, methods, successes and failures of some of these more well-known truth commissions. This will be done with the aim of equipping the reader not only with more background on the nature and stature of truth commissions, but also to highlight the similarities/differences thereof with the South African Truth Commission and more particularly, to realise the uniqueness of the process South Africa decided upon.

On 28 October 1982 the first Latin American truth commission was created in *Bolivia*, a few days after the return to democratic rule. The government of President Hernán Siles Zuazo established the “National Commission of Inquiry into Disappearances”. The eight commissioners who were selected represented a cross-section of society. The commission collected the testimonies of about 155 disappearances³⁶ that had happened in the period 1967-1982. Although they were able to locate some of the remains of missing people, no cases were definitively investigated. Difficulties such as limited financial support from the government, a lack of sufficient resources and political support, led to an incomplete process. The commission’s mandate also prevented a full investigation of the truth, where incidents of illegal and continued

³⁵ See Hayner, *Unspeakable truths ...*, pp. 305-310 for more detail on the past twenty-one truth commissions that were established.

³⁶ Forced disappearance is the abduction and clandestine detention of individuals, typically accompanied by violence against them, including murder. The Organisation of American States has declared the systematic practice of forced disappearances a crime against humanity. Ratner and Abrams, p. 74.

detention, torture and other abuses were ignored. After three years (1985), the commission disbanded without producing a final report.³⁷

Argentina's truth commission was the first from the 1980s onwards to hold trials involving human rights violators and the first to receive extensive international attention. It is therefore often perceived as an example for other countries in a transition process and who are examining the true historical facts. The armed forces seized power in Argentina in 1976 and through several successive military juntas, succeeded in ruling the country for the next seven years. Argentina moved to a democratic rule in 1983 as the military retreated from power. The Argentines wanted to create a commission to investigate the violence of the seven-year military regime from 1976-1983 – the so-called “Dirty War”. An estimated 10 000 to 30 000 people disappeared at the hands of the military.³⁸

The new president Raúl Alfonsín, unilaterally established the “National Commission on the Disappeared” (Comisión Nacional para las Desaparición de Personas, or CONADEP) on 16 December 1983. Ten non-legislative individuals were selected from different walks of life, who were human rights defenders and enjoyed national and international prestige. Representatives were also appointed from both chambers of Congress. The commission did not hold public hearings, but maintained a prominent public profile. The staff of the commission inspected police facilities, detention centres and secret cemeteries, while exiles from abroad came to testify and statements were also taken outside Argentina. The documented cases of 8 960 people who had disappeared and a list of 365 former torture centres were reported and published³⁹ in September

³⁷ Hayner, “Fifteen Truth Commissions ...”, pp. 613-614; Hayner, *Unspeakable truths ...*, pp. 52-53.

³⁸ Hayner, *Unspeakable truths ...*, pp. 33-34; Hayner, “Fifteen Truth Commissions ...”, pp. 614-615.

³⁹ The report was published in a shorter, book-length version and became an immediate best-seller: 40 000 copies were sold on the first day of its release and 150 000 copies in the first eight weeks. At present 300 000 copies have been sold with the book being reprinted over twenty times. It is one of the best-selling books ever in Argentina's history. Hayner, *Unspeakable truths ...*, p. 34.

1984 under the title of *Nunca Más: (Never Again) Informe de la Comisión Nacional sobre la Desaparición de Personas*. A two-hour synopsis of the testimony taken by the commission was also shown on national television.⁴⁰

Although the military junta granted itself immunity from prosecution and issued a decree ordering the destruction of all documents relating to military repression before leaving power, the civilian government repealed this form of amnesty. All files were turned over to the state prosecutor's office. However, though the commission submitted more than 1 800 cases for prosecution, justice was limited. President Alfonsín pushed through a Punto Final (Full Stop) law, setting a deadline for new criminal complaints. He also adopted a Due Obedience law, which excused officers below the rank of colonel for most crimes if they were following orders. From the previous military juntas that had ruled Argentina, nine members were prosecuted, and five were convicted. When Carlos Saul Menem succeeded as president in 1989, he exonerated the five junta members who had already been convicted, as well as officers awaiting trial.⁴¹

The parliament of *Uruguay* created the "Investigative Commission on the Situation of 'Disappeared' People and its Causes" in April 1985, following eleven years of military rule. After seven months the commission reported and provided evidence on 164 disappearances and the involvement of the Uruguayan security forces, which was handed to the

⁴⁰ Hayner, *Unspeakable truths ...*, pp. 33-34; Hayner, "Fifteen Truth Commissions ...", pp. 614-615; J. Mendez, "Acknowledgement, truth & justice - Argentina" in Boraine, *et al.*, (eds), pp. 35-37; C. Smulovitz, "Commissions of truth and reconciliation - Argentina" in A. Boraine and J. Levy (eds), *The healing of a nation?*, pp. 56-57; Christie, p. 47; J. Malamud-Goti, "Punishing human rights abuses in fledging democracies: The case of Argentina" in N. Roht-Arriaza, (ed.), *Impunity and human rights in international law and practice*, pp. 161-170; *Mail & Guardian*, 17-22.9.1999, p. 28; United States Institute of Peace Library, "Truth Commissions", <<http://www.usip.org/library/truth/html>>, 2005; Vanished Gallery, "The Desaparecidos of Argentina", <<http://www.yendor.com/vanished/>>, *s.a.*

⁴¹ L.S. Graybill, *Truth and Reconciliation in South Africa. Miracle or Model?*, pp. 8-9; Mendez, pp. 37-40; Hayner, *Unspeakable truths ...*, pp. 33-34; A. du Toit, "Laying the past to rest" in *Indicator South Africa* 11(4), Spring 1994, p. 65. See also "Argentina" in N.J. Kritz (ed.), *Transitional Justice. How emerging democracies reckon with former regimes*, Vol. II, pp. 357-375, for detail on these limitations of justice.

Supreme Court. However, much more common than disappearances in Uruguay, was torture and illegal imprisonment. The limited mandate of the commission prevented it from officially investigating and documenting these practices. It is self-evident that a truth commission's mandate cannot exclude abuses that represent a large portion of the victims' experiences, if it aims to be successful. Although the commission's report was public, it was not widely distributed and not well-known inside or outside of this country. Some of the parliamentary commission's limitations were compensated for by a report from a non-governmental project that published its own report on the abuses.⁴²

Reviewing the Uruguayan commission, many writers indicate that it was "a political exercise with no serious undertaking for human rights" and "no official investigation of abuses took place".⁴³

In *Chile*, General Augusto Pinochet overthrew the civilian government in September 1973, brutally repressing all opponents and ruled Chile for seventeen years. The regime's repressive tactics included mass arrests, torture, killings and disappearances. President Patricio Aylwin assumed the presidency in March 1990 and established the "National Commission on Truth and Reconciliation" (Comisión Nacional para la Verdad y Reconciliación). The commission had to investigate abuses resulting in the disappearances or death after arrest, executions and torture, as well as kidnappings and attempts on the life of people, following the period 11 September 1973 to 11 March 1990. The commission's mandate excluded abuses not resulting in disappearances or death, such as torture. Aylwin appointed a well-balanced commission, selecting four members who had supported Pinochet, as well as four members who had been in opposition. Non-governmental organisations also played an active role in creating the commission, as well as in providing information. Within nine months the commission thoroughly investigated the 2 920 cases within

⁴² Hayner, *Unspeakable truths ...*, pp. 53-54; Hayner, "Fifteen Truth Commissions ...", pp. 616-617; L. Weschler, "Acknowledgement, truth & justice - Uruguay" in Boraine, *et al.*, (eds), pp. 41-46; United States Institute of Peace Library, "Truth Commissions", <<http://www.usip.org/library/truth/html>>, 2005; Christie, pp. 47-48; Graybill, p. 8.

⁴³ Hayner, "Fifteen Truth Commissions ...", p. 616; Christie, pp. 48-49.

its mandate. The commission's final report⁴⁴ of 1 800 pages received wide recognition from the public and especially from human rights organisations. When presenting it in February 1990, President Aylwin formally apologised on behalf of the state to the victims and their families and begged forgiveness from the victims. He also asked the armed forces to acknowledge their role in the violence and in the pain caused.⁴⁵

However, there was no real condemnation of the role of the top leadership (i.e. General Augusto Pinochet). The reason for this lay in Pinochet's action in 1978 when he instituted an amnesty law, which barred prosecution for almost all human rights crimes that occurred after he had taken control. He also amended the constitution in 1980 to ensure his continued power and to preserve the autonomy and political influence of the military. The commissioners further refused to reveal the names of the perpetrators and no attempt was made to prosecute individuals. Unfortunately, after releasing the final report of the commission, three assassinations within three weeks occurred by the armed Left against right-wing members of the political elite. This caused alarm in political circles toward the threat of leftist terrorists. It resulted in the effective ending of any public discussions of the report, while thousands of copies of the report were held back from circulation. One of

⁴⁴ The final report "The Report of the Chilean National Commission on Truth and Reconciliation" is popularly known as the Rettig Report after former Senator Raul Rettig, president of the commission. For details on the report see United States Institute of Peace Library, "The Report of the Chilean National Commission on Truth and Reconciliation", <http://www.usip.org/library/tc/doc/reports/chile/chile_1993.toc.html>, 2005.

⁴⁵ Hayner, *Unspeakable truths ...*, pp. 35-37; Hayner, "Fifteen Truth Commissions ...", pp. 621-623; J. Zalaquett, "Acknowledgement, truth & justice - Chile" in Boraine, *et al.*, (eds), pp. 47-53; M. Popkin and N. Roht-Arriaza, "Truth as justice: Investigatory commissions in Latin America" in *Law and Society Inquiry: Journal of the American Bar Foundation* 2, 1995, pp. 84-86; M. Ensalaco, "Truth Commissions for Chile and El Salvador: A report and assessment" in *Human Rights Quarterly* 16, 1994, pp. 657-663; P. Aylwin, "Commissions of truth and reconciliation - Chile" in Boraine and Levy (eds), pp. 38-43; J. Correa, "Dealing with past human rights violations: The Chilean case after dictatorship" in *Notre Dame Law Review* 67, 1992, pp. 1455-1485; J. Mera, "Chile: Truth and justice under the Democratic Government" in Roht-Arriaza, (ed.), pp. 171-184; *The Cape Times*, 13.9.1994, p. 6; *Business Day*, 13.9.1994, p. 6 and 24.11.1994, p. 16; *Weekend Argus*, 1-2.10.1994, p. 21; *The Argus*, 22.11.1994, p. 2; *The Star*, 23.11.1994, p. 17; *Mail & Guardian*, 27.1-2.2.1995, p. 22; United States

the most important recommendations of the report that was implemented was the establishment of the “National Corporation for Reparation and Reconciliation” to oversee reparations for victims and to follow up the work of the commission.⁴⁶

Another commission, the “Reconciliation and Compensation Corporation” was established in 1990 to further investigate the abuses under the Pinochet regime, 1972-1990. A report published on 22 August 1996 found a further 899 cases of people who had disappeared or died, which brought the total number of victims of political repression in Chile to 3 197, of whom 1 102 are officially classified as ‘disappeared’ and 2 095 who are known to have died.⁴⁷

In April 1991 the United Nations set up the “Commission on the Truth for El Salvador” through the peace accords between the *El Salvador* government and the Farabundo Martí National Liberation Front (FMLN). Funding for this commission came from the United States and European Union, as well as from contributions by members of the United Nations. According to the commission’s mandate, they could investigate serious acts of violence that had occurred since 1980. Appointed by the Secretary General of the United Nations, the commissioners were highly respected international figures. Due to neutrality concerns, no Salvadoreans were included on the staff of the commission. Testimonies were taken from some two thousand victims and witnesses, reporting on over seven thousand cases of killings, disappearances, torture, rape and massacres. Nearly nine months later the commission produced a final report. Although the commission failed to investigate certain aspects of the

Institute of Peace Library, “Truth Commissions”, <<http://www.usip.org/library/truth/html>>, 2005; Tutu, p. 30.

⁴⁶ Hayner, *Unspeakable truths ...*, pp. 37-38; Hayner, “Fifteen Truth Commissions ...”, pp. 621-623; Popkin and Roht-Arriaza, pp. 84-86; Ensalaco, pp. 657-663; Aylwin, pp. 38-43; *The Cape Times*, 13.9.1994, p. 6; *Business Day*, 13.9.1994, p. 6 and 24.11.1994, p. 16; *The Argus*, 22.11.1994, p. 2; *The Star*, 23.11.1994, p. 17; *Mail & Guardian*, 27.1-2.2.1995, p. 22; United States Institute of Peace Library, “Truth Commissions”, <<http://www.usip.org/library/truth/html>>, 2005.

⁴⁷ Christie, p. 59.

violence, such as death squads, the report⁴⁸ was strongly worded, naming over forty senior members of the military, judiciary and armed opposition whom they identified as being responsible for human rights crimes. Despite the fact that the report was well received, the Salvadoran military responded with a written statement calling the commission out-of-line with its mandate and its actions illegal. Within five days of the publication of the commission's report, a general amnesty law was passed by the legislature that prevented any legal action against perpetrators.⁴⁹

The discussed truth commissions from Latin America tended to be quite substantial affairs, attracting significant public attention. Each country had different responses to its transitional process and the quest for justice, depending on local governing factors and dynamics. Significantly, these Latin American truth commissions interacted and affected one another by addressing the injustices of the past. Being more thorough, revealing and in a sense successful, these truth commissions provided useful cases for analysis as catalysts of justice in specific circumstances of transitional justice.

Africa has had the greatest number of truth commissions. Many of these truth-seeking bodies in Africa have tended to be smaller, less successful and sometimes less prominent. This is often the result of limited

⁴⁸ The commission's report on "serious acts of violence" since 1980 was entitled "From Madness to Hope: the 12-Year war in El Salvador: Report of the Commission on the Truth for El Salvador" and was released on 15 March 1993 at the United Nations. See United States Institute of Peace Library, "Truth Commissions", <<http://www.usip.org/library/truth/html>>, 2005. For more information on the Report see United States Institute of Peace Library, "Truth Commissions: Reports: El Salvador", <http://www.usip.org/library/tc/doreports/el_salvador/tc_es_0315_1993toc.html>, 1993.

⁴⁹ Hayner, *Unspeakable truths ...*, pp. 38-40; Hayner, "Fifteen Truth Commissions ...", pp. 599, 627-629; R. Canas, "Acknowledgement, truth & justice – El Salvador" in Boraine, *et al.*, (eds), pp. 54-56; Popkin and Roht-Arriaza, pp. 86-89; P. Tappatá de Valdez, "Commissions of truth and reconciliation – El Salvador" in Boraine and Levy (eds), pp. 66-77; Ensalaco, pp. 657-663; M. Popkin, "El Salvador: A negotiated end to impunity?" in Roht-Arriaza, (ed.), pp. 198-217; *Beeld*, 28.6.1994, p. 13. For more information on the Charter of this commission in El Salvador see United States Institute of Peace Library, "Truth Commissions: Charters: El Salvador", <http://www.usip.org/library/tc/do/charters/tc_elsalvador.html>, 1999.

resources in the form of funds and staff. Some truth commissions in African countries are also faced with political bias and/or ethnic or group-identity antagonism.

Uganda is the only country that went through two government-sponsored truth commissions. In June 1974, Ugandan President Idi Amin Dada established the “Commission of Inquiry into ‘Disappearances’ of People in Uganda since the 25th of January, 1971”. This commission came into being in response to the increasing public pressure to investigate the accusations of disappearances at the hands of military forces during the first years of the Amin government. The commission faced considerable practical difficulties and operated in an unfavourable political climate. Access to information was blocked by many sectors of government, the military police and military intelligence. After hearing 545 witnesses and documenting 308 cases of disappearances the commission concluded that the Public Safety Unit and the State Research Bureau, special security bodies set up by Amin, were mainly responsible for these disappearances. The commission report had minimum impact on the practices of the government of Amin and abuses by his forces increased considerably in subsequent years. The conclusion was that the commission was set up without any political will or responsibility for real change in human rights practice or policy.⁵⁰

Twelve years later, in 1986 the Yoweri Museveni government announced the formation of a “Commission of Inquiry into Violations of Human Rights”. This new commission made no reference to the previous one that was conducted in 1974. The Commission of Inquiry investigated human rights violations that had happened from Independence – 25 January 1962 up to 25 January 1986, when Museveni took control. Major

⁵⁰ Hayner, *Unspeakable truths ...*, pp. 51-52; Hayner, “Fifteen Truth Commissions ...”, pp. 611-613; Carver, pp. 397-400; N. Roht-Arriaza, “Overview” in Roht-Arriaza, (ed.), pp. 221-223; Christie, p. 62; *Mail & Guardian*, 19-25.5.1995, p. 8. Hayner and Carver point out that the commissioners were “targeted after the submission of the report by the state in apparent reprisal for their work: the one commissioner lost his employment with the government, another commissioner was framed with murder charges and

funding constraints limited and slowed the work of this commission, but a report was published in 1995, after nine years of investigation.⁵¹

Rwanda presented an altogether new truth commission model. Since 1959 violence in Rwanda had erupted between its three major groups: the Hutu, the Tutsi and the Twa. The relationship between especially the Hutu and the Tutsi, the two largest groups, had been characterised by violence and discrimination. Atrocities on the part of government officials, who aimed at driving the Tutsi out of the country, also occurred.⁵²

A coalition of five Rwandan human rights organisations approached four non-governmental organisations in the United States, Canada, France and Burkina Faso to create a commission. This commission was funded and entirely sponsored by international non-governmental organisations which formed the “International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990”. It was created with ten people to serve as commissioners who travelled to Rwanda for two weeks in January 1993, completing all their investigation during this time. It included interviews, listening to testimonies, reviewing government documents and exhumations – with the focus on government forces and not on rebel abuses. Although the government did not hinder the investigation, the government forces began killing in the days after the commission left the country and murdered an estimated 300-500 people. The final report was positively received in Rwanda and internationally. France and Belgium especially, started to re-evaluate their positions and the presence of troops in Rwanda. The

sentenced to death, and the third fled the country to avoid arrest”. Hayner, “Fifteen Truth Commissions ...”, p. 612; Carver, p. 400.

⁵¹ Hayner, “Fifteen Truth Commissions ...”, pp. 618-620; *The Star*, 11.7.1995, p. 13; United States Institute of Peace Library, “Truth Commissions”, <<http://www.usip.org/library/truth.html>>, 2005. For more information on the Charter of the second commission in Uganda see United States Institute of Peace Library, “Truth Commissions: Charters: Uganda”, <http://www.usip.org/library/tc/do/charters/tc_uganda.html>, 1999. See also “Uganda” in Kritz (ed.) Vol II, pp. 513-531 for more detail on the Commission of Inquiry into Violations of Human Rights, as well as the comments thereof made by four members of this Commission.

⁵² Hayner, “Fifteen Truth Commissions ...”, p. 629.

Rwandan government reacted by launching a publicity attack on the rebels to make known their human rights abuses.⁵³

A commission of inquiry was established in 1985 in *Zimbabwe*. The aim was to investigate the killing and governmental repression of an estimated 1 500 political dissidents and other civilians in the Matabeleland region of the country. The commission worked under the authority of the president and was presided over by a Zimbabwean lawyer. After several months of investigation, a report was submitted directly to the president. To date, the report has not been made public by the government and no one outside of the government has seen it.⁵⁴

Apart from Latin America and Africa, dramatic developments were also occurring in other parts of the world. These countries were also in democratic transitions, where they had to deal with the violent legacies left by previous regimes. Issues of investigation, prosecution, purge and redress had to be faced by these countries.

Germany, through its parliament, established a commission in March 1992 to investigate human rights violations under communist rule in East Germany under the German Democratic Republic between 1949 and 1989. This commission, the "Study Commission of Inquiry for the Assessment of History and Consequences of the SED⁵⁵ Dictatorship in

⁵³ *Ibid.*, pp. 629-632. After this commission, Rwandans engaged in 1994, in the fastest recorded genocide in history. This time the International Criminal Tribunal for Rwanda (ICTR) was authorised through the UN Security Council resolution 955 in November 1994, to "prosecute acts of genocide, crimes against humanity and violations of the Geneva Convention that were committed between January and December 1994". See L.S. Graybill, "Pardon, punishment, and amnesia: Three African post-conflict methods" in *Third World Quarterly* 25(6), 2004, pp. 1120-1124; L. Graybill and K. Lanegran, "Truth, justice, and reconciliation in Africa: Issues and cases" in *African Studies Quarterly* 8(1), Fall 2004, pp. 8-9; United Nations, "International Criminal Tribunal for Rwanda (ICTR)", <<http://69.94.11.53?ENGLISH/geninfo/index.htm>>, *s.a.* For more information on this genocide in Rwanda during 1994 see the publication of P. Gourevitch, *We wish to inform you that tomorrow we will be killed with our families. Stories from Rwanda*.

⁵⁴ Hayner, *Unspeakable truths ...*, p. 55; Hayner, "Fifteen Truth Commissions ...", pp. 617-618; R. Carver, "Zimbabwe: Drawing the line through the past" in Roht-Arriaza, (ed.), pp. 258-269; United States Institute of Peace Library, "Truth Commissions", <<http://www.usip.org/library/truth/html>>, 2005.

⁵⁵ The SED was the Socialist Unity Party, which was the ruling party of East Germany. It controlled the country for over forty years.

Germany”, was set up in response to events surrounding the opening of the files of the Stasi secret police. The process of this parliamentary commission was one of investigating and providing accurate records of the practices and circumstances that took place in East Germany under communist rule. Sixteen parliamentary members, eleven private citizens and a representative from each political party in parliament served on the commission. The 27-member commission’s mandate gave it access to all government records and Stasi files. These files allowed people who had been victims of Stasi informers to discover who had been reporting on them. The mandate of the commission reached beyond focusing only on gross human rights violations and included a broader inquiry into government policy and practice. It studied the methods that the communist regime used to remain in power, with a combined effort to tell the stories of the victims and the impact that government policies had on people’s lives.⁵⁶

On 18 March 1986 President Corazon Aquino gave broad power to the “Presidential Committee on Human Rights” to investigate human rights violations in the *Philippines*. This seven-member committee had to investigate the role of the military from 1972 to 1986 under President Ferdinand Marcos. Nothing definitive was ever produced and the committee never issued a final report.⁵⁷

⁵⁶ Hayner, “Fifteen Truth Commissions ...”, p. 627; J. Gauck, “State security files & disqualification – Germany” in Boraine, *et al.*, (eds), pp. 72-74; H-J. Geiger, “Consequences of past human rights violations: The significance of the Stasi files for dealing with the East German past” in M.R. Rwelamira and G. Werle (eds), *Confronting past injustices. Approaches to amnesty, punishment, reparation and restitution in South Africa and Germany*, pp. 41-52; G. Werle, “Without the truth there is no reconciliation” in *Die Suid Afrikaan* (53), 1995, pp. 18-19. See also Christie, pp. 52-53; *Democracy in Action*, 15.4.1994, p. 21; United States Institute of Peace Library, “Truth Commissions”, <<http://www.usip.org/library/truth.html>>, 2005. For more information on the Charter: “Germany: Law Creating the Commission of Inquiry on Working Through the History and the Consequences of the SED Dictatorship” see United States Institute of Peace Library, “Truth Commissions: Charters: Germany”, <http://www.usip.org/library/tc/doc/charters/tc_germany.html>, 1999. See also “The pain of reading one’s own file” in Kritz (ed.), Vol. II, pp. 612-614.

⁵⁷ Hayner, “Fifteen Truth Commissions ...”, pp. 620-621; *Mail & Guardian*, 19-25.5.1995, p. 8; United States Institute of Peace Library, “Truth Commissions”, <<http://www.usip.org/library/truth/html>>, 2005.

From the examples used, it is clear that human rights investigations vary remarkably, both in their political context and in their legal composition, as well as in their specific investigatory mandates and powers. It is self-evident that procedures and models which are appropriate at a specific time and place will not necessarily be appropriate for another country. Each country must shape a process of transition out of its own historical, political and cultural context. However, from these precedents there were cases where the police and army made general confessions in exchange for blanket amnesties with no emphasis on personal responsibility. In many instances, the commissions ignored the victims. This made it possible for the truth about past atrocities to remain largely concealed. Against this background, South Africa took certain guidelines in the 'truth recovery' from former commissions, incorporated lessons from these commissions, but used them even more as warnings.

2.4 FIRST CALLS FOR A TRUTH COMMISSION FOR SOUTH AFRICA

South Africans have sought to learn from past mistakes and to develop a different kind of truth commission right from the start. The concept of a truth commission was first articulated by Prof. Kader Asmal in his inaugural speech as the new chair of human rights law at the University of the Western Cape on 25 May 1992.⁵⁸ On occasion Asmal also explained his view of a truth commission for South Africa: "There is no prototype that can be automatically used in South Africa. We will be guided, to a greater or lesser extent, by experiences elsewhere, notably in those countries that managed to handle this highly sensitive – even dangerous – process with success. But at the end of the day, what is most important is

⁵⁸ K. Asmal, "Victims, survivors and citizens – human rights, reparations and reconciliation", *Inaugural Lecture*, Series A (64), 25.5.1992, pp. 5-29. See also Tutu, p. 45; Christie, p. 69.

the nature of our particular settlement and how best we can consolidate the transition in South Africa".⁵⁹

The idea of a truth commission for South Africa originated with the African National Congress. The party was accused of having perpetrated human rights violations in some of its Tanzanian training camps, as well as in other parts of Southern Africa, such as Angola, Zambia and Uganda. The ANC responded by setting up its own internal inquiries into their own behaviour of atrocities, brutality and misdemeanours committed during apartheid in these various camps in Southern Africa.⁶⁰

In 1991, a group of 32 previous detainees in ANC camps in Southern Africa formed the 'Returned Exiles Committee' to take the ANC to task over these allegations. With the ANC's credibility under question, Nelson Mandela established the Skweyiya Commission (Commission for Enquiry into Complaints by Former African National Congress Prisoners and Detainees) in March 1992 in an effort to investigate the accusations. The commission was directed to focus on events in ANC detention camps located throughout Southern Africa, including Angola, Zambia, and Tanzania. At that stage, the ANC was the first example among the number of truth commission models of a non-governmental entity – in this case, an opposition movement and armed resistance group – that established a commission to investigate and publicly report on its own past human rights abuses.⁶¹

Two of the three commissioners were ANC members, which led to the questioning of the neutrality of the commission. Although the outcome of

⁵⁹ Graybill, *Truth and Reconciliation in South Africa ...*, pp. ix, 1.

⁶⁰ Boraine, p. 11; SABC News Production, "Slices of Life: the imprisonment under apartheid of all South Africans – physically, mentally, emotionally and spiritually", *South Africa's human spirit. An oral memoir of the Truth and Reconciliation Commission*, CD 2 no. 7; Christie, p. 33; Tutu, p. 45; Krog, p. 5; *Die Burger*, 10.6.1997, p. 7 and 6.4.1998, p. 13.

⁶¹ Hayner, *Unspeakable truths ...*, p. 60; Hayner, "Fifteen Truth Commissions ...", p. 625. The ANC made a consistent effort to establish mechanisms of accountability and oversight, as evidenced by the appointment of the Stuart, Thami Zulu, Skweyiya and the Motsuenyane Commissions. See African National Congress, *National Executive Committee's Response to the Motsuenyane Commission's Report*, <<http://www.anc.org.za/ancdocs/pr/1993/pr0829.html>>, 1993.

this investigation gave details of “staggering brutality”, torture and violations, it pointed, rather, to the circumstances where the ANC “did not have real authority in the countries where abuse had taken place and could therefore not proceed with measures to ensure justice”.⁶² The report also did not name any responsible individuals. Nelson Mandela accepted collective responsibility on behalf of the ANC leadership. Notwithstanding these results, various external human rights’ NGOs such as Amnesty International still claimed that there had been a “long standing pattern of torture, ill treatment and execution of prisoners by the ANC’s security department, which was allowed to go unchecked for many years”.⁶³

Shortly after the Skweyiya Commission, investigations were also conducted by the Motsuenyane Commission⁶⁴ (Commission of Inquiry into Certain Allegations of Cruelty and Human Rights Abuses against ANC Prisoners and Detainees by ANC Members), appointed by Nelson Mandela at the end of 1992 to look again into the alleged abuses in ANC detention camps. The hearings of this commission were attended by representatives of Amnesty International, Lawyers for Human Rights and other organisations, while the proceedings were in public and the press reported widely on them. The Motsuenyane Commission, which had the greatest credibility and independence, submitted its report in August 1993 and confirmed that gross human violations had taken place by the security department of the ANC in camps during the time of exile. This Commission criticised the bias of the Skweyiya Report and the lack of individual culpability and continues to blame the executive arm of the

⁶² Hayner, *Unspeakable truths ...*, pp. 60-61; Christie, p. 79; Anon, “Intrepid impartiality vital for tough challenge” in *Financial Mail* 140(3), 29.3.1996, p. 20.

⁶³ Christie, p. 79. See also *Weekend Argus*, 5-6.11.1994, p. 6.

⁶⁴ The commission was chaired by Dr. Samuel M. Motsuenyane and included two jurists from Zimbabwe and the United States, Advocate D.M. Zamchiya and the Hon. Margaret Burham, respectively.

ANC for not taking more precautions in allowing this mistreatment to proceed.⁶⁵

The National Executive Committee (NEC) of the ANC accepted these findings and accepted collective responsibility on the part of the leadership of the ANC, while denying that “there was any deliberate and preconceived systematic policy of abuse”.⁶⁶ Already, with the outcome of the Skweyiya Report, Nelson Mandela issued a public apology to the victims, with the exception that individuals could not be named or held personally accountable in the process. In the NEC response to the Motsuenyane Commission report, the ANC again expressed its “profound sense of regret, collective moral responsibility and apology to all who suffered as a consequence”.⁶⁷

The NEC further refused to take action against perpetrators and decided that these violations should be seen against the general background of human rights violations committed in South Africa over a long period. The NEC believed that appointing a truth commission was the best way to handle the party’s own violations and those of the state and other organisations, with the emphasis on full disclosure and accountability, as well as the need for the whole truth. Setting up the various commissions from their side, the inquiries into the abuses in exile camps and subsequent reports were consequently seen by the ANC as the first historic step in a process of national disclosure from all sides into human rights violations.⁶⁸

⁶⁵ African National Congress, *National Executive Committee’s Response*; K. Asmal, “After Motsuenyane” in *Mayibuye*, October 1993, pp. 14-15; Christie, p. 79; J. de Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission” in C. Villa-Vicencio and W. Verwoerd, *Looking back reaching forward. Reflections on the Truth and Reconciliation Commission of South Africa*, p. 20; Hayner, *Unspeakable truths*, pp. 62-63; L. Berat, “South Africa: Negotiating change?” in Roht-Arriaza, (ed.), p. 275; *The Star*, 23.6.1993, p. 19; *Sowetan*, 25.8.1993, p. 10.

⁶⁶ African National Congress, *National Executive Committee’s Response*

⁶⁷ *Ibid.* See also Asmal, “After Motsuenyane ...”, pp. 14-15; Tutu, p. 45.

⁶⁸ Borraine, pp. 11, 258-260; Christie, p. 79; Minow, p. 53; *Beeld*, 25.3.1994, p. 7; *Business Day*, 4.7.1994, p. 8.

In 1993, the NEC called on the government to “agree, following discussions with the ANC and other political and non-governmental organisations, to set up, without delay, a Commission of Inquiry or Truth Commission into all violations of human rights since 1948”.⁶⁹ The NEC further argued for a “call for the establishment of a Commission of Truth, similar to bodies set up in a number of other countries to deal with the past. The purpose of such a commission will be to investigate all the violations of human rights - killings, disappearances, torture and ill treatment - from all quarters. This will not be a Nuremberg Tribunal. Its role will be to identify all abuses of human rights and their perpetrators, to propose a future code of conduct for all public servants, to ensure appropriate compensation to the victims and to work out the best basis for reconciliation. In addition, it will provide a moral basis for justice and for preventing any repetition of abuses in the future”.⁷⁰ The NEC outlined the benefits of a truth commission by focusing on the gaining of truth which contains cleansing power, while the memory of loved ones would not be denigrated or forgotten, with the ultimate aim that such violations must never happen again.⁷¹

It is not arguable that the appointment of commissions of inquiry by the ANC was an historic event as it was the first time that a liberation movement had engaged a commission to investigate its own past of human rights violations. In addition, it is noteworthy that the ANC demonstrated its desire for openness and transparency by undergoing such an exercise in exposing its actions for public and even international scrutiny. By not ignoring the findings, the world was taking note of the ANC’s attempt, to their credit, to ensure accountability in some way. This was further highlighted by the opinion of many who believed that the ANC committed these deeds for a ‘just’ cause against a state which had

⁶⁹ African National Congress, *National Executive Committee’s Response* See also Boraine, p. 11; S. Wilson, “The myth of restorative justice: Truth, reconciliation and the ethics of amnesty” in *South African Journal on Human Rights* 17(4), 2001, p. 533.

⁷⁰ African National Congress, *National Executive Committee’s Response* See also *Business Day*, 4.7.1994, p. 8.

⁷¹ Boraine, p. 12; African National Congress, *National Executive Committee’s Response*

been responsible for state crimes and the persecution of the majority of its people. By not sweeping these serious allegations under the carpet, the ANC showed its commitment to the development of a human rights culture.

2.5 THE ROLE OF THE NEGOTIATION PROCESS IN THE ESTABLISHMENT OF A TRUTH COMMISSION FOR SOUTH AFRICA

Pres. F.W. de Klerk's famous speech, given on 2 February 1990 at the annual opening of parliament, set in motion the constitutional negotiation process. This led to the first multiracial elections in April 1994 and the first democratic constitution for South Africa. The Truth and Reconciliation Commission of South Africa, while not a direct product of the negotiation process, was strongly influenced and determined by the nature of the negotiations leading up to the first democratic elections, the establishment of a new, democratic dispensation and the transfer of power in South Africa.⁷²

Crucial to the outcome of the process of political transition in South Africa was the fact that there was neither a winner nor a defeated enemy. Because neither side won the decisive victory, neither side could impose a victor's justice, which would have enabled a particular side to do so. Apart from this, the previous government (the National Party) became part of the new transitional dispensation. After the Second World War the Nuremberg trials could particularly be held for the reason that there were winners and losers; a clear conqueror and a clear conquered. With no single victorious participant in the South African conflict, deals and

⁷² K. Henrard, "Post-apartheid South Africa: Transformation and reconciliation" in *World Affairs* 166(1), Summer 2003, p. 39; W. de Klerk, *F.W. de Klerk. Die man en sy tyd*, pp. 3-4, 39-54; P. Waldmeier, *Anatomy of a miracle. The end of apartheid and the birth of the new South Africa*, pp. 149-151; South African Government Information, "Address by the State President, Mr FW de Klerk, DMS, at the opening of the second session of the ninth Parliament of the Republic of South Africa, Cape Town, 2 February 1990", <<http://www.info.gov.za/speeches/1996/101348690.htm>>, 2004.

pact-making had to be made and compromises had to be struck.⁷³ This process of negotiated compromise may be summed up as follows: “At the core of the pact lies a negotiated compromise under which actors agree to forego or underutilise their capacity to harm each other by extending guarantees not to threaten each other’s corporate autonomies or vital interests”.⁷⁴

It became apparent that only negotiations could lead to a new democratic dispensation. At the heart of these negotiations were compromise and mutual concessions, with the aim of building a democratic state in which all participants in the conflict could find a place. The alternative would have been a continued conflict with more human rights violations. In this case, compromise politics was one of the forces of the process securing its eventual success.⁷⁵ Adam Michnik puts it succinctly: “I am negotiating because I have chosen the logic of peace and abandoned the logic of war. This means my enemy of yesterday must become my partner and we will both live in a common state. He may still be my opponent but he is an opponent within peace, not within war”.⁷⁶

It is also important to take note of the contextual international factors that influenced the negotiation process in South Africa at the beginning of the 1990s. With the end of the Cold War and the collapse of the Soviet Union and the authoritarian regimes in Eastern Europe, South Africa was one of the countries that took advantage of the political opportunities resulting from these international happenings. With the ‘removal’ of the threat of communism in Eastern Europe, it became more difficult for the government of the day – the National Party, to claim credibility that South Africa was under attack from the communist threat. There was

⁷³ Waldmeier, p. 227; J. Sarkin, “The trials and tribulations of South Africa’s Truth and Reconciliation Commission” in *South African Journal on Human Rights* 12(4), 1996, p. 617; Christie, pp. 45, 56; Tutu, p. 25; P. Meiring, *Kroniek van die Waarheidskommissie. Op reis deur die verlede en hede na die toekoms van Suid-Afrika*, p. 10.

⁷⁴ Christie, p. 45.

⁷⁵ Waldmeier, pp. 94, 229-230; Henrard, p. 39; J. Sarkin, *Carrots and sticks: The TRC and the South African amnesty process*, pp. 49-50; *The Daily News*, 27.10.1998, p. 13.

⁷⁶ A. Michnik, “Why deal with the past?” in Borraine, *et al.*, (eds), p. 16.

also a growing realisation from the liberation movements that the armed struggle had failed to reach its main objectives and they would have to turn to the negotiation table to achieve its goals.⁷⁷

It was inevitable that political compromises would have to be made between the state and the liberation movements during the complex transitional political negotiations leading to the adoption of an Interim Constitution in 1993, with input from twenty-six political parties.⁷⁸ The Interim Constitution (Act No. 200 of 1993), which would govern the first five years of the transitional period, was the 'peace pact' reached between these opposing groups.

Amnesty provision was one of the compromises. Amnesty would be traded for peace and power sharing. It became clear that the negotiated amnesty prevented the country from a 'bloodbath scenario'. Amnesty would be the price to pay in order to secure a peaceful transition to majority rule.

A powerful impetus towards the establishment of the commission in particular was the post-amble of the Interim Constitution, with the heading 'National Unity and Reconciliation', which made provision for a limited form of amnesty. It reads as follows:

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

⁷⁷ Waldmeier, p. 71; Christie, pp. 46, 67.

⁷⁸ K. Asmal & L. du Plessis, "South African Agenda. Discussion on priorities & options" in Boraine, *et al.*, (eds), pp. 139-141; Henrard, p. 39; Graybill, *Truth and Reconciliation in South Africa ...*, p. 2.

- The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.
- The adoption of the Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.
- These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation.
- In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanism, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.”⁷⁹

FW de Klerk and his colleagues insisted that the implication of the post-amble was that everyone involved in the political conflicts of the past was eligible for amnesty. The National Party wanted to secure a guarantee that a new government would not victimise or persecute those who committed crimes in the course of defending an apartheid system. On the other hand, the post-amble was also an acknowledgement by all parties that a constitutional solution to the country’s problems would endure only by setting a premium on national unity and reconciliation between

⁷⁹ Republic of South Africa, “Promotion of National Unity and Reconciliation Act No. 34” in *Government Gazette* 361(16579), 1995, p. 2; Boraine, pp. 7, 38-39; Christie, p. 61; Tutu, pp. 45-46; T. Bell (in collaboration with D.B. Ntsebeza), *Unfinished business. South Africa apartheid and truth*, pp. 238-239.

previously hostile groups.⁸⁰ According to Lourens du Plessis the central theme of the postscript appears to be this: “for the sake of reconciliation we must forgive, but for the sake of reconstruction we dare not forget”.⁸¹

The Interim Constitution was a product of compromises; of give and take. It is evident that the drafters of the Interim Constitution accepted the principle of amnesty as an essential tool for the purpose of reconciliation and healing in the pursuit of national unity and knowledge. The Interim Constitution therefore provided an ‘historic bridge’ between the past violations of human rights and a future based on respect for human rights.

2.6 INITIAL PHASE OF CONFERENCES AND DEBATES

From 1994 the debates for a truth commission in South Africa began to surface in Parliament, non-governmental organisations and the media. The Institute for Democracy in South Africa (IDASA)⁸² held two major conferences in February and July of 1994 that brought public attention to the need for a truth commission. The aim of IDASA was also to learn from other countries’ experiences while adapting and adjusting them to correspond to the specific circumstances in South Africa.⁸³

The first conference was held in February 1994 in Somerset West in the Western Cape with the theme ‘Justice in Transition: Dealing with the Past’. It was a preparatory conference with the focus on the experiences of Latin America and of Eastern Europe, to assist South Africans in narrowing the options available to the South African context and to start defining the boundaries of the shape the commission would take. Among

⁸⁰ G. Simpson and P. van Zyl, “South Africa’s Truth and Reconciliation Commission”, <<http://www.csvr.org.za/papers/papgpspv.htm>>, 1995.

⁸¹ Boraine, pp. 39-40.

⁸² The Institute for a Democratic Alternative for South Africa (IDASA) was formed in 1986 as a non-governmental organisation with the main aim to work towards negotiation politics. Alex Boraine acted as the Executive Director. See *Democracy in Action*, 31.5.1994, p. 3 for an outline of their goals.

⁸³ Already in 1992 a small group of South Africans travelled and visited several countries in Eastern Europe, including Germany, the former Czechoslovakia and Hungary under the auspices of IDASA, to witness first-hand societies in transition to democracy. See Boraine, p. 14.

others, the participants included human rights' activists, academics from the legal field and various NGO representatives. The delegates, specifically from Eastern Europe and Latin America, shared their countries' struggles over the question of how to treat former enemies and oppressors. Thus, this conference provided a unique opportunity to hear from other countries which had shifted in recent times from totalitarianism to democracy. In the light of their experiences proposals could be formulated for possible action to be taken in South Africa.⁸⁴

After this conference, a proposal was drafted for the president of the ANC, Nelson Mandela, giving him some options which he might wish to consider in relation to dealing with the past.⁸⁵ After the election of the new democratic government in 1994, Dullah Omar, the then Minister of Justice, affirmed his total commitment to a truth commission by suggesting a combination of the amnesty process with the process of victims' stories to convey the idea of moral responsibility.⁸⁶

Shortly hereafter, Minister Dullah Omar announced to Parliament, on 27 May 1994 the government's decision to set up a commission of truth and reconciliation, which would enable South Africa to come to terms with its past. This commission would be established to give effect to the amnesty provisions in the Interim Constitution and simultaneously to achieve a form of justice for victims of human rights abuses. He also called for various individuals to investigate its viability.⁸⁷

⁸⁴ Boraïne, pp. 16-18; A. Boraïne, "Introduction" in Boraïne, *et al.*, (eds), p. xvii; Christie, p. 81; Krog, pp. 23-25; *The Argus*, 4.3.1994, p. 14; *Democracy in Action*, 15.4.1994, p. 20; *The Cape Times*, 27.5.1994, p. 8 and 9.6.1994, p. 6; *Sunday Tribune*, 12.6.1994, p. 14; *Rapport*, 26.6.1994, p. 23. The publication *Dealing with the past. Truth and reconciliation in South Africa*, has emerged from this conference and includes the debates and testimonies of the speakers who focused on how countries as diverse as Argentina & Chile, Bulgaria & Germany dealt with their own situations and how human rights could be protected.

⁸⁵ See Boraïne, pp. 30-34 for the detailed draft and letter to Nelson Mandela where Boraïne sets out the risks involved in setting up a truth commission, but also the compelling reasons why a truth commission could actually assist the healing process.

⁸⁶ Boraïne, p. 37; *Sunday Times*, 5.6.1994, p. 4; *The Citizen*, 22.6.1994, p. 4.

⁸⁷ Boraïne, p. 40; Christie, p. 81; *The Natal Witness*, 27.6.1994, p. 4; *Sowetan*, 8.6.1994, p. 1; *Negotiation News*, 21.7.1994, p. 12; *The Citizen*, 1.8.1994, p. 6; *Cape Argus*, 26.10.1998, p. 10.

Omar underlined that reconciliation could not be reached by letting bygones be bygones, and stressed: "If the wounds of the past are to be healed, if a multiplicity of legal actions are to be avoided, if future human rights violations are to be avoided and indeed, if we are to successfully initiate the building of a human rights culture, then disclosure of the truth and its acknowledgement are essential. We cannot forgive on behalf of victims, nor do we have the moral right to do so. It is the victims themselves who must speak. Their voices need to be heard. The fundamental issue for all South Africans is therefore to come to terms with our past on the only moral basis possible, namely that the truth be told and that the truth be acknowledged".⁸⁸ With this public announcement the government had clearly declared its intentions and political will towards the appointment of a truth commission.

With this first announcement to Parliament and the public, Minister Dullah Omar presented the proposals that the government was considering. It included the composition of a commission; its terms of reference, which would include investigating and establishing the truth about human rights violations and their acknowledgement; fair procedures and adherence to international law relating to human rights; a framework that needed to be created to deal with all claims in case of reparations. The commission would be appointed for a period of eighteen months to two years; and there would be a final and complete report presented to the President which would close the chapter on South Africa's past. The Minister also made brief points on the question of amnesty. The commission would set up a specialised structure to deal with applications and make recommendations; the cut-off date in respect of offences committed would be no later than 5 December 1993; offences in respect to which amnesty could be applied for, would be defined strictly within the framework of the constitutional provision on national unity and reconciliation; recommendations of the Commission should be referred to the President (this was changed later in the final Act, which

⁸⁸ Boraine, p. 41. See also *Sowetan*, 8.6.1994, p. 1; *The Citizen*, 1.8.1994, p. 6.

gave complete autonomy to the Amnesty Committee to make a final decision); and lastly, there would be a fixed cut-off date for applications.⁸⁹

Against this announcement of government, the second conference in preparation for a truth commission was held in July 1994 in Cape Town under the auspices of Justice in Transition, a free-standing NGO. It was called the 'South African Conference on Truth and Reconciliation'. This time, the focus was more on South African participation drawn from a wide spectrum of organisations and institutions within South Africa itself. Nearly 150 delegates from all walks of life were brought together, including Patricio Aylwin and José Zalaquett from Chile; Catalina Smulovitz from Argentina and Patricia Valdez from El Salvador, who had experience of the work of TRCs in their own countries.⁹⁰

These conferences and in particular, the workings of IDASA, marked the road for discussions on how to deal with the past and the violations of human rights in South Africa. With these organised conferences, the opportunities opened for discussions and guidance for South Africans from people who had gained specific experience and knowledge in their own countries. By using a pool of world experiences in international human rights, South Africans could also enrich their own concept of a workable truth commission for the specific complex situation in this country. Taking into account the different methods and models of a variety of governments who went through transitions and analysing their failures and successes, contributed immensely to shaping the correct approach and viability for the South African context.

2.7 HOW TO DEAL WITH THE PAST

⁸⁹ Boraine, pp. 41-42; *Sunday Times*, 5.6.1994, p. 4; *The Citizen*, 30.7.1994, p. 1; *Business Day*, 1.8.1994, p. 2.

⁹⁰ Boraine, pp. 42-44; Christie, p. 82; *Democracy in Action*, 30.4.1995, p. 26. The publication *The Healing of a Nation?*, has also emerged from this conference and includes the debates of the speakers who were mostly representatives from South Africa's human rights organisations, political parties and individuals involved in and concerned with human rights in South Africa.

The question that had to be answered was *how* to deal with the atrocities of the past. It was important to deal with the past in the correct way, as one is also dealing with the future. The way one deals with the past impacts upon the shape of the future, while aiming at establishing a new political and moral order. In addition, it was a dualistic situation where the new negotiated political dispensation called for reconciliation and forgiveness, while at the same time, there were ever-increasing calls for the history of the Apartheid State and its perpetrators to be exposed. It is, on the one hand, the political and ethical demand to confront past atrocities and on the other hand the desire to bury the past. In addition, International Law allows an affirmative obligation on the part of states to investigate and punish gross violations of human rights.⁹¹

This issue of *how* to deal with the past raised serious questions. Can entire nations be held guilty for the acts which were committed by a minority of the population and if so, where does it end? Who should ultimately be held responsible – the elite, the masses or both? Should the past be exhumed, preserved, apologised for and acknowledged? How may it be prevented that the atrocities of the past be repeated again in the future? Once the damage has been done, how will it be repaired? How will societies heal? Questions arise concerning citizenship, responsibility and guilt and ultimately, the question that needed to be answered was, what would be the best way to deal with the past?⁹² To answer these questions, the debate is centred around whether truth should be the aim of accountability or whether justice should be the aim of accountability.

Christie and Hayner argue that for many political scientists the notion of ‘coming to terms with the past and dealing with it’ is fundamental to the process of democratisation in post-authoritarian governments and states which appear to be undergoing traumatic changes.⁹³ Christie indicates further that with the aim of producing some form of collective memory of

⁹¹ Christie, p. 63; A.M. Omar, “Foreword” in Rwelamira and Werle, p. ix; *Sunday Times*, 12.6.1994, p. 20.

⁹² Christie, p. 39; *Sowetan*, 9.6.1994, p. 8; *Rapport*, 26.6.1994, p. 23. See Boraine, pp. 32-33 for the risks that were set out if the decision was taken to deal with the past through a truth commission.

a traumatic history, the emerging democratic dispensation often sought to respond to the previous regime, typically by “dismantling their apparatus of control, punishing or giving amnesty to the old officials of those regimes, providing some form of reparation for survivors and victims commemorating their struggle and sacrifice through monuments, statues and the renaming of streets and avenues in their honour”.⁹⁴ Dealing with past injustices and human rights violations, become both a political and ethical task. Thus, it becomes commonplace where the past needs to be ‘got over’ and perhaps more crucially, needs to be seen to be ‘got over’.⁹⁵

Justice in the courts is usually the most prominent of demands in how to deal with past atrocities. It is argued that truth produced by trials is much more precise and trials produce better quality information as the information has been subjected to the rigours of the legal process and the rules of evidence. In other words, the highly developed rules of evidence, procedure and proof that rule a trial, ensure that a fact established in such a setting is more likely to be true. These rules are designed to reduce the possibility of a false positive to an acceptable level, but do not claim to eliminate entirely such a risk.⁹⁶

Furthermore, the proponents of prosecutions believe that the population in general could benefit by a process of prosecutions as it helps to restore citizens’ dignity after years of defencelessness, based on state terror. It may also be an efficient way of ascertaining the truth where the legal process ensures that the fact-finding will be thorough and reasonably impartial. Prosecutions will lead to a clear declaration of fault where the guilty will be punished or at least stigmatised. The prosecution process

⁹³ Christie, p. 63; Hayner, *Unspeakable truths ...*, p. 11.

⁹⁴ Christie, pp. 63-64.

⁹⁵ *Ibid.*, pp. 64, 1. Compare Christie’s arguments for confronting the past with the reasons set out by Aryeh Neier in Boraine, *et al.*, (eds), p. 3.

⁹⁶ R.C. Slye, “Amnesty, truth, and reconciliation: Reflections on the South African amnesty process” in R.I. Rotberg and D. Thompson (eds), *Truth v. Justice. The morality of truth commissions*, pp. 173-174.

may also be useful in re-establishing the rule of law and providing a warning that future transgressions will not be excused.⁹⁷

Those in favour of prosecutions for human rights violations, such as Professor Stephan Landsman, argue that prosecuting these human rights violations may implicitly enhance the chances of establishing the rule of law and signalling that no individuals are outside the reach of legal accountability. In this sense, it is argued that prosecutions may be fundamental for the healing of social wounds caused by serious violations, based on the theory that a society cannot forgive what it cannot punish.⁹⁸

In South Africa there were some who wanted to follow the Nuremberg trial paradigm that happened after the Second World War with the case of the defeated Nazis. They were of the opinion that all perpetrators of gross human rights violations should bear the full brunt of the normal judicial process. They argued that technically, pardon or amnesty should not be extended to crimes against humanity and apartheid, in their view, constitutes an international crime that requires some form of punitive retribution and retributive justice.⁹⁹

Human Rights Watch was also opposed in principle to granting immunity. They argued strongly that governments have a duty under international law to prosecute those guilty of gross violations of human rights. Likewise, Amnesty International pointed out that amnesty cannot be granted in respect of crimes against humanity, as well as torture and similar offences. They indicated that they would have preferred an international court for South Africa, along the lines of the War Crimes

⁹⁷ N. Roht-Arriaza, "Introduction" in Roht-Arriaza, (ed.), pp. 8-9.

⁹⁸ Minow, pp. 57-58. See also S.P. Huntington, "The third Wave: Democratization in the late twentieth century" in Kritz (ed.), Vol. 1, pp. 68-69 for arguments in favor of prosecutions.

⁹⁹ Tutu, pp. 24, 27; Christie, pp. 14, 23; Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, Vol. 1, p. 5; M. du Preez, "The price of truth" in *The UNESCO Courier* 52(12), December 1999, p. 24; Simpson and Van Zyl.

Tribunal which dealt with human rights abuses in the former Yugoslavia.¹⁰⁰

This option however, could never really be regarded as viable because of the negotiated compromises, which resulted in power sharing. It would have been difficult and even unconstitutional, not to take into account the constitutional provisions of amnesty or to limit it in such a way as to make it nonsensical. As Tutu remarks so strikingly: “While the Allies could pack up and go home after Nuremberg, we in South Africa had to live with one another”.¹⁰¹ Thabo Mbeki underlies this fact which led to a shift in thinking, explaining: “Within the ANC the cry was ‘to catch the bastards and hang them’. But we realised that you could not simultaneously prepare for a peaceful transition. If we had not taken this route I don’t know where the country would be today. Had there been a threat of Nuremberg-style trials for the members of the apartheid state security establishment we would never have undergone a peaceful change”.¹⁰²

Apart from this, trials would not be a workable model, taking into account several factors. First of all the previous regime remained and became part of the new dispensation and the negotiation process would never have succeeded if one side had insisted that all perpetrators be brought to trial. The very difficult question of ‘who would be put on trial?’ had to be answered, which in turn, would have placed an intolerable burden on an already strained judicial system and the resources available for such a process. The time factor could also become a deterrent factor where one could not allow details from such cases of human rights abuse to be aired for too long a period, as it could be distressing to many and too disruptive for the fragile peace and stability

¹⁰⁰ L.S. Graybill, “Pursuit of truth and reconciliation in South Africa” in *Africa Today* 44(1), January-March 1998, p. 114; Amnesty International, “Amnesty International and Human Rights Watch Truth and Justice: Unfinished business in South Africa”, <<http://web.amnesty.org/library/print/ENGAFR530012003>>, 2003; M.R. Rwelamira, “Punishing human rights violations: Considerations in the South African context” in Rwelamira and Werle, p. 8; *The Natal Witness*, 13.12.1997, p. 7.

¹⁰¹ Tutu, p. 25.

in the country. Lastly, a criminal court requires the evidence produced in a case to pass the most severe scrutiny, as well as investigation and to prove the case beyond reasonable doubt. In many cases, there was a lack of evidence and crimes had taken place a long time ago.¹⁰³

According to Hayner, the attempts to prosecute and punish those responsible for severe abuses under a prior regime, are the most difficult and have seen little success. It is recognised that courts have limited reach. In addition, even successful prosecutions do not resolve the conflict and pain associated with past abuses. Furthermore, trials in international courts have also been limited.¹⁰⁴ Minow justifies these statements further by explaining that the reasons for relinquishing prosecution relates to the inherent limitations of trials, rather than to the limitations and failures of the nation's capacity to conduct trials.¹⁰⁵ Paul van Zyl argues that trials are mostly about establishing guilt in specific instances, not about broader explanations or culpability. For him, trials have "limited explanatory value. They're about individual culpability, not about the system as a whole. A trial is not about *our* complicity. It makes it look *they're* guilty, not us".¹⁰⁶

Therefore, it is no simple matter to obtain a conviction in a court of law. A strong possibility is that the accused may be found not guilty because of a lack of evidence. The Malan trial especially, raised questions over the capacity and effectiveness of the criminal trials system in South Africa. During 1996 former Minister of Defence, Magnus Malan and nineteen others were accused of planning and carrying out a massacre in January 1987 of thirteen people in KwaMakhutha in the former homeland of

¹⁰² Boraine, pp. 13-14.

¹⁰³ Tutu, pp. 27-28; Boraine, pp. 281-283; Christie, p. 53; Sarkin, "The trials and tribulations ...", pp. 618-619; Simpson and Van Zyl; Truth and Reconciliation Commission, Vol. 1, pp. 5-6, 122-123; *The Cape Times*, 9.6.1994, p. 6. See also Huntington, pp. 68-69 for arguments opposed to prosecution.

¹⁰⁴ Hayner, *Unspeakable truths ...*, pp. 12, 14. See also J. Tempelhoff, "Menseregte, boetedoening en die kultuurhistoriese toe-eieningsproses" in P.H. Kapp (ed.), *Die Suid-Afrikaanse verlede en die skuldvraagstuk. Verslag van 'n simposium oor die Afrikaanse geskiedskrywing en die toewysing van skuld*, pp. 6-7.

¹⁰⁵ Minow, p. 58.

¹⁰⁶ Hayner, *Unspeakable truths ...*, p. 101.

KwaZulu, now KwaZulu-Natal. The murder happened when a hit-squad attack was carried out on the home of anti-apartheid activist Victor Ntuli. After a difficult trial, all defendants were acquitted. The case collapsed because of a lack of evidence linking Malan directly to the killings. Since the accused was a former state employee, the state was obliged to pay the costs of the legal defence. The costs of this seven-month trial exceeded R12 million.¹⁰⁷ The collapse of the Malan trial was a set-back for those wanting prosecutions and they were reminded of the words of Samuel Huntington: “Do not attempt to prosecute authoritarian officials for human rights violations. The political costs of such efforts will outweigh any moral gains”.¹⁰⁸

A dilemma with prosecution that needed to be considered by transitional states was the fact that it could lead to political violence and/or civil war, which could weaken an already vulnerable democratic system. In other words, it may destabilise a still fragile transitional government resulting in prolonged political instability or even a return of dictatorship.¹⁰⁹ Carlos S. Nino warns that the “consequences of attempting to punish all or some of those responsible for human rights violations may be dangerous for the stability of the democratic regime and ultimately for the preservation of those very human rights in the future”.¹¹⁰

This was emphasised by Judge Ismail Mahomed when he was the deputy president of the Constitutional Court by quoting the words of Judge Marvin Frankel in his book *Out of the Shadows of Night: The Struggle for International Human Rights* as follows: “The call to punish human rights criminals can present complex and agonising problems that have no single or simple solution. While the debate over the Nuremberg trials still goes on, that episode – trials of war criminals of a defeated nation – was simplicity itself as compared to the subtle and dangerous issues that can

¹⁰⁷ B. Hamber and S. Kibble, *From truth to transformation. The Truth and Reconciliation Commission in South Africa*, p. 8; Hayner, *Unspeakable truths ...*, p. 101; Truth and Reconciliation Commission, Vol. 1, p. 123.

¹⁰⁸ Boraine, “Introduction” in Boraine, *et al.*, (eds), p. xvi.

¹⁰⁹ Christie, pp. 62-63; Roht-Arriaza, “Introduction” in Roht-Arriaza, (ed.), p. 9; *The Cape Times*, 13.2.1995, p. 2.

¹¹⁰ Boraine, “Introduction” in Boraine, *et al.*, (eds), p. xvi.

divide a country when it undertakes to punish its own violators. A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living alongside everyone else, and they may be very powerful and dangerous. If the army and police have been the agencies of terror, the soldiers and the cops aren't going to turn overnight into paragons of respect for human rights. Their numbers and their expert management of deadly weapons remain significant facts of life ... The soldiers and police may be biding their time, waiting and conspiring to return to power. They may be seeking to keep or win sympathisers in the population at large. If they are treated too harshly – or if the net of punishment is cast too widely – there may be a backlash that plays into their hands. But their victims cannot simply forgive and forget. These problems are not abstract generalities. They describe tough realities in more than a dozen countries. If, as we hope, more nations are freed from regimes of terror, similar problems will continue to arise. Since the situations vary, the nature of the problems varies from place to place”.¹¹¹

On the other hand, there were those who opposed the trial option and suggested that South Africa should rather let bygones be bygones, forget the past and move on. It was a desire to turn the page and focus on a new future. Instead, this option makes provision for a blanket or general amnesty. This was an option much sought after by the members of the previous government, the Inkatha Freedom Party (IFP) and those in the security forces.¹¹²

For those who want to leave the past alone, it is a case of “No, we do not want to enter into the morass of conflict, hatred, and pain. We want to focus on the future, for now, the past is too much part of the present for us to examine its details. For now, we prefer silence over confrontation,

¹¹¹ Tutu, pp. 25-26; Truth and Reconciliation Commission, Vol. 1, p. 6.

¹¹² Tutu, pp. 30-31; Boraine, p. 4; Truth and Reconciliation Commission, Vol. 1, p. 7; *Business Day*, 9.6.1994, p. 2; *Sunday Tribune*, 12.6.1994, p. 14; K. Asmal, “Coping with the past. A truth commission for South Africa” in *Mayibuye*, February 1994, p. 27. See Tina Rosenberg’s criticism on this kind of reconciliation in T. Rosenberg, “Reconciliation and amnesty – Latin America” in Boraine, *et al.*, (eds), pp. 66-68.

over renewed pain. While we cannot forget, we would like to pretend that we can".¹¹³

For some people, this option was not so much of ignoring the atrocities of the past, but rather of concern for the newly emerging democracy and a way to protect it. A truth commission could rather aggravate the situation it sought to address, making reconciliation and healing more difficult. A warning was given that to point to the guilty by digging up the details of past atrocities would only lead to more pain and could lead to further divisions along racial lines. By dwelling on the past, a deeply divided society will be unable to overcome its divisions and move forward. In other words, official investigations may do more harm than good.¹¹⁴ Apart from these arguments, there was altogether strong criticism against this option, which was rather a call for a collective amnesia.

Professor Bruce Ackerman of Yale University is strongly outspoken in his criticism to those who "squander moral capital in an ineffective effort to right past wrongs – creating martyrs and fostering political alienation, rather than contributing to a genuine sense of vindication".¹¹⁵ According to him "moral capital is better spent in educating the population in the limits of the law rather than in engaging in a quixotic quest after the mirage of corrective justice".¹¹⁶ He warns that "any attempt to engage in corrective justice will generate the perpetuation of moral arbitrariness and the creation of a new generation of victims because of the inevitable deviations from the due process that would attach to trials".¹¹⁷

Archbishop Desmond Tutu felt that general amnesty actually amounted to amnesia, and that accepting this option would have subjected the victims of apartheid to a second round of suffering. He further argues that if the past is not recognised and kept quiet or lied about it is

¹¹³ Hayner, *Unspeakable truths ...*, p. 185.

¹¹⁴ Sarkin, "The trials and tribulations ...", p. 620; Roht-Arriaza, "Introduction" in Roht-Arriaza, (ed.), p. 8; *Die Volksblad*, 5.7.1994, p. 7; *Die Burger*, 7.2.1995, p. 2.

¹¹⁵ Boraine, p. 5.

¹¹⁶ *Ibid.*

“embarrassingly persistent, and will return and haunt us unless it has been dealt with adequately. Unless we look the beast in the eye we will find that it returns to hold us hostage.”¹¹⁸ Judge Richard Goldstone agreed to this, stating that: “It is a recipe for national discontent and almost certainly will result in past abuses being repeated”.¹¹⁹ Some South Africans added to this, stating “we accepted that it is necessary to turn the page of history but we first needed to read that page”.¹²⁰

These views were emphasised by the Chilean philosopher and activist José Zalaquett who explains that: “one cannot expect morality from politicians, but one can hold them to the ethics of accountability. It will sometimes be necessary to choose between truth and justice. We should choose truth, he says. Truth does not bring back the dead, but releases them from silence. A community should not wipe out a part of its past, because it leaves a vacuum that will be filled by lies and contradictory, confusing accounts of what happened. Perpetrators needed to acknowledge the wrong they did. Why? It creates a communal starting point. To make a clean break from the past, a moral beacon needs to be established between past and the future”.¹²¹ For Patricia Hayner the inevitable question with which any country with past atrocities is confronted, is; if a society can build a democratic future on a foundation of blind, denied, or forgotten history?¹²²

The idea of ‘collective responsibility’ was also dismissed. For Alex Boraine the “buck has to stop somewhere and the critical question is, who takes the final responsibility? Is it the politician who told the generals what to do, is it the generals who told the foot soldiers what to do, or is it the foot soldiers themselves who carried out the orders?”¹²³ He stressed that there is a need to know the chain of command and to

¹¹⁷ *Ibid.*

¹¹⁸ Tutu, pp. 30-32.

¹¹⁹ *Sunday Times*, 17.4.1994, p. 3.

¹²⁰ Boraine, p. 5.

¹²¹ Krog, p. 24.

¹²² Hayner, *Unspeakable truths ...*, p. 5.

¹²³ Boraine, p. 66.

“know the whole story rather than have one person simply saying, ‘I will take responsibility and that is it’”.¹²⁴

If all the arguments are taken into account, it seemed that criminal trials would be unfeasible and blanket amnesty unacceptable. Considering the political circumstances and context of the transition leading to negotiated compromises, a third option was considered. Here South Africa had to balance the requirements of justice, stability, peace, accountability and reconciliation. Thus, for the sake of justice, for the restoration of dignity to victims and to foster reconciliation there must be accountability for the past. Means of reaching this would be to institute a commission, not on the grounds of vengeance or retribution, but one that may serve a reconciliatory, nation-building function. In this sense, a truth commission would be the ‘middle-road’ between the alternatives of pardon or prosecution and blanket amnesty or national amnesia.

In evaluating truth commissions in general and their role against a process of prosecution, Martha Minow comes to the conclusion that truth commissions are not a second best alternative to prosecutions. According to her assessment of these two processes, truth commissions rather “emphasize the experiences of those victimized; the development of a detailed historical record; and the priority of healing for victims and entire societies after the devastation to bodies, memories, families, friendships, and politics caused by collective violence. A truth commission could generate the evidence to support prosecutions. Or, when the fullest accounts and participation are sought in a nation marked by deep and historic divisions, a truth commission represents a potential alternative to prosecutions”.¹²⁵ Jonathen Allen indicates that recognition is indeed the business of law and criminal justice, as well as of truth commissions. The recognition afforded by truth commissions

¹²⁴ *Ibid.*

¹²⁵ Minow, p. 90. See also how this author sets out twelve more overlapping goals/aspirations with truth commissions in Minow, pp. 87-88.

should serve as a complement and auxiliary to legal recognition.¹²⁶ Kiss accentuates these arguments, clarifying that truth commissions have convincingly demonstrated that it is not just a 'second best' process to past abuses. On the contrary, truth commissions can provide a far fuller account of the human rights violations of the past and establish greater accountability among perpetrators than prosecutions are realistically able to do.¹²⁷

Boraine argues that there are compelling reasons for the establishment of a truth commission that could actually assist the healing process in South Africa and sets out certain points to be considered. The past cannot be ignored as it could make reconciliation even more difficult; for a forgiveness process, it is important to know what evil is being forgiven and who caused it; if dignity is to be restored to victims, knowledge of these violations have to be made known to the public; to compensate victims, there must be knowledge and details of violations; amnesty is already part and parcel of the new constitutional proposal and cannot be confused with amnesia; knowledge of the truth must also be acknowledge by the state and people of South Africa; if victims do not believe that their violations have been acknowledged and feel that justice will never be done, then private acts of vengeance and retribution may follow.¹²⁸ Ratner and Abrams are of the opinion while truth commissions as such, may not provide as rigorous a determination of, or as serious a punishment for, an individual's culpability as with the case of prosecutions, in many cases it represents the best or only alternative.

¹²⁶ J. Allen, "Between retribution and restoration: Justice and the TRC" in *South African Journal of Philosophy* 20(1), 2001, p. 29.

¹²⁷ E. Kiss, "Moral ambition within and beyond political constraints: Reflections on restorative justice" in Rotberg and Thompson (eds), p. 91.

¹²⁸ Boraine, pp. 33-34; *Sunday Times*, 17.4.1994, p. 3; *The Cape Times*, 8.6.1994, p. 8; *Die Volksblad*, 5.7.1994, p. 7. Compare also these arguments of Boraine with K. Asmal *et al.*, *Reconciliation through truth. A reckoning of Apartheid's criminal governance* (2nd edition), pp. 10-11, 28, where the authors provide a detailed layout of how a process of collective memory will in turn, move people towards a number of crucial goals.

Truth commissions as a form of accountability may serve as valuable precursors or complements to criminal trials.¹²⁹

Thus, there was decided upon a unique truth commission for South Africa with the granting of amnesty to individuals, in exchange for full disclosure of the truth relating to the crime for which amnesty was being sought. It would also give an opportunity to ordinary people to tell their stories, allowing them to remember and empowering them in the process, while at the same time acknowledging their individuality and humanity. The decision was thus taken - the Truth and Reconciliation Commission of South Africa would seek to promote full disclosure of the truth, limited amnesty and reparation.¹³⁰ Archbishop Tutu conceded that this truth commission was the only alternative to Nuremberg on the one hand, and amnesia on the other, although it remains a “risky and delicate business”.¹³¹

With this decision taken, South Africa had a totally unique TRC. The Commission had a process of no blanket amnesty, but a limited form of amnesty, set out with clear criteria, and with no guarantee that amnesty would be granted. Amnesty applicants had to make personal applications with full disclosure of the acts which had taken place. This aspect alone made South Africa the first country ever to hear perpetrators themselves providing detailed testimonies about crimes. In addition, it was the first commission to be given the power to grant amnesty to individual perpetrators. The focus and commitment was placed on restorative justice and not on a form of retributive justice. The Commission had the powers to *subpoena*, search and seize, which were much stronger than those of former commissions.

¹²⁹ Ratner and Abrams, p. 193.

¹³⁰ Tutu, pp. 24-34; Christie, p. 68; Boraine, p. 7; Asmal *et al.*, pp. 17-20; *Sowetan*, 12.5.2004, p. 15.

¹³¹ E.H. McCarthy, “Will the amnesty process foster reconciliation among South Africans?” in R.L. Brooks, (ed.), *When sorry isn't enough. The controversy over apologies and reparations for human injustice*, p. 487. See also *Weekend Argus*, 10-11.12.1994, p. 19.

Furthermore, a strong emphasis was put on truth-telling by victims and perpetrators, where victims especially, would receive a hearing where they could regain something of their human dignity. It was the first commission to create an equitably sophisticated witness protection programme. Apart from victim hearings, this Commission had a more extensive mandate to also conduct institutional hearings, as well as special hearings. A reparation policy would also be instituted. The fact that the South African Commission was a public process distinguished it even further from other commissions, coupled with the immense staff size and budget. In all, the Truth and Reconciliation Commission of South Africa would be a society-sanctioned body making an attempt to reach consensus on the historical truth of what really happened during the period under review, namely between 1960–1994.

The Commission would be the ‘bridge-building process’, leading the nation away from a divided past to promoting a future based on reconciliation, the recognition of human rights and dignity, as well as national unity.

2.8 AMNESTY IN EXCHANGE FOR TRUTH

Since one of the most far-reaching and unique features of the Commission was that it offered amnesty¹³² in exchange for truth, it is imperative to give some background on this aspect of the South African

¹³² Marxen indicates there is no set definition for the term ‘amnesty’, although it is frequently understood as an act of mercy. See K. Marxen, “The legal limitations of amnesty” in Rwelamira and Werle, p. 33. See also pp. 33-34, where Professor Klaus Marxen sets out four main characteristics of amnesty in defining the term. According to Ronald C. Slye, amnesties are official acts that provide an individual with protection from liability – civil, criminal, or both – for past acts. See Slye, p. 171. See also K. Greenawalt, “Amnesty’s justice” in Rotberg and Thompson, (eds), p.

Truth and Reconciliation Commission. Amnesty in exchange for truth has been described as the most “sophisticated amnesty undertaken in modern times, if not in any time, for acts that constitute violations of fundamental international human rights”.¹³³

The TRC differed in this sense significantly from all previous truth commissions as it had the power to grant amnesty – a power that was normally retained by government. Previous amnesties were normally granted in a closed and non-transparent way. The preceding amnesties were usually granted collectively either on the basis of crimes committed, or on the basis of excusing specific or all crimes committed during a specific period.¹³⁴

With the TRC there was no form of general amnesty. Amnesty had to be applied for on an individual basis for each offence committed, the individual making ‘full disclosure’ of his/her human rights violations in order to qualify for amnesty. The applicants were required to declare the nature of their offences – effectively acknowledging their culpability. Applicants for amnesty had to complete a prescribed form, which called for detailed information relating to the specific human rights violations, published in the *Government Gazette*. If the applicant had to appear before the Amnesty Committee, these hearings would be open to the public.¹³⁵

There was also a time limit set in terms of ‘the Act’, as well as a specified period during which amnesty applications could be made, from the time of the promulgation of ‘the Act’ in December 1995 to 10 May 1997. The original deadline for amnesty applications was 14 December 1996. It was extended to 10 May 1997, to allow the Section 29 subpoena process, which had been initiated only in November 1996, time to encourage

195 where Kent Greenawalt indicates the seven dimensions along which amnesties may vary.

¹³³ Boraine, p. 278.

¹³⁴ Sarkin, *Carrots and sticks ...*, p. 3.

potential applicants to file so as to avoid prosecution. To encourage more applications, the TRC later extended the deadline a second time to 30 September 1997. It was argued that since the constitutional amendment extending the amnesty cut-off date for offences from 6 December 1993 to 10 May 1994, had become law only in August, some perpetrators might have decided not to submit their applications until they were sure that Parliament would approve the extension of the cut-off date.¹³⁶

Only those acts, which were demonstrably political, would qualify. Specifically not included in these are acts for personal gain, malice or where no reasonable relationship existed between act and objective. An act associated with a political objective meant “any act or omission which constitutes an offence or delict which is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date”.¹³⁷ To be political, an act had to have been committed by a member or supporter of a “publicly known political organisation or liberation movement” or by an employee of the state, acting either “in furtherance of a political struggle (including both acts by or against the state and acts by one political organisation or liberation movement against another) or with the object of countering or otherwise resisting the said struggle”.¹³⁸ The act must have been committed “in the course and scope of his or her duties and within the scope of his or her express or implied authority”.¹³⁹

¹³⁵ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 16; Boraine, pp. 275-276; A. Boraine, “Alternatives and adjuncts to criminal prosecutions” in Brooks, (ed.), p. 473.

¹³⁶ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 16; Graybill, *Truth and Reconciliation in South Africa ...*, p. 60; Krog, pp. 117-119; Christie, pp. 86-87.

¹³⁷ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 20; Truth and Reconciliation Commission, Vol. 1, pp. 82-83. See also G. Barrie, “Amnesty and the Truth and Reconciliation Commission” in *De Rebus* (354), July 1997, pp. 493-494; *The Citizen*, 25.2.1995, p. 15.

¹³⁸ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 20.

¹³⁹ *Ibid.* See also p. 20 of ‘the Act’ for more detail on who could be associated with a political objective.

The rubric of proportionality had to be observed – that the means were proportional to the objective. The assessment of the political objective would depend on the motive, context, gravity and whether the act was ordered or approved from above.¹⁴⁰

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

¹⁴⁰ Christie, p. 121.

relationship and the proportionality of the act, omission or offence to the objective pursued".¹⁴¹

However, the act, omission or offence committed by any person referred to above who acted for the following reasons would not qualify:

(i) "for personal gain: Provided that an act, omission of offence by any person who acted and received money or anything of value as an informer of the State or as a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or

(ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed".¹⁴²

People given amnesty would be free from any civil or criminal prosecutions for the offences concerned. Furthermore and importantly, those who have already been convicted, sentenced and imprisoned could be set free. The effect of amnesty is as if the offence had never happened, since the perpetrator's court record relating to that offence becomes a blank page. The victim and/or the family thereof also did not have the right to sue for civil damages in compensation from the perpetrator. Victims had the right to oppose applications for amnesty by trying to demonstrate that the conditions had not been met, but they had no right of veto over amnesty.¹⁴³

Amnesty would not be automatic; it would not be granted for certain heinous crimes. For people who did not apply for amnesty, the TRC would recommend prosecution. Tutu emphasised that the granting of amnesty does not encourage impunity in the sense that perpetrators may escape completely the consequences of their actions, because amnesty is

¹⁴¹ Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 22. See also Barrie, p. 494.

¹⁴² Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 22.

¹⁴³ Barrie, p. 493; Christie, pp. 90, 121; Tutu, pp. 48, 52; Krog, p. 120.

granted only to those who accept responsibility for what they have done and who plead guilty.¹⁴⁴

There was no requirement for remorse in the TRC legislation. The argument was made that it would have been better if amnesty applicants had been required to show repentance. Hardly anyone, especially in leadership, truly apologised during the hearings. A newspaper headline at the time reflected the meaningless apologies as: “Ag, we’re sort of sorry”.¹⁴⁵ Tutu defends the legislature of no requirement for amnesty by explaining that “if there had been such a requirement, an applicant who made a big fuss about being sorry and repentant would probably have been judged to be insincere, and someone whose manner was formal and abrupt would have been accused of being callous and uncaring and not really repentant. It would have been a no-win situation”.¹⁴⁶

Kiss explains that South Africa’s TRC presented the most striking example of a morally innovative attempt to establish mechanisms of accountability. Firstly the TRC’s form of amnesty upheld the principle of individual moral accountability, as perpetrators had to disclose individually and publicly what they had done. Secondly, perpetrators could not hide behind a wall of silence and anonymity, as the applicants for amnesty were tried in the court of public hearings. Lastly, given the requirements of ‘full disclosure’, the amnesty process created incentives for truth-telling. These perpetrators had to acknowledge their participation, thus providing personal and official validation of their acts. In the process, applicants for amnesty became means for uncovering truths about past abuses.¹⁴⁷ Thus, the amnesty process was effective in the calling for accountability.

Apart from Tutu’s explanation that amnesty “is not given to innocent people or to those who claim to be innocent”,¹⁴⁸ and further clarifications that amnesty accompanied by full disclosure may wipe the “legal slate

¹⁴⁴ Tutu, p. 51. See also Christie, p. 124.

¹⁴⁵ Graybill, *Truth and Reconciliation in South Africa ...*, pp. 73-74.

¹⁴⁶ Tutu, p. 48.

¹⁴⁷ Kiss, pp. 76-77. See also Slye, pp. 180-182.

¹⁴⁸ Tutu, p. 51.

clean, but not the historical slate and definitely not the moral slate”,¹⁴⁹ there were still many people who argued strongly for a punitive, retributive justice that required nothing short of a court of law.

Many families and individuals who were victims themselves and/or relatives of those who had been victims of gross human rights violations, expressed their dissatisfaction and unhappiness at the amnesty process. For them, amnesty proved an uncomfortable prospect which they felt was a denial of justice and demanded to have their day in court. Attempts were even made by family members of high-profile victims of apartheid to stop the Commission from giving amnesty to anyone.¹⁵⁰

The applicants of the legal case against the TRC were jointly brought by the Azanian People's Organisation and the relatives of Steve Biko, Griffiths Mxenge and Fabian and Florence Ribeiro. In the case of *Azanian People's Organisation and Others v The President of the Republic of South Africa and Others*, they applied for direct access to the Constitutional Court and for an order declaring section 20(7) of 'the Act' unconstitutional. Arguments were upheld that cycles of violence and counter-violence could appear if the state failed to seek retributive justice. These critics were also questioning the government's commitment to human rights. The application was dismissed by the Constitutional Court in a judgement delivered on 25 July 1996. The Court held that the post-amble authorised the granting of amnesty for criminal liability. Without the epilogue, there would be no incentive for offenders to disclose the truth about past atrocities. The Court also noted that such an amnesty was a crucial component of the negotiated settlement itself. According to the Court, the amnesty provisions were not inconsistent with international norms and did not breach any of the country's obligations in terms of public international law instruments. Indeed, the

¹⁴⁹ W. Verwoerd, "Toward the truth about the TRC: A response to key moral criticisms of the South African Truth and Reconciliation Commission" in *Religion and Theology* 6(3), 1999, p. 320.

¹⁵⁰ Truth and Reconciliation Commission, Vol. 1, pp. 175-178; Christie, p. 121; Boraine, p. 279; Graybill, *Truth and Reconciliation in South Africa ...*, p. 59; *Sunday Tribune*, 22.1.1995, p. 9; *The Star*, 14.6.1995, p. 6; *Business Day*, 14.6.1995, p. 2; *City Press*, 18.6.1995, p. 17.

Court emphasised that the Constitution itself might not have been negotiated had this amnesty not been provided for.¹⁵¹

Against the background of these arguments and criticisms, is it important to distinguish between retributive justice and restorative justice. Retributive justice means that the state hands down punishment. Restorative justice places the central emphasis on the redressing of imbalances, the healing of breaches and the restoration of broken relationships.¹⁵² In other words, retributive justice will punish the offender, while restorative justice would seek rather to repair the damage of the offending party.

The idea of restorative justice emanated from a series of diverse practical initiatives to reform criminal justice systems and sentencing policies in Canada, the USA, Australia and New Zealand.¹⁵³ Restoration is directed at victims, perpetrators and communities in events of political transition. It encourages all these role-players to be directly involved in resolving conflict; in seeking to deal with the past in order to create a better future for all involved.¹⁵⁴ In the process of repairing the relationship between the victim and the wrongdoer, a fourfold commitment is involved: firstly, it is the recognition of the damage done by a violation; secondly, it is the expression of remorse for the wrong having been committed; thirdly, it involves a willingness to try to 'make good' the violation through reparation and/or restitution; and lastly, to achieve forgiveness and reconciliation between these parties.¹⁵⁵ Thus, restorative justice entails a

¹⁵¹ Sarkin, "The trials and tribulations ...", pp. 625-631; Anon, "Summary of anti-amnesty case" in Brooks, (ed.), pp. 477-478; Boraine, p. 279; Graybill, *Truth and Reconciliation in South Africa ...*, pp. 57-58; *The Star*, 14.6.1995, p. 6; *Business Day*, 14.6.1995, p. 2; *City Press*, 18.6.1995, p. 17.

¹⁵² Tutu, p. 51.

¹⁵³ Allen, p. 30.

¹⁵⁴ W. Verwoerd, "Continuing the discussion: Reflections from within the Truth and Reconciliation Commission" in *Current Writing* 8(2), 1996, pp. 78-80; C. Villa-Vicencio, "Restorative justice: dealing with the past differently" in Villa-Vicencio and Verwoerd, pp. 68-69; H. Huma, "At last, victims can be heard" in *Nexus*, March 2000, pp. 16-17.

¹⁵⁵ Wilson, p. 544. The author of this article provides some direct arguments of criticism towards restorative justice in the context of the South African transition and indicates that the concept does not make sense of much of the TRC's functions and

moral balance between the community, victim and violator, with the emphasis on the humanity of both victim and offender. It is viewed as a morally superior response over retribution to human rights violations in which responsible reconciliation is seen as the best prevention.¹⁵⁶

The philosophical base of restorative justice is described as “moving from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and harshness to community and wholeness, from negativity and destructiveness to healing, forgiveness and mercy”.¹⁵⁷ Apart from the fact that this type of justice demands that the accountability of perpetrators be extended to making a contribution to the restoration of the well-being of their victims, it also seeks to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he/she has injured by his/her offence. Thus, the process involved is one of moral transformation with the goal of re-establishing trust and also the community. The TRC claimed that restorative justice is served when “efforts are being made to work for healing, for harmony and for reconciliation”.¹⁵⁸ It is thus a process based on reparation, which “challenges South Africans to build on the humanitarian and caring ethos of the South African Constitution and to emphasise the need for reparation rather than retaliation – despite growing anger and insecurity in the midst of high levels of crime in South Africa”.¹⁵⁹

The idea of moving away from punishment was supported by South Africa’s religious culture, which features Christian theology and the traditional concept of *ubuntu*. The Christian understanding and the African philosophy of *ubuntu* are two important approaches to

the experiences of victims and perpetrators who came before it. For more detail on these lines of argument, see pp. 531-562.

¹⁵⁶ Verwoerd, “Toward the truth about the TRC ...”, p. 313; Wilson, pp. 537, 544; J. Consedine, *Restorative justice. Healing the effects of crime*, pp. 179, 196; Truth and Reconciliation Commission, Vol. 1, pp. 125-127; Kiss, p. 80.

¹⁵⁷ Consedine, p. 10. See also Consedine, pp. 185-193 for a detail discussion of the advantages of restorative justice.

¹⁵⁸ Truth and Reconciliation Commission, Vol. 1, p. 9; Tutu, pp. 51-52.

¹⁵⁹ Truth and Reconciliation Commission, Vol. 1, p. 127.

reconciliation. In the Christian religion, the focus is on the covenant between God and the individual, with Jesus Christ as the bridge to the relationship. Confession, repentance, restitution and forgiveness all form part of reconciliation, which is seen as a gift from God that cannot be earned. Reconciliation with God goes hand in hand with reconciliation with your neighbour.¹⁶⁰ Tutu discusses this theology as one that “can never give up on anyone, because God was one who had particularly a soft spot for sinners. ... Christians are constrained by the imperatives of the Gospel, the Good News of a God who had a bias for sinners, contrary to the normal standards of the world ... Ultimately no person or situation in this theology is an irredeemable cause devoid of all hope”.¹⁶¹

Ubuntu (translated as ‘humanness’), on the other hand, represents humanity, personhood, group solidarity and morality, and speaks to the very essence of being human. *Ubuntu* emphasises community over individual. If *ubuntu* is part of a person, he/she is available and open, caring and compassionate towards others, and possesses the self-confidence that arises from the conviction that he/she belongs to the greater cycle of life. *Ubuntu* expresses itself as ‘people are people through other people’ (*umuntu ngumuntu ngabantu*). John Mbiti explains: “Whatever happens to the individual happens to the whole group, and whatever happens to the whole group happens to the individual. The individual can only say: ‘I am because we are, and since we are, therefore I am’.”¹⁶² *Ubuntu* suggests, in the case of violence, that a victim should not seek revenge and become a new perpetrator, but should rather forgive, thereby breaking the cycle of violence. To forgive is the best form of self-interest and is not simply altruistic. Forgiveness can enable people to survive and be human, despite efforts to dehumanise them.¹⁶³

¹⁶⁰ Boraine, pp. 360-363.

¹⁶¹ Tutu, pp. 74-75.

¹⁶² Graybill and Lanegran, p. 6.

¹⁶³ Tutu, pp. 34-36, 51, 127 213; Truth and Reconciliation Commission, Vol. 1, pp. 125-128; Boraine, p. 362; R.A. Wilson, “The Sizwe will not go away. The Truth and Reconciliation Commission, human rights and nation-building in South Africa” in

The TRC was convinced that restorative justice would create better opportunities for all parties involved, than punishment according to a criminal justice system. They believed that a win-win situation was called for with a challenge to achieve both justice and reconciliation.¹⁶⁴ Johnny de Lange¹⁶⁵ emphasises that although restorative justice is the essence, it also embodies components of retributive justice in the manner that lies are exposed while truth-telling occurs and in the process, the perpetrators become known. For Boraine, restorative justice was not an abdication of justice, but the only available form of justice that would be suitable within the unique context of a traumatic transition.¹⁶⁶

It is not debatable that the amnesty principle was a sophisticated undertaking for acts that composed violations of fundamental international human rights, although it was a complex way of dealing with the demands of justice and truth. In a theoretical sense, the amnesty procedure should expose the truth and promote truth-seeking. In the end, the amnesty process was one of the most important sources of significant information regarding the causes, extent and nature of gross violations of human rights. It became clear that the quasi-judicial procedure of amnesty led to the identification of many more perpetrators than would have been the case through prosecutions. The amnesty process provided critical insights into the motives and perspectives of perpetrators and offered important evidence regarding the authorisation of gross violations of human rights.

2.9 THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT NO. 34 OF 1995

African Studies 55(2), 1997, pp. 11-14; Santa Clara University, "On forgiveness", <http://www.scu.edu/bannancenter/publications/explore/spring02/onforgiveness.cfm>>, 2004.

¹⁶⁴ See J.L. Gibson, "Truth, justice, and reconciliation: Judging the fairness of amnesty in South Africa" in *American Journal of Political Science* 46(3), July 2002, pp. 545-555 for an examination of South Africans' general view of amnesty that focused on restorative justice, as it seems to make retributive justice elusive.

¹⁶⁵ Johnny de Lange is an ANC member of Parliament.

¹⁶⁶ De Lange, pp. 23, 25; Boraine, p. 427.

Early on, the decision was made to involve as many individuals and organisations as possible in the framing of the Bill that would result in the setting up of a truth and reconciliation commission. The parliamentary Portfolio Committee on Justice, composed of members from all major political parties represented in the South African Parliament, held public hearings, asking individuals, groups, and parties to make recommendations and suggestions about what to include in the draft legislation. The public could submit comments and proposals until 30 June 1994. The committee, under the chairmanship of Johnny de Lange, listened to more than twenty hours of submissions and after several hours of discussions, they drafted various clauses of the bill, taking into consideration the submitted suggestions.¹⁶⁷

There was a serious, active attempt to involve as many members of public as possible, as well as organisations in framing of the Bill. This was done with the objective of giving more substance to the idea of a TRC and making it a more democratised debate and process. The Justice Minister, Dullah Omar, continually stressed this process of involvement and felt that the more people who participate, the better the end product would be.¹⁶⁸ This was something unique and actually unusual compared to any other commissions. South Africa was the very first example of a process officially encouraging public input and debate on the make-up and functioning of a truth commission.

Already by July 1994, the Minister of Justice was able to indicate that the Commission would consist of eight to ten members; that there would be three specialised committees; that the cut-off date for offences was 5 December 1993; that the precondition for amnesty was 'full disclosure'; and that the life of the Commission would be twelve months with a possible extension of six months.¹⁶⁹

¹⁶⁷ Graybill, *Truth and Reconciliation in South Africa ...*, p. 2; Boraine, p. 47; Christie, p. 82; Krog, p. 4.

¹⁶⁸ Christie, pp. 81-82; Boraine, pp. 47, 49.

¹⁶⁹ Boraine, pp. 47-48; Justice in Transition, *Truth and Reconciliation Commission*, pp. 6-7.

To broaden this process and bring it even more to the attention of the public, the Justice Minister used the co-operation of Justice in Transition to coordinate a campaign to reach as many people as possible. This NGO undertook a number of initiatives, which included amongst others, the presentation of thirty seminars and workshops giving people an opportunity to understand the philosophy behind the proposed Commission and to consider the full implications of such a commission. They printed 150 000 booklets entitled *The Truth and Reconciliation Commission*, which dealt with the main ideas of the Commission. This was done in six languages and distributed throughout South Africa. More steps included radio programmes; a history workshop which brought together twenty-four leading historians who tried to record as objectively as possible what had actually happened in the period 1960-1993; and establishing a project dealing with the documentation of human rights violations.¹⁷⁰

The Promotion of National Unity and Reconciliation Bill was published in November 1994 by the newly appointed government. This Bill was subject to additions, scrutiny, deletions and amendments. During March 1995, the Portfolio Committee on Justice met daily to draft the legislation. This committee had to ensure that they had interpreted the post-amble to the Constitution correctly and that they were able to locate that interpretation within the framework, which is consistent with international law. After this detailed process, which took some 127 hours and 30 minutes on the Truth Commission Bill, it was eventually tabled in the National Assembly.¹⁷¹

One issue that raised controversy and resulted in different opinions was the secrecy clause, especially on the issue whether amnesty hearings should be held in public. At hand was the importance of the credible functioning of the TRC. For the NGOs accountability was more at the core

¹⁷⁰ Boraine, pp. 50-51; *Die Burger*, 14.11.1994, p. 7; *Business Day*, 23.11.1994, p. 4.

¹⁷¹ Graybill, *Truth and Reconciliation in South Africa ...*, p. 2; Boraine, p. 67; Krog, p. 9; Omar, p. viii; *The Citizen*, 8.12.1994, p. 11 and 8.4.1995, p. 8; *The Natal Witness*, 14.2.1995, p. 6; *Die Burger*, 10.5.1995, p. 11; *Rapport*, 1.11.1998, p. 2.

of the secrecy clause and the discussions surrounding it. The National Party made objections to the draft bill to the clause which made provision that the committee and sub-committee hearings should be open. The NP argued that they wanted to protect witnesses. As a concession to the NP, a secrecy clause was accepted where the bill outlined in Section 24 (1) that the proceedings of the TRC committees would be open to the public, except for the amnesty committee. The Freedom Front supported this clause, feeling that this would prevent witch-hunts. Various organisations and NGOs reacted to this clause and argued that it was contrary to the Bill of Rights; it further violated the rights of victims and survivors of apartheid and was contrary to a climate of openness. In the end the secrecy clause was reverted to the original proposal which made provision for public hearings, but also provided for additional conditions in which in-camera hearings were to be allowed 'in the interests of justice'.¹⁷²

Dullah Omar finally presented the Bill to Parliament on 17 May 1995 for debate and decision. He stressed that the Bill "provides a pathway, a stepping stone, towards that 'historic bridge' of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society, characterised by strife, conflict, untold suffering and injustice and commence the journey towards a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex ... to address the injustices of the past and to take such steps as are necessary to heal the wounds of the past. To do anything less would be to ignore the sufferings of countless victims ... Merely granting amnesty to perpetrators without addressing our international obligations, dealing with wounds of the past and our duty to victims will undermine the process of reconciliation. It is necessary, therefore to deal

¹⁷² Christie, pp. 83-85; Boraine, pp. 64-66; Simpson and Van Zyl; Anon, "Truth: Human rights NGOs attack secrecy" in *Southern Africa Report* 13(5), 3.2.1995, pp. 4-5; Truth and Reconciliation Commission, Vol. 1, p. 53. See also *The Citizen*, 25.11.1994, p. 13; *Business Day*, 1.2.1995, p. 2; *Beeld*, 2.2.1995, p. 6; *The New Nation*, 3-9.2.1995, p. 3; *Weekend Argus*, 11-12.2.1995, p. 3; *Die Burger*, 16.3.1995, p. 2.

with South Africa's past, including the question of amnesty, on a morally acceptable basis".¹⁷³

The longest debate of the newly elected Parliament followed when all the party members and leaders participated vigorously in the debate. Apart from objections to certain clauses, no significant changes were made to the Bill. In the final vote, all parties voted for the Bill, with the exception of the Freedom Front who voted against it and the IFP who abstained from voting.¹⁷⁴

After the Bill was passed in the Senate on 27 June 1995 and the National Assembly agreed to the Senate amendments on 28 June 1995, the Bill was signed into law on 19 July 1995 by President Nelson Mandela. According to Mandela, the passage of 'the Act' would enable South Africans finally to "deal with the past ... establish the truth ... and lay the basis of genuine reconciliation".¹⁷⁵ The Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) empowered and mandated the Truth and Reconciliation Commission (TRC) and came into effect on 15 December when the commissioners were appointed.¹⁷⁶

The Bill was regarded as "the most sensitive, technically complex, controversial and important legislation" ever to be passed by Parliament. It was also called the "Mother of All Laws".¹⁷⁷ Graybill notes that it was also the most time-consuming; more time was spent on this bill than on any other legislation this first post-apartheid Parliament considered.¹⁷⁸ Johnny de Lange comments on the Bill arguing that "what makes this

¹⁷³ Boraine, pp. 67-68. See also *City Press*, 21.5.1995, p. 15; *The Star*, 10.10.1997, p. 13.

¹⁷⁴ Republic of South Africa, "Debates of the National Assembly – Second Session – First Parliament" in *Hansard* 6, 17.5.1995, Col. 1421-1532; Boraine, pp. 67, 71; Christie, p. 82; *Sowetan*, 10.5.1995, p. 2; *City Press*, 21.5.1995, p. 15; *The Citizen*, 28.6.1995, p. 1; *The Cape Times*, 28.6.1995, p. 5; *Business Day*, 28.6.1995, p. 2; *Cape Argus*, 26.10.1998, p. 10.

¹⁷⁵ *The Citizen*, 20.7.1995, p. 6; *Sowetan*, 21.7.1995, p. 10.

¹⁷⁶ Boraine, p. 71; Christie, p. 82; Truth and Reconciliation Commission, "Promotion of National Unity and Reconciliation Act No. 34 of 1995", <<http://www.doj.gov.za/trc/legal/act9534.htm>>, s.a.

¹⁷⁷ Krog, p. 9.

¹⁷⁸ Graybill, *Truth and Reconciliation in South Africa ...*, p. 3.

piece of legislation so unique is that it really is a patchwork of all the viewpoints of the country”.¹⁷⁹

‘The Act’ made the independence of the Commission very clear: “The Commission shall function without political bias and interference and shall be independent and separate from any party, government, and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity”.¹⁸⁰ It is furthermore important to take note that the Commission was not a court of law or a judicial body and could not conduct trials. The aim was rather to “re-established the rule of law and the principle of accountability in the hope of turning South Africa around from the path of violence and intolerance”.¹⁸¹

The adoption of ‘the Act’, which established the Commission, was a very open and transparent process. All major political parties participated in the procedures and mandate of the TRC through a process of parliamentary hearings. All role-players, as well as civil society, were given the opportunity to perform a large and influential part in the establishment of this parliamentary commission. This openness increased the public and democratic character of the TRC.

For Minister Omar, ‘the Act’ was a major event for the transition process in the country and also for the creation of a human rights based, democratic society. For him, it was the best balance achieved in the tension between justice and reconciliation, while complying with the basic tenets of international law. Nonetheless, he was not uncritical towards ‘the Act’, explaining that, “I do not think that we should pretend

¹⁷⁹ Krog, p. 10. See also Christie, p. 82.

¹⁸⁰ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 38; Borraine, p. 48.

¹⁸¹ Borraine, p. 69.

that the Act makes provision for complete justice ... I do not think that you should approach the Act uncritically”.¹⁸²

However, this Act was critically important for the successful functioning of the TRC. It gave every role-player a mandate to fulfil as laid down by ‘the Act’. The TRC could fall back on ‘the Act’ because it set and dictated the boundaries, lines and limitations wherein the TRC was formulated. Within this Act, the TRC could conduct their duties, making it a ‘part of the ethos of the TRC’.

2.10 OBJECTIVES AND FUNCTIONS OF THE TRUTH AND RECONCILIATION COMMISSION AS PRESCRIBED BY ‘THE ACT’

‘The Act’ made the overall purpose of the TRC clear: “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...”¹⁸³

The objectives of the Commission were to “promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by:

- (a) establishing, in accordance with the principles of international law and the Constitution, as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors

¹⁸² Omar, pp. vii-viii. See T. Raditapole and A. Steenkamp, “The Promotion of National Unity and Reconciliation Act. A legal practitioner’s perspective” in *De Rebus* (341), June 1996, pp. 391-395, where the authors of this article highlight some of the problematic provisions of ‘the Act’. They focus specifically on amnesty provisions of ‘the Act’, with some of the obstacles facing the Commission and its commencement, as well as the difficulties practitioners would face in advising clients – both perpetrators and victims – of their respective legal situations.

and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;¹⁸⁴

(b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;

(c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

(d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the further violations of human rights".¹⁸⁵

In summary form, the aims of the TRC were:

(a) "To return to victims their civil and human rights;

(b) To restore the moral order;

(c) To seek the truth, record it and make it known to the public;

(d) To grant amnesty to those who qualified;

¹⁸³ Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 2.

¹⁸⁴ According to Christie, is one of the "outstanding aspects" of the South African case, if compared to truth commissions around the world, that it "represents one of the most thorough, far reaching and controversial of the inquiries and investigations that have ever been conducted". See Christie, p. 46.

¹⁸⁵ Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 6; Truth and Reconciliation Commission, Vol. 1, p. 55; Justice in Transition on behalf of the Ministry of Justice, *Truth and Reconciliation Commission*, pp. 5-6; Krog, pp. 9-11; Asmal *et al.*, p. 14.

(e) To create a culture of human rights and respect for the rule of law;

(f) To prevent the violations of human rights of the past from ever happening again”.¹⁸⁶

The function of the Commission was to “achieve its objectives and to that end the Commission should:

(a) facilitate, and where necessary initiate or coordinate, inquiries into:

(i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;

(ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;

(iii) the identity of all persons, authorities, institutions and organisations involved in such violations;

(iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and

(v) accountability, political or otherwise, for any such violation;

(b) facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of

¹⁸⁶ Boraine, pp. 48-49; Justice in Transition, *Truth and Reconciliation...*, p. 14.

victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;

(c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the *Gazette*;

(d) determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;

(e) prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;

(f) make recommendations to the President with regard to:

(i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;

(ii) measures which should be taken to grant urgent interim reparation to victims.

(g) make recommendations to the Minister with regard to the development of a limited witness protection programme for the purpose of the Act;

(h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and

the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights”.¹⁸⁷

Briefly stated, the Commission was given “four major tasks in order to achieve the overall objectives of promoting national unity and reconciliation. These were:

- (a) analysing and describing the ‘causes, nature and extent’ of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations;
- (b) making recommendations to the President on measures to prevent future violations of human rights;
- (c) the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;
- (d) granting amnesty to persons who made full disclosure of relevant facts relating to acts associated with a political objective”.¹⁸⁸

With the objectives, functions and tasks set out for the TRC by ‘the Act’, Dullah Omar reiterated what the Commission’s main objective was, namely to “facilitate the healing of our deeply divided society on a morally acceptable basis”.¹⁸⁹ The emphasis was thus not on a witch-hunt exercise, but rather a bold endeavour to deal with the past to be able to restore a national moral conscience to face adequately the challenges of the future. In summary it aimed to build a society which has respect for

¹⁸⁷ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 8; Truth and Reconciliation Commission, Vol. 1, pp. 56-57; Justice in Transition on behalf of the Ministry of Justice, *Truth and Reconciliation...*, pp. 7-9.

¹⁸⁸ Truth and Reconciliation Commission, Vol. 1, p. 57.

¹⁸⁹ Boraine, p. 45.

human rights and human dignity where citizens believe in a society which is just for all.

2.11 APPOINTMENT OF THE COMMISSIONERS

According to The Promotion of National Unity and Reconciliation Act No. 34 of 1995 'the Act' the constitution of the Commission was set out as follows:

(1) "The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet.

(2) (a) The President shall appoint the commissioners in consultation with the Cabinet;

(b) the commissioners shall be fit and proper persons who are impartial and who do not have a high political profile: Provided that not more than two persons who are not South African citizens may be appointed as commissioners.

(3) The President shall make the appointment of the commissioners known by the proclamation in the Government Gazette.

(4) The President shall designate one of the commissioners as the Chairperson and another as the Vice-Chairman, of the Commission.

(5) A commissioner appointed in terms of the Act shall hold office for the duration of the Commission.

(6) A commissioner may at any time resign as commissioner by tendering his/her resignation in writing to the President.

(7) The President may remove a commissioner from office on the grounds of misbehaviour, incapacity or incompetence, as

determined by the joint committee and upon receipt of an address from the National Assembly and an address from the Senate;

(8) If any commissioner tenders his/her resignation or is removed from office, or dies, the President, in consultation with his Cabinet, may fill the vacancy by appointing a person for the unexpired portion of the term of office of his or her predecessor or may allow the seat vacated to remain vacant".¹⁹⁰

With 'the Act' in place, the search for commissioners started to take place. Various human rights and religious organisations made a serious call on the President to ensure that appointments would be made on the basis of a candidate's track record in working for human rights and not through a process of 'political horse-trading'. They also emphasised a participatory and open process. President Mandela reacted by making clear his intention to be sensitive to the need to create a representative and impartial Commission.¹⁹¹

The appointment procedures began on 17 September 1995 with a nine-member selection panel, chaired by Professor Nicholas Haysom, the legal adviser to the President.¹⁹² The panel was in charge of receiving public submissions on the people's choice for suitable commissioners. It was widely advertised and all organisations, political parties and every aspect of civil society, as well as individuals were invited to nominate people to serve on the Commission. At closing 299 submissions were received. Forty-five candidates were selected and public hearings were held for each candidate. A final shortlist of 25 names was composed and recommended to the President. The President, in consultation with

¹⁹⁰ Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 10, 12; Justice in Transition on behalf of the Ministry of Justice, *Truth and Reconciliation...*, pp. 10-11.

¹⁹¹ Sarkin, "The trials and tribulations ...", p. 621; Sarkin, *Carrots and sticks ...*, p. 55.

¹⁹² The multiracial and diverse political selection committee consisted of the following members of Parliament: Harriet Ngubane (IFP MP); Ray Radue (NP senator); Rosier de Ville (FF senator); and Baleka Kgositsile (ANC member of Parliament [MP]). Four more members formed part of the NGO community, namely Bishop Peter Storey (Methodist Church); Jayendra Naidoo (National Economic Development and Labour Council [NEDLAC] head); Jody Kollapen (Lawyers for Human Rights attorney); and Brigalia Bam (South African Council of Churches [SACC] general

cabinet and other political parties, appointed 17 commissioners from the shortlist.¹⁹³

Boraine explains the advantages of these public hearings by highlighting the fact that the process meets the demand for transparency. Thereby, it could enable anyone to apply while sorting out the people whose record relating to human rights was either neutral or worse; and importantly – could provide greater confidence to the final selection and enable Commissioners to defend their position much more efficiently.¹⁹⁴

The fact that the public could also participate by producing nominees and attending the public hearings or follow them on television or radio, gave this democratic process a fair degree of legitimacy and credibility. The fact that inputs and dialogue came from various sectors prevented power being concentrated in the hands of a single group. Political decision-making was decentralised which made public participation and scrutiny possible. All of these steps resulted in an acclaimed process, viewed as legitimate, participatory and transparent.

Christie points out that the following criteria were important in the selection: “the person should be able to make impartial judgements; the commissioners should have moral integrity with a known commitment on human rights, to reconciliation and to disclosure of the truth; and they should not be a potential applicant for amnesty in terms of the legislation”.¹⁹⁵

President Mandela selected 15 names from the shortlist and added two new names, namely Revd. Khoza Mgojo (a prominent Methodist minister and leader from KwaZulu-Natal) and Denzil Potgieter (an advocate). Mandela appointed Archbishop Desmond Tutu as Chairperson and Alex Boraine as Deputy-chairperson of the Commission. These selections were

secretary). See Boraine, p. 72; Graybill, *Truth and Reconciliation in South Africa ...*, p. 9.

¹⁹³ Christie, pp. 82-83, 85-86; Graybill, *Truth and Reconciliation in South Africa ...*, pp. 3-4.

¹⁹⁴ Boraine, p. 72.

¹⁹⁵ Christie, p. 86.

gazetted on 15 December 1995.¹⁹⁶ It must be underlined that the appointment of two commissioners who were not listed on the shortlist, was clearly within the President's legal mandate. Mandela later revealed that he "had not personally approved of all his appointees, but that he had appointed them, in spite of his reservations, in the interest of national unity".¹⁹⁷

Apart from the names already mentioned the rest of the Commissioners included Mr Dumisa Ntsebeza (lawyer); Revd. Bongani Finca (Reformed Presbyterian Church minister); Ms Mary Burton (Black Sash); Dr. Wendy Orr (medical doctor); Mr Wynand Malan (lawyer and former MP); Ms Yasmin Sooka (lawyer and President, World Conference on Religion and Peace); Mr Richard Lyster (Director, Legal Resources Centre); Ms Sisi Khampepe (lawyer and Vice Chair of Mediation and Conciliation Centre); Ms Glenda Wildschut (Chair, Trauma Centre for Victims of Violence and Torture); Dr. Fazel Randera (medical doctor and deputy Chair, Human Rights Committee); Advocate Chris de Jager (lawyer, former MP and Human Rights commissioner); Dr. Mapule Ramashala (clinical psychologist); and Ms Hlengiwe Mkhize (Director, Mental Health and Substance Abuse, Department of Health).¹⁹⁸

Shea indicates that although the commissioners' racial and gender composition was not strictly proportional to that of society as a whole, the selection process distinctly reflected a conscious political attempt to achieve a high degree of representivity.¹⁹⁹ The composition of the seventeen Commissioners consisted of ten men, seven women, seven Africans, six whites, two Coloureds and two Indians. The majority of commissioners (seven) were from the legal profession; four were ordained ministers who had been the national heads of their respective denominations; five were from medicine, psychology, and nursing; three

¹⁹⁶ Boraine, pp. 73-74; Graybill, *Truth and Reconciliation in South Africa ...*, p. 4.

¹⁹⁷ D. Shea, *The South African truth commission. The politics of reconciliation*, p. 25.

¹⁹⁸ Sarkin, *Carrots and sticks ...*, p. 58; Boraine, pp. 77-81; Tutu, pp. 66-67; Krog, pp. 20-21; *Rapport*, 1.11.1998, p. 2.

¹⁹⁹ Shea, p. 25.

from politics; and three from NGOs. From a political viewpoint the commissioners represented the left spectrum with the PAC; to the right spectrum, with a Freedom Front (FF) member. There was however, no one aligned with the IFP.²⁰⁰

Although the appointees were seen as “reasonably representative of the broad political, ethnic and cultural spectrum in South Africa”²⁰¹ the list of commissioners did not please everyone. F.W. de Klerk, as well as Mangosuthu Buthelezi, voiced their unhappiness with some of the names and indicated that it would not have been their choice.²⁰² The IFP declared that the “Truth Commission, through its party political appointments, is beginning to resemble the make-up of Stalin’s show trials, where accuser, judge and jury are one and the same”.²⁰³ The Afrikaans media criticised the commissioners and described them as ‘struggle’ types (referring to the anti-apartheid struggle) and in favour of the ANC, making them biased. The *Rapport* and *Die Burger* especially, voiced their disapproval and suspicion of the composition of the Commissioners. According to them, twelve to fourteen could be called pro-ANC; possibly two commissioners were not unsympathetic towards the NP, but there were no pro-Inkatha members.²⁰⁴

The original goal was to have commissioners without high political profile. After the appointment of the commissioners, it was rather the opposite where many were political leaders in their communities and had been activists in the struggle against apartheid. Tutu suggested at an early meeting that it might be a worthwhile gesture for all to resign any membership in a political party or organisation. It was pointed out to him by the commissioners that people had been nominated for membership precisely because of their political affiliations and that they would be seen to be engaging in a misleading charade if those who were members

²⁰⁰ Boraine, p. 75; Graybill, *Truth and Reconciliation in South Africa ...*, p. 4.

²⁰¹ Graybill, *Truth and Reconciliation in South Africa ...*, p. 4.

²⁰² Boraine, p. 75.

²⁰³ Sarkin, “The trials and tribulations ...”, pp. 620-621.

²⁰⁴ A. Muller, “Facing our shadow side. Afrikaners must own their complicity” in *Track Two* 6(3&4), December 1997, p. 16.

of political parties were to resign and pretend that they were apolitical.²⁰⁵

In his book *No Future without Forgiveness*, Archbishop Desmond Tutu notes that it is interesting that the President appointed an Archbishop as chairperson of the Commission and not, for instance, a judge.²⁰⁶ Apart from Alex Boraine, who had at one time been the President of the Methodist Conference, three of the Commissioners were active, ordained ministers who had also been the national heads of their denominations. According to Desmond Tutu, "the President must have believed that the work of the TRC would be profoundly spiritual. After all, forgiveness, reconciliation and reparation were not the normal currency in political discourse. Forgiveness, confession and reconciliation were far more at home in the religious sphere".²⁰⁷

The Commission held its first meeting at Bishops court, (official residence of the Archbishop), in Cape Town, on 16 December 1995. After the Commissioners had gone on a retreat together early in January 1996, they were ready for business.²⁰⁸

Apart from the fact that the Commissioners were broadly representative of South African society, they were also strong and independent-minded people. Although this was a vital attribute, it had on the other hand, an influence on the interpersonal relationships between these different commissioners. It seems that there was, from the start, suspicions about various members having hidden agendas and an undercurrent of concern that carried a racial essence.²⁰⁹ According to Boraine, they often experienced difficulties in working together and noted that "the sickness of racism and separation in the country has left a ghastly heritage and

²⁰⁵ Tutu, p. 68; Graybill, *Truth and Reconciliation in South Africa ...*, pp. 4-5.

²⁰⁶ Tutu, p. 71.

²⁰⁷ *Ibid.*

²⁰⁸ Boraine, pp. 76, 81-82; Tutu, pp. 61, 71-72; Graybill, *Truth and Reconciliation in South Africa ...*, p. 5.

²⁰⁹ Bell, p. 243. See also W. Orr, *From Biko to Basson. Wendy Orr's search for the soul of South Africa as a commissioner of the TRC*, pp. 83-88, 229 where the author is candid regarding the negative interpersonal relationships that occurred between some of the Commissioners.

this threatens to sour so much of human relations in South Africa, and the Commission is no exception".²¹⁰ Tutu goes further saying that: "we were often very suspicious of one another and it was not easy to develop real trust in one another ... our meetings for the first year or so were hell. It was not easy to arrive at a common mind as each of us tried to stake our claim to the turf and to establish our particular space".²¹¹ However, Tutu was optimistic when he declared that the Commissioners with their suspicions and chasms could be a "useful paradigm for the South African nation, for if they could eventually be welded into a reasonable coherent, united and reconciled group then there was hope for South Africa".²¹²

It is self-evident that the Commissioners would experience certain difficulties in their relation to one another and in building trust between them, taking into account that they were a microcosm of South African society and came from diverse backgrounds. It is obvious that these people would have contradictory views about past human rights violations in the country and the moral and political accountability thereof. Apart from this, one must also consider the circumstances with which these commissioners were faced, which included an extremely hectic, demanding programme with rigorous schedules, working constantly under tension between the task on the one hand and the process on the other. In such surroundings, personality clashes are sometimes not dealt with in a patient and understanding way conducive to building trust.

It is apparent that a commission's success will depend strongly on the stature, moral authority and independence of its members. However, commissioners are influenced by their life experiences, as well as perspectives and cannot be expected to be completely neutral. The large number of commissioners appointed by the President was a diverse group of people representing a definite discernible political, regional or ethnic constituency. The fact that many of these commissioners had high

²¹⁰ Boraine, pp. 90-91.

²¹¹ Tutu, p. 70. See also *Mail & Guardian*, 12-18.4.1996, p. 12.

²¹² Tutu, p. 71.

political profiles caused their impartial role to be disputed. Additionally, commissioners from outside the country were absent, which may have imparted a lack of neutrality. Their inclusion could have added specific expertise to the successfulness of the Commission. Thus, looking at the domestic Commissioners appointed, it is understandable that certain groups and newspapers raised serious questions and dissatisfaction with the appointees. The Afrikaans community in particular, saw the majority of the Commissioners as either 'struggle people' or 'English liberals' where both groups have little understanding or sympathy for the history and aspirations of the Afrikaans people. Nonetheless, the process preceding the appointment of the Commissioners was exceptionally open and transparent, involving everyone in the country. In the end it was the people of South Africa who made inputs and choices for appointees. Finally, the President himself, in collaboration with the Cabinet, made the appointments from a shortlist, taking into account a broader perspective which would benefit the truth-seeking process and the country as a whole.

2.12 STRUCTURE OF THE TRUTH AND RECONCILIATION COMMISSION

To achieve the objectives as set out in 'the Act', the TRC worked through three committees, namely the Committee on Human Rights Violations (HRV), the Committee on Amnesty, and the Committee on Reparation and Rehabilitation. Fifteen commissioners were split between the HRV committee and the Reparation and Rehabilitation Committee, while two commissioners along with three judges served on the Amnesty Committee.

The initial allocation of commissioners into the three committees was as follows:²¹³

²¹³ Truth and Reconciliation Commission, Vol. 1, p. 44; Boraine, p. 85.

The Human Rights Violations Committee: Archbishop Desmond Tutu (Chairperson), Mr Wynand Malan (Vice-Chairperson),²¹⁴ Ms Yasmin Sooka (Vice-Chairperson), Dr. Alex Boraine, Ms Mary Burton, the Revd. Bongani Finca, Mr Richard Lyster, and Dr. Fazel Randera.

The Amnesty Committee: Adv Chris de Jager, Ms Sisi Khampepe and Adv Denzil Potgieter.²¹⁵

The Reparation and Rehabilitation Committee: Ms Hlengiwe Mkhize (Chairperson), Dr. Wendy Orr (Vice-Chairperson), the Revd. Khoza Mgojo, Dr. Mapule F. Ramashala and Ms Glenda Wildschut.

Mr Dumisa Ntsebeza was appointed as head of the Investigation Unit and also served on the HRV Committee.

The duties and functions of the Committee on Human Rights Violations were clearly stipulated in Section 14 of 'the Act'.²¹⁶ This Committee conducted open hearings throughout the country to give survivors of human rights abuse the chance to testify regarding their experiences. The HRV Committee was entrusted to hear victims' stories in order to establish whether gross violations of human rights had occurred. With reference to gross violations of human rights, the Committee was mandated, amongst other things, to "enquire into systematic patterns of abuse, to attempt to identify motives and perspectives, to establish the identity of individual and institutional perpetrators, to find whether violations were the result of deliberate planning on the part of the state or liberation movements and to designate accountability, political or otherwise, for gross human rights violations".²¹⁷

²¹⁴ Mr Wynand Malan was reassigned to and appointed as Amnesty Committee member in November 1997.

²¹⁵ A number of changes were made to the composition of the Amnesty Committee later in the life of the Commission.

²¹⁶ For more detail on the powers, duties and functions of this committee, see Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 14, 16.

²¹⁷ Truth and Reconciliation Commission, Vol. 1, p. 277; Truth and Reconciliation Commission, "Committee on Human Rights Violations", <<http://www.doj.gov.za/trc/trccom.htm>>, s.a.

A gross human rights violation was defined as the “violation of human rights through the killing, abduction, torture, or severe ill treatment of any person or the attempt, conspiracy, incitement, instigation, command or procurement to commit such acts ... which emanated from conflicts of the past ... and the commission of which was advised, planned, directed, commanded or ordered by any person acting with a political motive.”²¹⁸ The general mandate of the TRC was specifically designed to cover only *gross* violations of human rights that had occurred in the specific period set out. The Commission was therefore restricted to examining only a fraction of the totality of human rights violations, namely those that had resulted in physical or mental harm or death and were incurred in the course of the political conflicts of the mandated period.²¹⁹

The HRV Committee was made up of ten commissioners and an additional ten committee members. The Committee exercised the powers of investigation granted to the Commission as set out in ‘the Act’, which entailed the establishment of an Investigating Unit. The Investigation Unit extensively supported the work of the HRV Committee, particularly concerning the pre-findings and findings processes. The Research Department also made valuable contributions with the establishment of the political context of the violations alleged by victims; providing an analytical capacity to enquire into the systematic patterns of abuse and the perspectives and motives that led to gross human rights violations.²²⁰

For the Amnesty Committee, ‘the Act’ authorised the President to appoint a chairperson and several of its members. The initial composition of the Amnesty Committee consisted of a chairperson and vice-chairperson and three other members. Judges who were not Commissioners, but were appointed by the President, headed the Committee. Owing to the heavy workload, the number of additional members was increased twice.

²¹⁸ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 4; Graybill, *Truth and Reconciliation in South Africa ...*, p. 6.

²¹⁹ Christie, p. 91.

²²⁰ Truth and Reconciliation Commission, Vol. 1, pp. 278-279; Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 28.

Finally, the number was nineteen members which included six High Court judges, eight advocates and five attorneys.²²¹

The Amnesty Committee would be autonomous in its decision-making powers. The primary function of this Committee was to consider applications for amnesty that were made in consonance with the provisions of 'the Act'. Thus, it facilitated and promoted the granting of amnesty in respect of 'acts associated with political objectives' by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts.²²²

Initially, applicants could apply for amnesty for any act, offence or omission associated with a political objective committed between 1 March 1960 and 6 December 1993, the date of the adoption of the Interim Constitution. An amendment was made to the interim Constitution and the cut-off date was extended to 10 May 1994, the date of Nelson Mandela's inauguration. The extension of the cut-off date was made at the TRC's request to enable victims and perpetrators of human rights abuses committed after December 1993 to approach the Commission. This enabled those parties responsible for the killings at the Heidelberg Tavern and St James's Church (the PAC) and for the 1994 election bombings (AWB - the Afrikaner Resistance Movement), to qualify for amnesty. The final date for the submission of applications was midnight 30 September 1997. The total number of applications received

²²¹ Truth and Reconciliation Commission, Vol. 1, pp. 267-268; Sarkin, *Carrots and sticks ...*, p. 68. The full Amnesty Committee included: Judges Hassen E. Mall (Chairperson), Andrew Wilson (Vice Chairperson), Selwyn Miller, Sandile Ngcobo, Bernhard Ngoepe, Ronnie Pillay. Advocates Francis Bosman, Chris de Jager SC, Leah Gcabashe, John Motata, Denzil Potgieter SC, Ntsiki Sandi, Jonas Sibanyoni, Sibongile Sigodi. Attorneys: Ms Sisi Khampepe, Mr Ilan Lax, Mr Wynand Malan, Mr Jake Molo, Dr Wycliffe Tsotsi.

²²² Truth and Reconciliation Commission, Vol. 1, p. 267; Justice in Transition on behalf of the Ministry of Justice, *Truth and Reconciliation...*, p. 14; Truth and Reconciliation Commission, "Committee on Amnesty", <<http://www.doj.gov.za/trc/trccom.htm>>, s.a; Truth and Reconciliation Commission, *The Committee on Amnesty*, p. 1. For more detail on the amnesty process of this committee, see Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 16, 18, 20, 22, 24.

was 7 127. The Amnesty Committee began its work in 1997 and completed it by June 2001.²²³

The issue of the extension of the cut-off date was criticised and seen to have clouded the political independence of the TRC. Graeme Simpson criticised this step as “a most fundamental political compromise [that] demonstrated a willingness to play politics on the part of the TRC. Prior to that, the TRC could claim that, whatever they were doing no more than administering in some senses, a compromising political agreement reached by the ANC and the National Party in the negotiation process”.²²⁴

While the other committees had powers of recommendation, the Amnesty Committee had powers to grant amnesty. These powers of the Amnesty Committee made it a distinctly separate process. This resulted to a large degree in an Amnesty Committee who conducted its process independently of the rest of the TRC.²²⁵

The Reparation and Rehabilitation Committee was represented by five Commissioners and five committee members. This Committee was responsible for deciding how each victim should be compensated. The Committee had to submit recommendations to the President for a comprehensive reparations policy for those found to be ‘victims’ of gross violations of human rights and the measures to be taken to restore the human and civil dignity of victims. The Reparation and Rehabilitation Committee was the only one of the three TRC committees not to hold public hearings.²²⁶

The powers of the Reparation and Rehabilitation Committee of the TRC were in comparison, very limited. It could only recommend a future

²²³ Truth and Reconciliation Commission, Vol. 1, p. 267; Graybill, *Truth and Reconciliation in South Africa ...*, p. 6; *Business Day*, 9.6.1994, p. 2; *Die Burger*, 18.5.1995, p. 1.

²²⁴ Sarkin, *Carrots and sticks ...*, p. 54.

²²⁵ *Ibid.*, pp. 73-75.

²²⁶ Justice in Transition on behalf of the Ministry of Justice, *Truth and Reconciliation ...*, pp. 17-18; Truth and Reconciliation Commission, Vol. 1, p. 285; Hamber and Kibble, p. 7; Truth and Reconciliation Commission, “Committee on Reparations and Rehabilitation”, <<http://www.doj.gov.za/trc/trccom.htm>>, s.a.

reparation policy to the State President and Parliament. The powers to implement these recommendations are reserved for the President in consultation with Parliament. Only when the President's proposals are approved by Parliament, is the government empowered to make the necessary regulations.²²⁷ This situation undoubtedly had certain consequences. Because large sums of money were involved, it is understandable that the government should be involved. However, it is ironic that the Commission could not implement its own recommendations for reparations, while it had the ability to deliver amnesty.

Regional hearings were held by this Committee across the country in 1996 and 1997 in an endeavour to determine what victims were seeking in terms of compensation. Thereafter, it finalised the recommendations on reparation and submitted them to the government. The government is ultimately responsible for implementing these recommendations and the reparation policy.²²⁸

The second meeting of the full commission was held on 22-26 January 1996. A wide range of topics was discussed and decisions were taken. During this meeting, it was decided that the national office of the Commission would be in Cape Town.²²⁹ Regional offices would also be established in Cape Town, East London, Johannesburg and Durban, as well as a sub-regional office in Bloemfontein. The headquarters of the Amnesty Committee would be in Cape Town and the other two committees would be in Johannesburg. The following commissioners were responsible for the Commission's regional offices: Wendy Orr (Cape

²²⁷ Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 26, 28.

²²⁸ Truth and Reconciliation Commission, Vol. 1, pp. 286-288; Graybill, *Truth and Reconciliation in South Africa ...*, p. 7; Hamber and Kibble, p. 7. For more detail on this committee's workings see Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 26, 28.

²²⁹ The national office was situated at 106 Adderley Street, Cape Town. To save costs, the Cape Town regional office was located in the same building.

Town), Fazel Randera (Johannesburg), Bongani Finca (East London) and Richard Lyster (Durban).²³⁰

The reason the Commission decided to operate in a decentralised manner was twofold. Because of the sheer size of South Africa and the uneven distribution of its population, regional offices would help to reduce logistic difficulties associated with holding hearings, taking statements and conducting investigations over an extremely large area. Furthermore, it would allow the Commission to respond more effectively to the significant characteristics and differences of various regions.²³¹

An additional number of staff appointments was made to assist the commissioners. John Allen was appointed as the director of the Communications Department with Paul van Zyl as the executive secretary of the Commission. The TRC could also secure the services of Prof. Charles Villa-Vicencio from the University of Cape Town, who became the director of the Research Department. Hanif Valley became the head of the Legal Department with Kariem Hoosain and later Willie Greyvenstein, as Financial Director and Sandra Arendse as director of the Human Resources Department. Dr Biki Minyuku was appointed 1 March 1996 as chief executive officer of Communication, as well as chief accounting officer of Communication. Tutu brought his own assistant, Lavinia Crawford-Browne with him, while Boraine retained his own assistant, Paddy Clark.²³²

Alex Boraine was put in charge with responsibility of getting the logistics in place and overseeing the staff complement and key staff members. A full staffing plan together with job description was also set up, which led to the appointment of nearly 350 staff members – the largest truth commission to date. The Commission had to secure premises in all the centres, as well as order furniture, carpeting, equipment, stationery and everything else needed to run an office. It was agreed that the

²³⁰ Truth and Reconciliation Commission, Vol. 1, pp. 45, 137; Boraine, p. 84.

²³¹ Truth and Reconciliation Commission, Vol. 1, p. 137.

²³² Boraine, pp. 85-88.

Department of Justice would assist in the process of establishing the offices and infrastructure of the Commission.²³³ The planning of the initial round of hearings dominated every aspect of the TRC's work for the next four months, until the first hearing in April 1996.

2.13 CRITICISMS LEVELLED AGAINST THE COMMISSION

Dullah Omar stated in his address to the 'Truth and Reconciliation' conference that he "wished to stress that the objective of the exercise is not to conduct a witch hunt or to haul violators of human rights before court to face charges", but rather a "necessary exercise to enable South Africans to come to terms with their past on a morally acceptable basis and to advance the cause of reconciliation where there is a commitment to break from the past, to heal the wounds of the past, to forgive but not to forget and to build a future based on respect for human rights".²³⁴ The international community was taking note of the Truth Commission's endeavours in South Africa and provided a high level of approval for the TRC model and its hearings.²³⁵

However, apart from Omar's statement and approval from outside the country, there was still a strong stream of criticism loaded against the formation of a truth commission. Voices were raised on the grounds that it was too risky to delve into the past, too divisive and that it would oppose the process of reconciliation. The suggestion from these groups was that the very idea of a truth commission should be scrapped and their opposition was an opposition of principle. The criticism came in particular from the National Party, the Freedom Front, the Inkatha Freedom Party and members of the security forces.

²³³ Truth and Reconciliation Commission, Vol. 1, pp. 45-47; Graybill, *Truth and Reconciliation in South Africa ...*, p. 5; Boraine, pp. 83-84.

²³⁴ D. Omar, "Message from Mr Dullah Omar, Minister of Justice" in *South African Outlook* 126(2), pp. 18-19; Boraine, p. 45; *Beeld*, 28.5.1994, p. 2; *Weekend Star*, 4-5.6.1994, p. 11; *The Cape Times*, 8.6.1994, p. 8.

²³⁵ Truth and Reconciliation Commission, Vol. 1, p. 14.

De Klerk and his party (NP) had 'serious misgivings' about the TRC. According to F.W. de Klerk, the TRC could "undermine the goodwill and sense of national unity that had begun to take root since Mandela's inauguration" and warned that South Africans would be "foolish if they precipitously tore out the stitches from wounds that are only now beginning to heal ... this exercise will become the antithesis of reconciliation".²³⁶

The right-wing Freedom Front agreed with the views and concern of F.W. de Klerk and warned that the Commission could become a witch-hunt against the Afrikaner.²³⁷ General Constand Viljoen, representing the Freedom Front, accused the Commission of being biased and focused on the wording of the Interim Constitution which called rather for a general amnesty. Viljoen also voiced his uneasiness about a lack of even-handedness from the Commissioners and was mainly concerned about the emphasis on the pursuit of truth and the revelation of the names of the perpetrators.²³⁸ The 'Herstigte Nasionale Party', a far right-wing party, saw the Commission as "a terrorist war against Afrikaners".²³⁹

In general, white conservatives claimed the Commission to be a one-sided organisation, intended on discrediting and humiliating the Afrikaners and glorifying the ANC. Many Whites referred to the Commission as the 'Kleenex Commission' because of all the tears it produced and the 'Biegbank' (confessional bench), where confessing was seen as the primary aim of the TRC, instead of truth in the interest of reconciliation.²⁴⁰ The complaint was made that "the Commission is

²³⁶ Boraine, "Introduction" in Boraine and Levy (eds), pp. xxiii-xix; *The Citizen*, 14.6.1994, p. 6; *Die Burger*, 14.9.1994, p.1; *City Press*, 18.12.1994, p. 19; *Sowetan*, 21.12.1994, p. 8; *The Cape Times*, 13. 2. 1995, p. 2; *Sunday Times*, 23.7.1995, p. 18.

²³⁷ Truth and Reconciliation Commission, Vol. 1, p. 8; Boraine, pp. 44-45; *Die Afrikaaner*, 10-16.6.1994, p. 1; *Die Burger*, 7.2.1995, p. 2. See also Graybill, *Truth and Reconciliation in South Africa ...*, p. 5. 'Afrikaner' refers primarily to Afrikaans-speaking white South Africans who identify themselves with the Afrikaans language, literature, history, general culture, values and conventions of the 'Afrikaner community'. See W. Verwoerd and M. Mabizela (eds), *Truths drawn in jest. Commentary on the TRC through cartoons*, p. 64.

²³⁸ Boraine, pp. 56-57; *Die Burger*, 8.6.1994, p. 2.

²³⁹ *Die Afrikaaner*, 10-16.6.1994, p. 1; *City Press*, 18.12.1994, p. 19.

²⁴⁰ McCarthy, p. 488; Verwoerd and Mabizela (eds), pp. 67-68.

obviously being used to present a bad image of the previous government and put the Afrikaner in a bad light ... The object is evidently to show to the world that apartheid was the greatest evil in South Africa. The terrorists were all pure, innocent people who never put a foot wrong but were unjustly persecuted".²⁴¹

From the beginning, the Inkatha Freedom Party (IFP) expressed its strong opposition to a truth commission and publicly opposed the TRC. On 22 October 1994 the National Council of the IFP met in Ulundi and adopted a resolution which expressed the party's views on the proposed TRC. They posited the argument that there had not been adequate debate in the country on whether the truth commission as planned and proposed, was the best medium for achieving national reconciliation and granting amnesty. The party stated that it is not the business of government to "guide the manufacturing of historical truths and that unified government-produced historical truths are often not accepted by the people and open much greater conflicts and wounds than those they are purported to heal ... [T]he multifaced soul of our country contains a polarity of truths which no government may express in a unified report."²⁴²

According to the IFP, the resources that would be wasted on a truth commission could rather be used to "promote a nationwide debate, an information-seeking exercise in schools and communities so that from this grass-roots process a real and multifaceted plurality of historical truths emerges which would be the truth of the people rather than the truth of the government".²⁴³ The IFP also expressed its deep concern about the "ill-conceived idea of having a truth-finding exercise driven by the confession of those who are in jail and seek amnesty by rendering statements under the spotlight of the press".²⁴⁴ They were furthermore strongly against the idea that amnesty should be administered on a

²⁴¹ McCarthy, p. 488.

²⁴² Boraine, p. 53; *The Natal Witness*, 6.3.1995, p. 2; *The Citizen*, 6.3.1995, p. 1; *Die Burger*, 28.6.1995, p. 15. See also Christie, p. 129.

²⁴³ Boraine, pp. 53-54.

political basis and opted rather for a judicial process where amnesty could be granted by courts of law on the basis of clearly defined legal parameters, rather than on the basis of broad political parameters set out in the Truth Commission legislation.²⁴⁵ Lastly, the IFP was likewise distressed that the Commission would be provided with powers of search and seizure and powers of subpoena.²⁴⁶

The IFP discouraged its members from applying for amnesty. In August 1997 the IFP leader, Mangosuthu Buthelezi, ran a half-page advertisement in newspapers that called on IFP members to boycott all TRC activity. As a result, very few IFP members applied for amnesty.²⁴⁷

It is rather ironic that after all these objections against the Commission in principle, the IFP nevertheless participated in the selection committee which provided President Mandela with a shortlist of names of people to serve on the Commission.

From the onset, the South African Police (SAP) at its highest level opposed the establishment of a truth commission. They emphasised the principle of collective responsibility for acts of violence committed during the past political conflict. This meant that individuals would not take sole blame for their actions. The leadership of the SAP pointed a finger at the politicians - the political leadership of the National Party and the African National Congress, which were essentially and collectively responsible for creating a climate conducive to furthering their political objectives.²⁴⁸ In their judgement, "individuals entrusted with carrying out the orders of the national government were left to their own initiative and devices in order to carry them out and were personally commended on an individual and group basis by members of the cabinet".²⁴⁹ In the view of the SAP, those who had accepted major responsibility and who were the chief culprits were not the policemen

²⁴⁴ *Ibid.*, p. 54.

²⁴⁵ *Ibid.* See also Christie, pp. 133-134.

²⁴⁶ Boraine, p. 54.

²⁴⁷ McCarthy, pp. 489, 491.

²⁴⁸ Boraine, p. 59; Boraine, "Introduction" in Boraine and Levy (eds), p. xix; *Rapport*, 19.6.1994, p. 1; *The Citizen*, 10.8.1994, p. 4; *The New Nation*, 28.7.1995, p. 9.

and the soldiers who carried out the orders. It was rather the political leaders who were the originators and planners of the very actions which were to be investigated by the proposed TRC.²⁵⁰

On the other hand, the ANC and PAC were worried that the Commission would be 'too evenhanded'. They perceived the Commission as too perpetrator-friendly and insensitive to the plight of victims.²⁵¹

The South African public's opinion regarding the TRC was often divided along racial lines. Several surveys conducted prior to the TRC hearings (IDASA 1994; Human Science Research Council - HSRC 1995), indicated widespread support for a truth commission among black South Africans, while the majority of white South Africans seemed to have had a negative or an indecisive perception of the TRC.²⁵²

These preconceived opinions about the TRC and its workings did not change radically. A survey conducted by the Centre for the Study of Violence and Reconciliation in 1996, indicated a significant number of white South Africans (46%) who believed that the TRC was an ANC-inspired witch-hunt to discredit its enemies. The survey indicated that the majority of white South Africans remain unconvinced about the unjust nature of the past system of Apartheid. For them, the system was not inherently problematic and they did not see themselves as highly

²⁴⁹ Boraine, p. 60.

²⁵⁰ *Ibid.*

²⁵¹ Graybill, "Pursuit of truth and reconciliation ...", p. 109; Truth and Reconciliation Commission, Vol. 6, p. 738.

²⁵² The survey conducted by IDASA in 1994 indicated that 65% of all Black South Africans were in favour of a Truth Commission, while only 39% of all white South Africans endorsed such a proposal. The HSRC survey showed interesting differences among white South Africans regarding support for the TRC. The percentage of respondents in favour of the TRC decreased significantly with age. The rejection of the TRC was also higher among Afrikaans-speaking whites (59%) compared to English-speaking whites (48%). Male respondents were more against the TRC (62%) compared to the white female South Africans (50%). G. Theissen, "Common past, divided truth: The Truth and Reconciliation Commission in South African Public Opinion". Paper presented at the Workshop of the International Institute for the Sociology of Law (IISL) on "Legal institutions and collective memories", Oñati, Spain, 22-24.9.1999, pp. 30-31; G. Theissen, "Between acknowledgement and ignorance: How white South Africans have dealt with the apartheid past", <<http://www.csvr.org.za/papers/papgt6.htm>>, s.a. See also *Die Burger*, 14.10.1994, p. 9.

complicit. The Apartheid system was generally viewed as not inherently bad, but was carried out in such a way that 'mistakes' occurred. Thus, two out of three white respondents felt that it would be better to let bygones be bygones, forget about the past and not to prosecute those who had committed crimes against anti-apartheid activists.²⁵³

These negative views by predominantly white respondents towards the TRC, were still held in November 1998, after the publication of the TRC Report. The majority (55%) of white respondents claimed that the TRC was a very bad thing for the country. Most white South Africans (83% of Afrikaans speaking and 71% of English-speaking whites) denied that the TRC was impartial and the perception that the TRC was fair to all sides dropped among white respondents from 35% in May 1996, to a mere 13% in November 1998. In effect, it was an immense vote of no confidence in the TRC.²⁵⁴ This notion was confirmed by a survey conducted by Market Research Africa, which found that almost two-thirds of urban South Africans believed that the TRC had harmed, rather than reconciled the state of race relations in South Africa.²⁵⁵

Nevertheless, James L. Gibson has tested the belief that 'truth leads to reconciliation' by using extensive surveys and social science analysis. According to his surveys, the TRC did indeed succeed in convincing the majority of South Africans across the political spectrum that all sides were guilty of human rights violations and, in turn, suffered from violations.²⁵⁶

It is true that commissions aren't perfect. As a high risk exercise in the political history of South Africa, it is evident that criticism would be raised against a variety of aspects concerning the TRC. The limited

²⁵³ G. Theissen and B. Hamber, "A state of denial: White South African's attitudes to the Truth and Reconciliation Commission" in *Indicator South Africa*, 1998, pp. 8-12.

²⁵⁴ Theissen, "Common past, divided truth ...", pp. 31-31, 35; M. Meredith, *Coming to terms. South Africa's search for truth*, p. 315.

²⁵⁵ Sarkin, *Carrots and sticks ...*, p. 7; Meredith, p. 319; Anon, "TRC clash over the crime of apartheid" in *Southern Africa Report* 16(30), 31.7.1998, p. 4; *The Star*, 29.7.1998, p. 5; *Die Afrikaner*, 31.7.-6.8.1998, p. 2; *Beeld*, 7.8.1998, p. 11.

²⁵⁶ Graybill and Lanegra, p. 4.

interest and negative attitudes of whites towards the activities of the TRC throughout the lifetime of the TRC, was a constant concern. However, one cannot ignore the fact that truth commissions contribute to the cause of justice and the protection and promotion of human rights. The functions performed by truth commissions focus on the promotion of a just, democratic and open society and endeavours to restore the collective dignity of a state and its people. This finds an echo in international humanitarian law.

2.14 CONCLUSION

With the establishment of the South African Commission on Truth and Reconciliation it was the formal beginning of another process of confronting the past through official truth-seeking.

The Truth and Reconciliation Commission of South Africa was arguably the most ambitious to date and has been used as an example in many parts of the world as a new model for confronting a tormented and divisive history. The truth-seeking purpose of the TRC lay in the official confrontation of past human rights abuses, with the aim of fostering individual and national reconciliation, through the catharsis of testimonies and confessions by the perpetrators of human rights abuses and their victims. This process opened the possibilities of public acknowledgement of the atrocities of the past. The hope was that it would lead to healing for victims and their families, forgiveness and ultimately to reconciliation throughout the post-apartheid society of South Africa.

The democratic approach to the formation of the TRC distinguished it sharply from truth commissions of other countries. Apart from the fact that the public had maximum participation in the setting-up process of the Commission, the public also had full media access to the proceedings of the TRC. This 'input from below' added to a process of inclusiveness

and transparency, with an awareness of the proceedings by all citizens of the country and even those outside the borders of South Africa.

An additional positive feature that gave both prominence and stature to the Commission, was the persona of Nelson Mandela. The fact that the President supported the establishment of the Commission, and that he was directly involved in appointing the commissioners and selecting the Chairperson and Deputy Chairperson, gave the Commission his personal stamp. With his support for the Commission, Mandela furthered the process of reconciliation.

Given its political goals of national unity and reconciliation and the politics of a negotiated compromise, the TRC could in essence, make no other decision but to work with an 'amnesty for truth' approach to justice as restorative, rather than retributive. The granting of amnesties was seen as necessary to reveal and expose the truth. This aspect contributed to an unusual form of truth commission.

The stage was set for bringing human rights concerns to the fore, recognising the suffering of victims and realising the acts of perpetrators, with the aim of establishing a fair, global truth. This could lead towards learning from history, while keeping memory alive.

Chapter 3

DEALING WITH HUMAN RIGHTS VIOLATIONS

3.1 INTRODUCTION

The goals to which the Truth and Reconciliation Commission of South Africa (TRC) had to contribute were founded in the belief that in order to build the 'historic bridge' of which the Interim Constitution speaks, it was needed to establish as 'complete a picture as possible' of the injustices committed in the past. This should be combined with a public, official acknowledgement of the 'untold suffering' which resulted from those injustices.

The Commission's mandate, as contained in the Promotion of National and Reconciliation Act No. 34, 1995 (the Act), had to provide the space within which victims could share the stories of their trauma with the nation. The first phase in the life of the Commission was to give attention to the question of the restoration of the human and civil dignity of individual victims of past gross human rights violations. The Committee on Human Rights Violations (HRV Committee) filled this vacuum, providing a more complete picture of the past as it emanated from the larger narratives of victims, while the present generation of South Africans was confronted with the harsh realities thereof.

These victims' hearings in particular, meant that thousands, who experienced human rights violations could, in their mother tongue, at their own tempo and in their own way, convey their stories and give testimony at public hearings across South Africa. These hearings were combined with an extensive statement-taking effort, investigations, research and so-called 'Section 29' hearings (where witnesses and

alleged perpetrators were *subpoenaed*), in order to establish the fate or whereabouts of victims and the identity of those responsible for human rights violations.

These individual stories are incalculably tragic – involving terror, torture, removal, rape, murder, abandonment and mutilation. Through these stories of suffering and grief, many people were confronted, some for the first time, with the human face of the unknown or silenced victims of past conflicts. Although a process of cross-examination was not involved in the victims' hearings, a variety of detailed information was still attained. The public nature of these hearings broke the silence, lifted the veil of secrecy and gave authority to the voices of ordinary people. In the process truths, half-truths, myths and lies were challenged through these public hearings to gain a fuller account in a larger framework of what had happened in the past.

This chapter will outline the Commission's interpretation of its mandate, by giving attention to specific concepts and how they were interpreted and implemented by the Committee on Human Rights Violations. The way 'truth' was defined by the Commission will also be examined. A description will be given of the methodology process in selecting victims, which resulted in witnesses testifying at public victim hearings. An analysis of the statistical information will provide a broader understanding of who came to the Commission to share their stories.

3.2 SEARCHING FOR TRUTH

A commitment to history and the uses thereof, involves a search for an objective truth and for advancing the approach to truth. On the question 'What is truth?', O. Handlin describes truth as "absolute; knowable and will [get] out if earnestly pursued; mighty above all things, it resides in the small pieces which together form the record".¹ As the past cannot be relived, history deals with evidence from the past and must seek truth in the record of bygone events.

For some, 'truth' and the search thereof, is not so obvious and certainly not a very well-defined topic. According to Albert Camus, "truth is as mysterious as it is inaccessible and it must be fought for eternally".² In his book *Truth: A history and a guide for the perplexed*, Felipe Fernandez-Armesto bemoans the fact that "trapped between fundamentalists who believe they have found truth, and relativists who refuse to pin it down, the bewildered majority in between continues to hope there is a truth worth looking for, without knowing how to go about it or how to answer the voices from either extreme".³ For Dicenso, truth is rather evasive and he states: "For in this world of lies, Truth is forced to fly like a scared white doe in the woodlands; and only by cunning glimpses will she reveal herself".⁴

Christie argues that truth is rarely used in the abstract, absolute sense of the term. The truth is relative and in reality it is a contested, difficult, and complex concept, which holds various meanings and is ultimately linked to various beliefs, value systems and ideologies. He emphasises that historical truth, as seen before, has many different facets. According to

¹ O. Handlin, *Truth in history*, p. 405.

² J. Cherry, "Historical truth: Something to fight for" in C. Villa-Vicencio and W. Verwoerd (eds), *Looking back reaching forward. Reflections on the Truth and Reconciliation Commission of South Africa*, p. 143.

³ D. Posel and G. Simpson, "The power of truth. South Africa's Truth and Reconciliation Commission in context" in D. Posel and G. Simpson (eds), *Commissioning the past. Understanding South Africa's Truth and Reconciliation Commission*, p. 1.

⁴ J. Dicenso, *Hermeneutics and the disclosure of truth. A study in the work of Heidegger, Gadamer, and Ricoeur*, p. 151.

him, truth as displayed by truth commissions, is rarely straightforward in any sense.⁵

Antjie Krog describes her own difficulty with the word 'truth': "The word 'truth' makes me uncomfortable. The word 'truth' still trips the tongue. I hesitate at the word. I am not used to using it. I have never bedded that word in a poem. I prefer the word 'lie'. The moment the lie raises its head I smell blood. Because it is there ... where the truth is the closest".⁶ She continues to debate the issue of 'truth' and asks: "Will a Commission be sensitive to the word 'truth'? If its interest in truth is linked only to amnesty and compensation, then it will have chosen not truth, but justice. If it sees truth as the widest possible compilation of people's perceptions, stories, myths and experiences, it will have chosen to restore memory and foster a new humanity; and perhaps that is justice in its deepest sense".⁷

Krog philosophises further on 'truth' indicating that philosophers have two theories on truth. The first is the correspondence theory, which claims that what one says must correspond with reality. The second theory is the coherency theory. Since one cannot speak correspondingly about the world, one can only try to speak coherently about it. Truth then becomes seeing the point of the story, as a story told about the world.⁸

Patricia Valdez explains the right to truth by claiming that "The right to truth is an undeniable obligation of states towards their citizens and towards the international community".⁹ In addition, Priscilla Hayner stresses this 'inherent right to truth' in the existing international human rights laws. These laws oblige states to investigate and punish violations of human rights. Within this is the inherent right of the citizenry to know

⁵ K. Christie, *The South African Truth Commission*, pp. 56, 179.

⁶ A. Krog, *Country of my skull*, p. 36.

⁷ A. Krog, "To remember & acknowledge: The way ahead. The South African road" in A. Boraine and J. Levy (eds), *The healing of a nation?*, pp. 117-118; Krog, *Country ...*, p. 16.

⁸ Krog, "To remember ...", p. 116.

⁹ P. Valdez, "The right to truth" in W. James and L. van de Vijver (eds), *After the TRC: reflections on truth and reconciliation in South Africa*, p. 57.

the results of the various investigations that have been carried out into past abuses.

Article 19¹⁰ of the Universal Declaration of Human Rights guarantees that there is indeed a 'right to know the truth' which is contained within the right to 'seek, receive and impart information'. This establishes the right to truth.¹¹ International "principles to combat impunity" proposed in 1997 by the United Nations Special Rapporteur Louis Joinet, indicate "A people's knowledge of the history of their oppression is part of the heritage and, as such, shall be preserved by appropriate measures in fulfilment of the State's duty to remember".¹² José Zalaquett emphasises this line of argument stating that: "We owe the truth to the victims and their families. Truth does not bring back the dead, but releases them from silence".¹³ Thus, knowledge of the past is intrinsically important and it seems that people have a moral right to know the truth.

The TRC was intent on effecting reconciliation through establishing, as fully as possible, the truth via a process of publicly accounting for human rights violations. Truth was to be told from a variety of perspectives by giving both victims and perpetrators opportunities to share their own stories.

The complexity of the concept 'truth' and the search to answer the question "What about truth – and whose truth?" were debated before and during the existence of the Commission. Already at the second conference in preparation for a truth commission in July 1994 under the auspices of Justice in Transition, Albie Sachs argued that there are

¹⁰ Article 19 of the Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948) reads as follows: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Human Rights Library, "Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)", <<http://www1.umn.edu/humanrts/instrree/b1udhr.htm>>, *s.a.*

¹¹ P.B. Hayner, "Fifteen truth commissions – 1974 to 1994: A comparative study" in *Human Rights Quarterly* 16(4), 1994, p. 611; P.B. Hayner, *Unspeakable truths. Facing the challenge of truth commissions*, p. 31.

¹² Hayner, *Unspeakable truths ...*, p. 184.

¹³ Krog, *Country ...*, p. 24.

different orders of truth which do not necessarily mutually exclude one another. The one is 'microscope truth' which is factual. The other is a 'dialogue truth', a social truth, which is established through interaction, discussion and debate.¹⁴

The debates on this issue resulted in four notions of truth implemented and used by the established TRC: factual or forensic truth; personal or narrative truth; social or 'dialogue' truth and healing or restorative truth.¹⁵

The Act required that the Commission "prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal".¹⁶ Factual or forensic truth is the legal or scientific notion to bring forward corroborated evidence; of obtaining accurate information through reliable (impartial, objective) procedures.¹⁷ Colin Bundy argues that "the establishment of the objective truth is part of the struggle for the control of history. It plays a central role in society's redefinition of itself".¹⁸

In pursuing factual and objective information, the Act required the examination of two essential areas. The first was based on findings on an individual level – what happened to whom, where, when and how, and who was involved? An extensive verification and corroboration policy was adopted by the Commission to fulfil this aspect of the mandate. The second aspect was based on findings on the contexts and causes of violations. Here, a report on the broader patterns underlying gross violations of human rights was required, as well as exploring the causes

¹⁴ A. Sachs, "The task for civil society" in Boraine and Levy (eds), p. 105; D.M. Tutu, *No future without forgiveness*, p. 33.

¹⁵ Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, Vol. 1, p. 110.

¹⁶ Republic of South Africa, "Promotion of National Unity and Reconciliation Act No. 34" in *Government Gazette* 361(16579), 1995, p. 8.

¹⁷ Truth and Reconciliation Commission, Vol. 1, p. 111; A. Boraine, *A country unmasked. Inside South Africa's Truth and Reconciliation Commission*, p. 288.

of such violations. To achieve this, a social scientific approach was adopted to analyse, interpret and draw inferences from the information received.¹⁹

Narrative truth was central to the work of the Commission, especially to the hearings of the Committee on Human Rights Violations. The Act (Section 3(c)) explicitly recognised the healing potential of telling stories by stating that one of the objectives of the Commission was to “restore the human and civil dignity of victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims”.²⁰

In the South African context, with value attached to oral tradition, the process of storytelling is important. Ellen Kuzwayo wrote: “Africa is a place of story telling. We need more stories, never mind how painful the exercise might be. Stories help us to understand, to forgive and to see things through someone else’s eyes”.²¹ The TRC was aspiring to recover the word and the right of the word, and provide a forum for storytelling.

Storytelling is significant as it constructs a common memory of the past. By telling stories, an opportunity is offered to participate in one another’s humanity in story form. According to psychologists, sharing stories in a supportive setting leads to healing; especially in the case of victims where many times they feel ignored or misunderstood or their pain went unrecognised and their sacrifices unacknowledged.²² Botman notes that every time a story is heard the miracle happens; “the deaf begin to hear”.²³ Gerald West underlines the fact that what was hidden can

¹⁸ Boraine, pp. 287-288. See also I.S. Maclean, “Truth and reconciliation: irreconcilable differences? An ethical evaluation of the South African Truth and Reconciliation Commission” in *Religion and Theology*, 6(3), 1999, p. 277.

¹⁹ Truth and Reconciliation Commission, Vol. 1, p. 111; Boraine, p. 288.

²⁰ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 6.

²¹ P. Meiring, “Truth and Reconciliation: The South African experience” in W.E. Van Vugt and G.D. Cloete (eds), *Race and Reconciliation in South Africa. A Multicultural Dialogue in Comparative Perspective*, p. 196.

²² L.S. Graybill, “South Africa’s Truth and Reconciliation Commission: Ethical and theological perspectives” in *Ethics and International Affairs* 12, Spring 1998, pp. 48-49.

²³ *Ibid.*, p. 49.

become public through storytelling. “People who have nurtured their subjugated stories in the confines of their hearts and hearths – offstage – now have an opportunity to articulate and own their stories on stage”.²⁴ For Anglican Bishop David Beetge, we tell our stories “not only to release the dammed up tears that have waited years to be shed. It is in order that truth should be uncovered and justice seen to be done”.²⁵

Both victim and perpetrator communicated personal truths to the broader public through the Truth Commission. In the process, meaning was added to the multi-layered experiences of the South African story. Through the creation of narrative truth, the Commission sought to capture the widest possible record of people’s perceptions, stories, myths and experiences.²⁶

Through social or ‘dialogue’ truth, the Commission acknowledged the importance of transparency and participation and people from all walks of life were invited to participate. A conscious effort was made to provide an environment in which all possible views could be considered and weighed one against the other; with carefully listening given to the complex motives and perspectives of all those involved.²⁷ The *Final Report* describes this truth as “the process whereby the truth was reached, was itself important, because it was through this process that the essential norms of social relations between people were reflected. It was, furthermore, through dialogue and respect that a means of promoting transparency, democracy and participation in society was suggested as a basis for affirming human dignity and integrity”.²⁸ In its search for social truth, the connection between the Commission’s process and its goals was to be found.

‘Healing’ truth is described as the kind of truth that places facts and their meaning within the context of human relationships – both amongst

²⁴ *Ibid.*

²⁵ Truth and Reconciliation Commission, Vol. 1, p. 120.

²⁶ *Ibid.*, pp. 112-113; Boraine, p. 289; Maclean, p. 277.

²⁷ Truth and Reconciliation Commission, Vol. 1, pp. 113-114; Maclean, p. 277.

²⁸ Truth and Reconciliation Commission, Vol. 1, p. 114. See also Boraine, pp. 290-291.

citizens and between the state and its citizens. It combines truth as factual, objective information and the way it is acquired with the purposes it is required to serve. In this context, the role of 'acknowledgement' is emphasised where facts are fully and publicly acknowledged. This results in the affirmation that a person's pain is real and worthy of attention, and thus central to the restoration of the dignity of victims.²⁹

There are a variety of debates on the 'rainbow truths' that were presented by the Commission. It is indicative that praise, as well as criticism was voiced for the complex and contradictory process of 'truth recovery' embodied in the practices of the TRC.³⁰

Archbishop Tutu states in the foreword to the *TRC Final Report* that "we believe we have provided enough of the truth about the past for there to be a consensus about it ... We should accept that truth has emerged ... The truth can be, and often is, divisive."³¹ Janet Cherry conveys her fears that in an attempt to establish a consensus on 'the truth', many of the complexities and nuances thereof, are lost. According to her, one must acknowledge that the truth uncovered by the TRC is, at best, "only a partial truth".³² Handlin warns in this regard: "in reducing truth to an instrument, even an instrument of doing good, you necessarily blunt its edge and expose yourself to the danger of its misuse. For, when truth ceases to be an end in itself, and becomes but a means toward an end, it also becomes malleable and manageable and is in danger of losing its character – not necessarily, not inevitably, but seriously".³³

²⁹ Truth and Reconciliation Commission, Vol. 1, p. 114; Maclean, p. 277.

³⁰ Compare especially chapters 7-9 with different viewpoints in D. Posel and G. Simpson (eds), *Commissioning the past. Understanding South Africa's Truth and Reconciliation Commission*. The aim of the book was to "provide a multifaceted evaluation of the TRC's truth-production enterprise". The book sets out a series of evaluations of the TRC process and the 'truth' the Commission delivered.

³¹ Truth and Reconciliation Commission, Vol. 1, p. 18.

³² W. Esterhuyse, "Truth as a trigger for transformation: From apartheid injustice to transformational justice" in Villa-Vicencio and Verwoerd (eds), p. 143.

³³ Handlin, p. 414.

Boraine confesses in the introduction to his book *A country unmasked. Inside South Africa's Truth and Reconciliation Commission*, that the Commission itself “did not find the whole truth”.³⁴ Ingrid de Kok states forthrightly that “nobody believes that the TRC can produce the full ‘truth’, in all its detail, for all time”.³⁵ Tepperman is even more frank in his criticism of the TRC’s handling of truth and describes it as having occurred in a “bizarre manner that hurt rather than helped its credibility”, as the different notions of truth seemed only to “heighten confusion and scepticism about the TRC’s ability to produce a single authoritative story of what had transpired under apartheid”.³⁶

In addition, Krog raises her question on truth and brings out another perspective: “Out of this must now be taken: The Truth? Is the truth known only to the dead? It is asking too much that everyone should believe the Truth Commission’s version of the Truth. Or that people should be set free by this truth, should be healed and reconciled. But perhaps these narratives alone are enough to justify the existence of the Truth Commission. Because of these narratives, people can no longer indulge in their separate dynasties of denial.”³⁷ This is further articulated by Michael Ignatieff: “All that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse”.³⁸

Wilhelm Verwoerd defends the truth-seeking process by the TRC and argues that “the limitations of the TRC’s search for factual truth should not obscure the vital moral truths gathered by the process – truths about moral evils, past injustices and gross human rights violations”.³⁹ De Kok adds to this, perceiving that “in the multiplicity of partial versions and

³⁴ Boraine, p. 2.

³⁵ I. de Kok, “Cracked heirlooms: memory on exhibition” in S. Nuttall and C. Coetzee (eds), *Negotiating the past: The making of memory in South Africa*, p. 61.

³⁶ J.D. Tepperman, “Truth and consequences” in *Foreign Affairs* 81(2), March-April 2002, p. 140.

³⁷ Krog, *Country ...*, p. 89.

³⁸ Truth and Reconciliation Commission, Vol. 1, p. 111; Boraine, p. 289; *The Sunday Independent*, 7.6.1998, p. 11.

experiences, composed and recomposed within sight of each other, truth 'as a thing of this world' will emerge".⁴⁰ Combrink warns that "historians should consider the elusive nature of 'truth' in an historical context. Perceptions of what is true vary from time to time, from place to place and from party to party according to the questions posed, as well as the affiliations and convictions of those involved. Historians should take this into account when considering the motives and actions of those involved in the conflicts of the past".⁴¹

It would be wise for truth commissions not to single out one version of past events and establish it as 'the truth'. This concurs with Lydia Samarbakhsh-Liberge who says that by considering 'history' as "interpretations of processes and interpretations of human experiences, as well as interpretations and tales by people who are themselves sensitive to their own time and society",⁴² the historian needs to implement choices between bodies of evidence, sources and the presentation of facts. People are all influenced by beliefs, social demands, ethical principles and political opinions which will inevitably influence the way the individual tells his/her story. As a result, the historian must strive to use his/her discipline in its capacity for enhancing the approach to truth and ultimately, the way it presents the past to society.

Thus, the very notion of truth is a disputed one and 'truth' as such, defies rigid definition. Post-modern philosophers challenge the very notion of an objective truth and generally assert that there is no objective knowledge, only differing viewpoints and perspectives. Nevertheless, even without this post-modern perspective, it is clear that determining

³⁹ W. Verwoerd, "Towards the recognition of our past injustices" in Villa-Vicencio and Verwoerd (eds), p. 164.

⁴⁰ De Kok, p. 61.

⁴¹ N.L. Combrink, "History and the Commission on Truth and Reconciliation: the problem of collective guilt" in *Journal for Contemporary History* 23(2), 1998, p. 119.

⁴² L. Samarbakhsh-Liberge, "'Truth and history' in the post-apartheid South African context" in *An African Journal of Philosophy* XVI (1-2), 2002, pp. 151-152.

truth is difficult under the best of circumstances. Historical truth remains subjective and partial to a greater or lesser extent.⁴³

Against this background of arguments, it is evident that there are conflicting viewpoints on truth. Can truth and nothing else but truth be reached and captured, especially by a truth commission? This seems impossible. Juan Mendez is certain that achieving complete truth and justice by a truth commission is “impossible even under the best circumstances and with the fewest constraints”.⁴⁴ Hayner sets out certain difficulties and dilemmas confronting truth commissions in finding and telling the truth. A truth commission may be confronted with many challenges, as it does not operate in a vacuum and every commission works under political constraints or contextual challenges, which cannot necessarily be avoided. According to her, the most explicit limitations to many truth commissions in answering the question ‘What is the truth?’ are those written into their mandates, or terms of reference.⁴⁵

The many limitations and constraints in a truth commission’s mandate may affect a commission’s ability to produce an authoritative account of the past. Therefore, in this sense, truth commissions may not manage to uncover and establish the truth with a capital ‘T’. Thus, the interpretation of past occurrences of atrocities may be complex and be, to a large extent, disputed. The limited mandate and purpose of the South African Truth Commission restricted itself to looking only at a certain portion of the abuses that took place. Consequently, it may be argued that the TRC did not provide a full detailed description of the extent and effect of the widespread abuses that took place over the years of apartheid. Yet, the TRC was not mandated to look into all atrocities in the period 1960-

⁴³ A.R. Chapman and P. Ball, “The truth of truth commissions: Comparative lessons from Haiti, South Africa, and Guatemala” in *Human Rights Quarterly* 23, 2001, pp. 3-4; J.A. du Pisani and K-S. Kim, “Establishing the truth about the apartheid past: Historians and the South African Truth and Reconciliation Commission”, <<http://www.africa.ufl.edu/asq/v8/v8i1a5.htm>>, 2004.

⁴⁴ J. Mendez, “Prosecution: Who and what for?” in A. Boraine, *et al.*, (eds), *Dealing with the past. Truth and reconciliation in South Africa*, p. 88.

1994, but only those indicated as ‘the killing, abduction, torture or severe ill treatment of any person’.

The TRC, through its HRV Committee, did, in accordance with the Act, focus on its mandate which included ‘activities and findings based on factual and objective information’, while at the same time, recognising the ‘healing potential of telling stories to restore the human and civil dignity of victims by granting them an opportunity to relate their own accounts of the violations’ through their story-telling and perspectives. By using and implementing the different notions of truth - factual, narrative, social and healing – the objective of the TRC was to uncover truth and provide a fuller and more complete picture of past atrocities. However, it is evident that the different notions of truth implemented cannot provide *the truth, the whole truth, and nothing but the truth*. Additionally, it is understandable that many people were confused and questioned the different forms of truth recovery implemented by the TRC. Can there really be another form of truth as factual? It cannot be ignored that only factual truth is familiar to most people. It is also this objective, verifiable form of truth that is recognised by people when they think of truth.

However, the TRC definitely did add significantly to the quantity of knowledge of past atrocities by revealing truths thus far not known. The political choice of acknowledgement that resulted in some measure of accountability for the political atrocities concerned, did play a vital role in the ‘restoration of the victims’ human and civil dignity’. Although it seems as if truth in all its particulars cannot be fully recovered by a truth commission, it can provide more information. This may be obtained from objective factual truth, as well as the acknowledgement of various subjective truths. Perhaps it is safer to indicate that *ample* truth may be recovered by a truth commission, rather than indicating that *the* truth has been uncovered.

⁴⁵ Hayner, “Fifteen Truth Commissions ...”, pp. 635-636. For more detail on the

It seems as if Truth can be an elusive goal. Although the truth is not easily found, it can be known. Truth is always there – sometimes just simply hidden from the public eye. Truth may result from a continued process of openness to differences and to conversion. Its search requires the independent and critical interchange of conflicting judgements, rather than the unjust demand for unchanging principles. Thus, the process of seeking the truth will continue, as truth-telling is limited not only to a specific commission. Every person has an obligation to commit to truth and to search for it.

3.3 DEFINING GROSS VIOLATION OF HUMAN RIGHTS

The underlying objective of the legislators was to make it possible for the Commission to recognise and acknowledge as many people as possible as victims of the past political conflict in South Africa. The HRV Committee was entrusted with hearing victims' stories, in order to establish whether gross violations of human rights had occurred.

With reference to the gross violations of human rights, the Committee was mandated, amongst other things, to “enquire into systematic patterns of abuse, to attempt to identify motives and perspectives, to establish the identity of individual and institutional perpetrators, to find whether violations were the result of deliberate planning on the part of the state or liberation movements and to designate accountability, political or otherwise, for gross human rights violations”.⁴⁶

A gross human rights violation was defined as the “violation of human rights through:

(a) the killing, abduction, torture or severe ill treatment of any person; or

difficulties and dilemmas in finding and telling the truth see Hayner, “Fifteen Truth Commissions ...”, pp. 635-650.

⁴⁶ Truth and Reconciliation Commission, Vol. 1, p. 277; Truth and Reconciliation Commission, “Committee on Human Rights Violations”, <<http://www.doj.gov.za/trc/trccom.htm>>, *s.a.*

(b) the attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered by any person acting with a political motive”.⁴⁷

Insofar as the Act was concerned with the question of gross violations of human rights, two distinct enquiries were comprehended:

(a) Was a gross violation of human rights committed and what was the identity of the victim? This is a factual question and does not involve the issue of accountability.

(b) What was the identity of those involved in such violations and what was their accountability for such violations? The second question is factual and legal. This enquiry is stricter and involves technical questions such as accountability.

In other words, a gross violation of human rights could be committed because there was a victim, but it had to undergo a more rigorous test in order to hold a perpetrator accountable for that specific violation. Issues such as justification had to be taken into account.⁴⁸

In the description of the Act that relates to what constitutes a gross violation of human rights, no moral distinction is made – it does not deal with morality, but rather with legality. In other words, a gross violation is a gross violation, whoever commits it, and for whatever reason. This brings legal equivalence between all perpetrators, where their political affiliation is irrelevant.⁴⁹

The general mandate of the TRC was specifically designed to cover only gross violations of human rights committed as specific acts, resulting in

⁴⁷ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 4; L.S. Graybill, *Truth and Reconciliation in South Africa. Miracle or Model?*, p. 6.

⁴⁸ Truth and Reconciliation Commission, Vol. 1, pp. 70-71.

severe physical and/or mental injury or death that occurred in the course of past political conflicts in the mandated period. For this reason, the Commission could not give attention to the effects of laws passed by the previous National Party (NP) government, nor on general policies of that government or of other organisations. The Commission was therefore restricted to examining only a fraction of the totality of human rights violations that emanated from the policy of apartheid. In the *Final Report* of the TRC, the Commission emphasised that they recognised the fact that those gross violations of human rights as defined in the Act, should not be taken to mean that they were the only very serious human rights violations that had occurred in the country.⁵⁰

The definition of a 'gross violation of human rights' therefore limited the attention the Commission could give to events which emanated from the policies of apartheid. It is understandable that people would have pointed to important areas that they felt could not be ignored. This included events, to name but a few, such as the denial of freedom of movement through the pass laws; forced removals; the denial of franchise to citizens; and the treatment of labour disputes. Nevertheless, these events did not fall within the Commission's mandate therefore making it narrower and more restricted, with its focus on some of the worst acts committed against the people of South Africa in the post-1960 period and not upon the everyday, governmental enforcement of apartheid. The picture provided from these acts, was correspondingly by no means complete and could obscure the truth of other injustices.

There was obviously criticism levelled against the Commission as interpreting the mandate too narrowly, ignoring the broader criminality of the system itself and the racial inequities for which the system was responsible. Mahmood Mamdani especially, has bitterly criticised the TRC for avoiding the issue of the beneficiaries of apartheid and of the Commission's inability to see apartheid as a system. Because of this

⁴⁹ Tutu, pp. 79-80.

⁵⁰ Truth and Reconciliation Commission, Vol. 1, pp. 60-65. See also Christie, p. 91.

“narrow, individualistic and legalistic view” of the TRC, he is of the opinion that the Commission actually “obstructed the wider project of ensuring social justice for the majority of Africans”.⁵¹

In its defence, it must be noted that the TRC had a limited period of time to complete its work. By limiting the mandate to only four categories – killing, abduction, torture and severe ill treatment, at least gave the Commission a manageable task that could hopefully be accomplished within the time-span allocated and still provide a more comprehensive picture of the past. The *Final Report* of the Commission reveals much about the apartheid system and an attempt was made to take the structural violations of apartheid into account.

The language used in the Act to describe gross human rights violations deliberately avoided the use of the terms associated with the South African law’s legal definitions of crimes. This made it rather difficult for the Commission to interpret the categories of acts contained in the definition of gross violations of human rights, and of formulating criteria to determine the ‘political’ motivation of these acts of killing, torture, abduction and severe ill treatment.

‘Torture’ was easy to define as the Commission adhered to the internationally accepted definition of torture. The following definition guided the Commission in its work: “the intentional infliction of severe pain and suffering, whether physical or mental, on a person for the purpose of (1) obtaining from that or another person information or a confession, or (2) punishing him for an act that he or a third person has committed or is suspected of having committed, or (3) intimidating him or a third person, or (4) for any reason based on discrimination of any kind. Pain or suffering that arises only from, inherent in, or incidental to, a lawful sanction does not qualify as torture”.⁵²

⁵¹ R.A. Wilson, *The politics of truth and reconciliation in South Africa. Legitimizing the post-apartheid state*, p. 35; M. Mamdani, “A diminished truth” in James and Van de Vijver (eds), pp. 58-61.

⁵² Truth and Reconciliation Commission, Vol. 1, p. 78.

In general, torture is seen as “pure negation” and a “reversion to the pre-language of cries and groans”, where torture and the infliction of pain in all cases, aims at the “annihilation of the other”.⁵³ Maurice Blanchot explains torture further as the “recourse to violence with a view to making the person speak. This violence, perfected or camouflaged by technique, wants one to speak, want speech. Which speech? Not the speech of violence, but a true speech, free and pure of all violence. This contradiction offends us but also unsettles us”.⁵⁴

The forcible and illegal removal or capturing of a person defined ‘abduction’. This category was defined as “including those persons who were forcibly detained or arrested and last seen in the custody of the security forces or agents of the state, as well as those forcibly and unlawfully abducted by other known or unknown armed groups or parties”.⁵⁵ It did not include arrests and detentions that satisfied universally recognised international human rights standards, nor the capturing of an enemy soldier in a situation of armed conflict.⁵⁶ Cases of disappearance presented the Commission with real challenges. It was not possible for the Commission to make any findings in the absence of conclusive proof, even if most factors pointed to the probability of the disappeared being dead. This unfinished business remains the responsibility of the state and should be investigated by the National Prosecuting Authority.⁵⁷

All executions of activists or other persons for politically motivated crimes, both within the established legal system and in other settings, whether carried out by the state or the liberation movements, were considered as gross violations of human rights. The killings of people described as innocent bystanders caught in the crossfire were also found

⁵³ E.A. Christodoulidis, “‘Truth and reconciliation’ as risks” in *Social and Legal Studies* 9(2), June 2000, p.180.

⁵⁴ *Ibid.*, p. 201.

⁵⁵ Truth and Reconciliation Commission, Vol. 6, p. 515. For more detail on the TRC’s *Final Report* on abductions, disappearances and missing persons, as well as the list of disappeared and missing persons, see Truth and Reconciliation Commission, Vol. 6, pp. 512-549.

⁵⁶ Truth and Reconciliation Commission, Vol. 1, p. 78.

to be victims of gross violations of human rights, if the other conditions had been fulfilled.⁵⁸

‘Severe ill treatment’ is not a term recognised either in international or in South African law. It seems as if the legislators included this term to give the Commission some options or flexibility in determining the breadth of the mandate and was intended to be interpreted as similar in degree to the other acts already described. South African constitutional law recognises concepts such as grievous bodily harm and ill treatment and together with international law, it recognises cruel, inhuman or degrading treatment or punishment, which is sometimes colloquially referred to as ‘ill treatment’.⁵⁹

Taking into account ill treatment as set out in South African law and including the extreme acts of ‘cruel, inhuman, or degrading treatment’ under international law, the following definition of severe ill treatment was adopted: “Acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim, taking into account the context and nature of the act or omission and the nature of the victim”.⁶⁰ If an act or omission constituted a severe ill treatment, it was thus resolved on a case-by-case basis. It was further determined that in order to qualify as severe ill treatment, an act should meet the general criteria that apply to all gross violations of human rights.⁶¹

The Commission also set out the following criteria to be taken into consideration in determining whether a particular hardship or suffering was severe:

- 1) “duration – the longer the hardship or suffering lasted, the more easily it qualified as severe;

⁵⁷ *Ibid.*, Vol. 6, p. 532.

⁵⁸ *Ibid.*, Vol. 1, p. 79.

⁵⁹ *Ibid.*, pp. 79-80. See also M. Burton, “Making moral judgements” in Villa-Vicencio and Verwoerd (eds), p. 81.

⁶⁰ Truth and Reconciliation Commission, Vol. 1, p. 80.

⁶¹ *Ibid.*

- 2) physical or mental effects – the more serious and permanent the physical or mental effects, the more severe the treatment;
- 3) the age, strength and state of health of the victim – the very young and the very old, the weak and the infirm, required less hardship or suffering to meet the criteria of severe”.⁶²

These criteria were interdependent and the more one criterion was satisfied, the less relevant the others became.

Against the above criteria, the following acts were regarded as constituting severe ill treatment:

- a) “rape and punitive solitary confinement;
- b) sexual assault, abuse or harassment;
- c) physical beating resulting in serious injuries;
- d) people shot and injured during demonstrations;
- e) burnings (including those caused by fire, petrol, chemicals, and hot liquid);
- f) injury by poison, drugs or other chemicals;
- g) mutilation (including amputation of body parts, breaking of bones, pulling out of nails, or teeth or scalping);
- h) detention without charge or trial;
- i) banning or banishment (a punishment inflicted without due process, consisting (a) of the restriction of a person by house arrest, prohibition from being in a group, prohibition from speaking in public or being quoted, or (b) of the enforced transfer of a person from one area to another without the right to leave it);

⁶² *Ibid.*, pp. 80-81.

- j) deliberate withholding of food and water to someone in custody with deliberate disregard to the victim's health or well-being;
- k) deliberate failure to provide medical attention to ill or injured persons in custody;
- l) the destruction of a person's house through arson or other attacks which made it impossible for the person to live there again".⁶³

This list was illustrative and not exhaustive.

It is evident that the Commission interpreted 'killing, abduction, torture and severe ill treatment' broadly rather than narrowly, still keeping within general international practices. The vast number of acts especially included in severe ill treatment could create a detailed picture of the suffering experienced by many people. See Appendix 1 for an outlay of the different violation types as categorised by the HRV Committee.

Furthermore, by implementing their mandate, the Commission had to determine the 'political motive' of the acts of torture, abduction, killing and severe ill treatment which 'emanates from the conflicts of the past' (Section 1(1)(ix), the Act). This was difficult to determine and the Commission was guided by the definition of an 'act associated with a political objective' (Section 20(2) and (3), the Act).⁶⁴ These acts had to comply with Clause 20 of the internationally accepted Norgaard Principles,⁶⁵ which required a degree of proportionality between a given human rights violation and the political objective it is supposed to serve.⁶⁶

⁶³ *Ibid*, p. 81.

⁶⁴ Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 4, 20, 22.

⁶⁵ Professor Carl Aage Norgaard is former President of the European Commission on Human Rights. He developed criteria to help define politically-motivated offences in Namibia, which became known as the Norgaard Principles.

⁶⁶ A. Holiday, "Forgiving and forgetting: The Truth and Reconciliation Commission" in S. Nuttall and C. Coetzee (eds), *Negotiating the past: The making of memory in South Africa*, p. 47; G.N. Barrie, "The Norgaard Principles and the Truth Commission" in *SA Now* 1(3), 1996, pp. 8-10; Truth and Reconciliation Commission, Vol. 1, p. 51.

The framework applied in implementing the *political* requirement, was that a violation of human rights within the prescribed period was found to constitute a gross violation of human rights if it was “advised, planned, directed, commanded, ordered or committed by:

- (a) any member or supporter of a publicly known political organisation or liberation movement on behalf of, or in support of, that organisation or movement, in furtherance of a political struggle waged by that organisation or movement (Section 20(2)(a), the Act). This included also membership of youth and community-based organisations, trade unions, as well as general resistance to the previous state through, for example, rent boycotts;
- (b) any employee of the state (or any former state) or any member of the security forces of the state (or any former state) in the course and scope of his/her duties and directed against a publicly known political organisation or liberation movement engaged in a political struggle against the state (or former state) or against any members or supporters of such organisation or movement or any person in furtherance of a political struggle. The act in question must have been committed with the objective of countering or otherwise resisting the said struggle (Section 20(2)(b), the Act).⁶⁷

Whether these violations ‘emanated from the conflicts of the past’ was decided with reference to the following criteria:

- (a) “the context in which the violation took place, and in particular whether it occurred in the course of or as part of a political uprising, disturbance or event, or in reaction thereto (Section 20(3)(b), the Act), for example, protests, ‘stay-aways’, strikes and demonstrations;
- (b) the objective being pursued, and in particular whether the conduct was primarily directed at a political opponent or state property or

⁶⁷ Truth and Reconciliation Commission, Vol. 1, pp. 82-83. See also Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, pp. 20, 22.

personnel or against private property or individuals (Section 20(3)(d), the Act);

- (c) whether it was the result of deliberate planing on the part of the state (or former state) or any of its organs, or on the part of any political organisation, liberation movement or other group or individual (Section 4(a)(iv), the Act)".⁶⁸

It is important to note that the central elements of the Commission's understanding of the country's history include the following: apartheid was a crime against humanity. The TRC judged the policy of apartheid to be a crime against humanity – as in the UN declaration to that effect – and the Commission's *Final Report* included an appendix specifically addressing this issue.⁶⁹

In the early 1960s the United Nations declared apartheid as a 'crime against humanity'. Through various resolutions, it was stipulated that apartheid was a negation of the UN Charter. On 30 November 1973 the UN adopted the General Assembly Resolution 3068, which declared the International Convention on the Suppression and Punishment of the Crimes of Apartheid. The Convention was enforced on 18 July 1976. Article one stipulated that: "(1) The States Parties to the resent Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of race segregation and discrimination, as defined in Article II of the Convention are crimes violating the principles of the Charter of the United Nations, and constituting a serious threat to international peace and security. (2) The States Parties to the present Convention declare criminal those organisations, institutions and

⁶⁸ Truth and Reconciliation Commission, Vol. 1, p. 83. See also Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", pp. 8, 22.

⁶⁹ J.L. Gibson, *Overcoming apartheid. Can truth reconcile a divided nation?*, p. 72. See also Truth and Reconciliation Commission, Vol. 1, p. 94. For detail on the repression of the apartheid state and particularly the repressive structures and methods which were invented by the previous National Party government, see M. Coleman (ed.), *A crime against humanity. Analysing the repression of the apartheid state*, Part A-D and pp. 245-270.

individuals committing the crime of apartheid”.⁷⁰ In 1976, the United Nations Security Council unanimously stated that “apartheid is a crime against the conscience and dignity of mankind”.⁷¹ During November 1983, the General Assembly reaffirmed that ‘apartheid is a crime against humanity’. This formed the basis for the General Assembly’s Programme of Action against Apartheid.⁷²

The 1991 Draft Code of Crimes against the Peace and Security of Mankind specifically lists apartheid, together with other crimes such as genocide and exceptionally serious war crimes, as crimes against the security and peace of mankind.⁷³

The International Law Commission defines crimes against humanity in Article 18 in its 1996 Draft Code of Crimes against the Peace and Security of Mankind as follows: “A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organisation or group: (a) murder; (b) extermination; (c) torture; (d) enslavement; (e) persecution on political, racial, religious or ethnic grounds; (f) institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; (g) arbitrary deportation or forcible transfer of the population; (h) forced disappearance of persons; (i) rape, enforced prostitution and other forms of sexual abuse; (j) other inhumane acts which severely damage

⁷⁰ United Nations Documentation: Research Guide, “International Convention on the Suppression and Punishment of the Crime of Apartheid (30 Nov. 1973) A/RES/3068 (xxniii)”, <<http://www.un.org/Depts/dhl/resguide/resins.htm>>, *s.a.*; Christie, p. 19.

⁷¹ Truth and Reconciliation Commission, Vol. 1, p. 95.

⁷² K. Asmal *et al.*, *Reconciliation through truth. A Reckoning of Apartheid’s Criminal Governance* (2nd edition), p. 195. See Chapter 16, pp. 176-206 in this book for a detail description of ‘Apartheid and the International Community’. See also United Nations High Commissioner for Human Rights, “Implementation of the programme of action for the second decade to combat racism and racial discrimination and launching of a third decade to combat racism and racial discrimination. RES 1993/11”, <<http://193.194.138.190/huridocda/huridoca.nsf/3d1134784d618e28c1256991004b7950c4dff4de8b7befbcc1256a7e00521d38?OpenDocument>>, *s.a.*

⁷³ Truth and Reconciliation Commission, Vol. 1, p. 96.

physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm".⁷⁴

It was stated categorically, that apartheid was a crime against humanity. However, the liberation movements could not claim that, because of this, they were conducting a just war (*jus in bello*), on account of having a just cause. The Geneva Convention and the principles of the just war are crystal clear that there must be justice in war. In other words, fighting for a just cause must be fought by just means in the conduct of the fight.⁷⁵

Working in accordance with the framework of international law, as well as with international organisations and judicial bodies, the Commission concluded that not all acts in war could be regarded as morally or legally legitimate, even where the cause may have been just. Against this background, the Commission had to consider the concept of crimes against humanity on both a systematic level and on the level of specific acts.⁷⁶

Within the parameters that were embodied in the Act concerning gross violations of human rights, the Commission could now expose those violations that would otherwise, in all reasonableness, have remained concealed from public knowledge.

3.4 ESTABLISHING 'VICTIM STATUS'

⁷⁴ *Ibid.*, pp. 98-99. At the Conference on Human Rights held in Vienna in June 1993 the Vienna Declaration and Programme of Action was adopted according to which "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of the political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms". World Conference on Human Rights, "Vienna Declaration and Programme of Action", <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23En?OpenDocument)>, s.a; D. Omar, "Building a new future" in Boraine and Levy (eds), pp. 3-4.

⁷⁵ Tutu, p. 80; Burton, pp. 82-84. See Truth and Reconciliation Commission, Vol. 6, pp. 593-613 for an explanation and exposition of 'legal accountability' and 'International humanitarian law'.

⁷⁶ Truth and Reconciliation Commission, Vol. 1, p. 69.

The Human Rights Violations Committee had to classify people as victims according to the mandate of the Act. The latter indicates in Section 1(xix) that a victim includes:

(a) “persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights -

(i) as a result of a gross violation of human rights; or

(ii) as a result of an act associated with a political objective for which amnesty has been granted;

(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimisation of such persons; and

(c) such relatives or dependants of victims as may be prescribed”.⁷⁷

There are comparisons between these criteria as set out in the Act and the description in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as adopted by the General Assembly resolution 40/34 of 29 November 1985. According to this resolution, ‘victims of abuse of power’ means “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that

⁷⁷ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, pp. 4, 6.

do not yet constitute violations of criminal laws, but of internationally recognized norms relating to human rights".⁷⁸

Certain people expressed some uneasiness about the use of the term 'victim' as the word implies rather a negative or passive connotation. On the other hand, the word 'survivor' indicates an ability to overcome adversity and has a more positive meaning. Many expressed themselves as soldiers who had voluntarily paid the price of their struggle. However, the person against whom a gross human rights violation is committed by perpetrators may be described only as a victim, regardless of whether the person then emerged as a survivor. The intention and action of the perpetrator created the condition of being a victim, making the survival of the person irrelevant. The decision was consequently made to keep with the terminology of the Act and use the term 'victim'.⁷⁹

The Commission was obliged by law (Section 11, the Act) to deal even-handedly with all victims. When dealing with victims, the actions of the Commission were guided by the following principles:

- (a) "victims shall be treated with compassion and respect for their dignity;
- (b) victims shall be treated equally and without discrimination of any kind, including 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;
- (c) procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible;

⁷⁸ Office of the High Commissioner for Human Rights, "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Adopted by General Assembly resolution 40/34 of 29 November 1985", <http://www.unhcr.ch/html/menu3/b/h_comp49.htm>, *s.a.*

⁷⁹ Truth and Reconciliation Commission, Vol. 1, p. 59; T. de Ridder, "The trauma of testifying. Deponent's difficult healing process" in *Track Two* 6(3&4), December 1997, p. 33.

(d) victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of -

- (i) the role of the Commission and the scope of its activities;
- (ii) the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry;

(e) appropriate measures shall be taken in order to minimise inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;

(f) appropriate measures shall be taken to allow victims to communicate in the language of their choice;

(g) informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims”.⁸⁰

The Commission made a decision to establish a finite, closed list of victims and acknowledge the fact that it had the capacity to corroborate only those statements that were actually received. It was recognised as unrealistic to give the government an open-ended list of victims. Therefore, an inherent justice was applied in dealing only with the statements of those who had made the effort to approach the Commission to make a statement. In the process, the Commission restricted the number of victims eligible for reparations.⁸¹

⁸⁰ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, pp. 12, 14. See also the research report written for the Centre for the Study of Violence and Reconciliation by R. Picker, “Victims’ perspectives about the human rights violations hearings”, <<http://www.csvr.org.za/papers/pappick.htm>>, 2005.

⁸¹ Truth and Reconciliation Commission, Vol. 1, p. 86.

A victim, as set out in the Act, would comprise a person from any walk of life. It could be someone who had been an active participant in organised resistance or someone who had been an agent for the previous Apartheid State or anyone else who could be innocent, even ignorant; a victim could be one who was at the wrong place at the wrong time. It must be understood that the TRC's focus was essentially on the victim. Through establishing what encompasses victims, these people were given a public voice through their testimonies, while using their anecdotes to analyse and describe the greater layout of events. It is evident from the criteria that were laid down that the legislators made proper provision for the process to be victim-sensitive; focusing on restoring victims' dignity.

3.5 FUNCTIONING OF THE COMMITTEE ON HUMAN RIGHTS VIOLATIONS

The Committee on Human Rights Violations (the Committee) was established at the first meeting of the Truth and Reconciliation Commission on 16 December 1995. The initial allocation of commissioners to this Committee with the regional offices where they were located, were as follows: Archbishop Desmond Tutu (Chairperson, Cape Town), Mr Wynand Malan (Vice-Chairperson, Johannesburg),⁸² Ms Yasmin Sooka (Vice-Chairperson, Johannesburg), Dr Alex Boraine (Cape Town), Ms Mary Burton (Cape Town), the Revd Bongani Finca (East London), Mr Richard Lyster, (Durban), Dr Fazel Randera (Johannesburg) and Mr Dumisa Ntsebeza (Cape Town).⁸³ Advocate Denzil Potgieter was initially part of this Committee, but was reassigned and appointed to the Amnesty Committee in July 1997.⁸⁴

The Act made provision for the appointment of additional committee members, taking into consideration regional needs and ensuring as far as possible a comprehensive presentation in terms of skills, gender, culture,

⁸² Mr Wynand Malan was reassigned to and appointed as Amnesty Committee member in November 1997.

⁸³ Truth and Reconciliation Commission, Vol. 1, pp. 44, 277-278; Boraine, p. 85; Tutu, p. 66.

⁸⁴ Truth and Reconciliation Commission, Vol. 1, p. 278.

language, geographical origin and faith. It was emphasised that the membership had to reflect the life experiences of all South Africans.⁸⁵ Moreover, contemplating the prescriptions of the Act that such a member should preferably “possess knowledge of the content and application of human rights or of investigative or fact-finding procedure”,⁸⁶ the following members were also appointed to the Committee:⁸⁷ Dr Russell Ally (Johannesburg), Ms June Crichton (East London), Mr Mdu Dlamini (Durban), Ms Virginia Gcabashe (Durban), Ms Pumla Gobodo-Madikizela (Cape Town), Mr Ilan Lax (Durban)⁸⁸, Mr Hugh Lewin (Johannesburg), Ms Judith ‘Tiny’ Maya (East London)⁸⁹, Adv Ntsikelelo Sandi (East London)⁹⁰, Ms Joyce Seroke (Johannesburg), and in the final months, Ms Mothofela Mosuhli (East London). An executive secretary was also appointed to this Committee.⁹¹

Former president, Nelson Mandela appointed Archbishop Desmond Tutu as the Chairperson of the Commission. However, it was Tutu’s own decision that he would assume leadership of the HRV Committee.⁹²

Although the legislation of the TRC was not framed in religious terms, the presence of Archbishop Tutu as chairperson and his theological views in particular, lent a more religious tone to the activities of the TRC. Even on the first day of hearings, Tutu appealed to the different faith communities to uphold the Commission in “fervent prayer and intercession” and urged all houses of worship to make available their resources to provide counselling and confessions.⁹³

This more religious, ‘heavily spiritual and indeed Christian’ character and emphasis, with reference specifically to the activities of the HRV Committee, has earned both praise and criticism. For some people, the

⁸⁵ *Ibid.*, p. 138.

⁸⁶ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 14; Truth and Reconciliation Commission, Vol. 1, p. 138.

⁸⁷ The contracts of these appointments were due to end in March 1998. However, some ended their work within this Committee on an earlier stage.

⁸⁸ Mr Ilan Lax was reassigned and appointed to the Amnesty Committee in early 1998.

⁸⁹ Ms Judith ‘Tiny’ Maya resigned from the Commission at the end of 1997.

⁹⁰ Adv Ntsikelelo Sandi was reassigned to and appointed as Amnesty Committee member in March 1998.

⁹¹ Truth and Reconciliation Commission, Vol. 1, p. 278; Vol. 5, p. 1; Boraine, p. 106.

⁹² Boraine, p. 85.

Christian atmosphere and discourse of the TRC was distasteful. Critics felt it diminished the value of the Commission's work and excluded and alienated South Africans from other faiths who did not come from a Christian faith perspective. They were also embarrassed by the typically religious ceremonies and the Christian atmosphere which, they felt, alienated South Africans.⁹⁴ On the contrary, the Christian framework within which the Commission operated, was widely accepted by the majority of South Africans. Boraine argued that the Commission was assisted in its work by the religious nature of the wider South African community.⁹⁵

Against the background of this criticism, it should be taken into account that religion has always played an important and dominant role in South African society.⁹⁶ Because of the importance of Christianity in the country, many people, to a certain extent, had experienced the search for truth and truth-telling in their own churches and cathedrals. Even victims, who were encouraged to tell their stories in their own way, routinely used overtly Christian terminology and biblical references to describe what had happened to them and how they had dealt with their losses.⁹⁷ Christian thought has always had an impact on public discourse in South Africa. According to Richard Elphick, "Christian doctrine, language and sentiment are ... interwoven in the social and cultural history of South Africa".⁹⁸

When challenged by journalists, Tutu himself, with his full ecclesiastical dress, use of Christian metaphors and offerings of prayers, justified his

⁹³ Graybill, "South Africa's Truth and Reconciliation Commission: ...", p. 48.

⁹⁴ Graybill, *Truth and Reconciliation in South Africa ...*, pp. 27, 166-167; Boraine, pp. 265-268; Graybill, "South Africa's Truth and Reconciliation Commission: ...", p. 46.

⁹⁵ Boraine, pp. 265-268.

⁹⁶ Boraine indicates in his book that, during the 1991 census, more than 70% of the respondents indicated some relationship with one of the major denominations of the Christian church. He also indicates the 'remarkable growth' of the 'so-called African independent churches'. Boraine, p. 267. Graybill elaborates on these numbers by indicating that 72.6% of South Africans identified themselves as Christians, including 76% of the African population. Graybill, *Truth and Reconciliation in South Africa ...*, pp. 25, 166. See also P. Meiring, "The *baruti* versus the lawyers: The role of religion in the TRC process" in Villa-Vicencio and Verwoerd (eds), p. 125; Maclean, p. 288.

⁹⁷ L.S. Graybill, "Pursuit of truth and reconciliation in South Africa" in *Africa Today* 44(1), January-March 1998, p. 110; L.S. Graybill, *Religion and resistance politics in South Africa*, pp. 1-3.

strong element of spirituality by stating that he could not pretend to be someone else. He is a religious leader and had been chosen by the President to chair the Commission in this capacity.⁹⁹ According to Tutu, “theology helped the people in the TRC to recognise that everyone inhabits a moral universe; that good and evil are real and that they matter. Those are not just things of indifference. This is a moral universe, which means that, despite all the evidence that seems to be to the contrary, there is no way that evil and injustice and oppression and lies have the last word. For those who are Christians, the death and resurrection of Jesus Christ are proof positive that love is stronger than hate, that life is stronger than death, that light is stronger than darkness, that laughter, joy, compassion, gentleness and truth, all these are so much stronger than their ghastly counterparts”.¹⁰⁰ The Commission accepted who Tutu was, and he operated within this framework. This meant that religious and theological perspectives and insights would determine much of what the Commission did and how they did it.

Although some observers considered Tutu to be an inappropriate figure to lead the hearings, Tutu was also viewed as the perfect person to have led South Africa in the process of national healing and reconciliation, given his Christian compassion and moral stature as an activist bishop.¹⁰¹ Jones remarks that Archbishop Tutu is respected among diverse and opposite groups within South Africa. Together with his “gentle spirit, firm convictions, and tireless passion”, his persona served the entire process of the TRC “extremely well”.¹⁰² One reporter noted that “Tutu has wept with the victims and marked every moment of repentance and

⁹⁸ Graybill, *Truth and Reconciliation in South Africa ...*, p. 166.

⁹⁹ Tutu, pp. 72-73; Graybill, *Truth and Reconciliation in South Africa ...*, p. 166.

¹⁰⁰ Tutu, p. 76; Graybill, *Truth and Reconciliation in South Africa ...*, p. 28. See also *The Cape Times*, 22.5.1997, p. 10.

¹⁰¹ Graybill, *Truth and Reconciliation in South Africa ...*, pp. 27-28. See also Boraine, pp. 268-269 on how Alex Boraine compliments Archbishop Tutu - his persona and leadership, as well as work and assistance to the Commission; along with Krog, *Country ...*, p. 152 where Antjie Krog describes that the Commission’s process was impossible and unthinkable without Tutu.

¹⁰² L.G. Jones, “How much truth can we take?” in *Christianity Today* 42(2), 1998, p. 20. See also *Eastern Province Herald*, 2.11.1998, p. 4.

forgiveness with awe. Where a jurist would have been legalistic, he has not hesitated to be theological”.¹⁰³ Taking into account all sides of criticism and praise, it is evident that the presence and assistance of Tutu was rather a critical strength and not a detriment for the Commission and the HRV Committee in their activities.

The duties and functions of the Committee on Human Rights Violations were clearly stipulated in Section 14 of the Act. In addition to the powers, duties and functions conferred on, imposed upon and assigned to in the Act and accordance with the purpose of achieving the objectives of the Commission: ¹⁰⁴

- (1) (a) “the Committee shall-
 - (i) institute the inquiries referred to in Section 4(a),¹⁰⁵
 - (ii) gather the information and receive the evidence referred to in Section 4(b);¹⁰⁶
 - (iii) determine the facts contemplated in Section 4(d);¹⁰⁷

¹⁰³ Graybill, “Pursuit of truth and reconciliation ...”, p. 110.

¹⁰⁴ For more detail on the powers, duties and functions of this committee, see Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, pp. 14, 16.

¹⁰⁵ Section 4 (a) in the Act stipulated the following: the Commission (a) facilitate, and where necessary initiate or coordinate, inquiries into: (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse; (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations; (iii) the identity of all persons, authorities, institutions and organisations involved in such violations; (iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and (v) accountability, political or otherwise, for any such violation. Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 8.

¹⁰⁶ Section 4(b) in the Act stipulated the following: facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims. Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 8.

¹⁰⁷ Section 4(d) in the Act stipulated the following: determine what articles have been destroyed by any person in order to conceal violations of human rights or acts

(iv) take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and the date of commencement of this Act or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period;

(v) record allegations and complaints of gross violations of human rights;

(b) the Committee may-

(i) collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;

(ii) make recommendations to the Commission with regard to the matters referred to in Section 4(f), (g) or (h);¹⁰⁸

(iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit;

(iv) submit to the Commission interim reports indicating the progress made by the Committee with its activities or with regard to any other particular matter;

associated with a political objective. Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 8.

¹⁰⁸ Section 4(f), (g) and (h) in the Act stipulated the following: (f) make recommendations to the President with regard to: (i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims; (ii) measures which should be taken to grant urgent interim reparation to victims; (g) make recommendations to the Minister with regard to the development of a limited witness protection programme for the purpose of the Act; (h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights. Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 8.

(v) exercise the powers referred to in Chapter 6 and 7.

(2) The Committee shall at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying of its duties in terms of this Act.”¹⁰⁹

The Committee exercised the powers of investigation granted to the Commission as set out in the Act, which entailed the establishment of an Investigating Unit. This Unit, especially with the pre-findings and findings process, supported the work of this Committee at length. The Investigating Unit gave assistance to investigations to determine the validity of the allegations made by the victims and the verification and corroboration of statements provided by victims who were to testify at hearings. It also had to gather evidence and prepare questions for the different types of hearings. Apart from these functions, the Investigation Unit also supported the work of the Amnesty Committee, and performed proactive investigations into a range of strategic areas relating to the mandate of the Commission, which focused on a variety of themes, patterns and trends relating to human rights violations that had occurred during the specified period. In order to assist these strategic investigations, a specialised ‘analysis function’ was set up within this Unit. In addition to this, the Investigation Unit convened and undertook the necessary preparatory work for enquiries held in terms of Section 29 of the Act. The purpose of this was to question persons who may have had information relevant to the investigations of the Commission.¹¹⁰

¹⁰⁹ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, pp. 14, 16.

¹¹⁰ Truth and Reconciliation Commission, Vol. 1, pp. 150-151. For more detail on this Unit see Truth and Reconciliation Commission, Vol. 1, pp. 326-343. See also Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 28; G. Newham, “Truth and reconciliation: Realising the ideals”, <<http://www.csvr.org.za/papers/papnwhm1.htm>>, 1995.

This Unit had, in effect, to provide the Commission with the “teeth”,¹¹¹ as described by Newham, that it needed to gain information about the atrocities of the past. Thus, this unit played a major role in the overall process of establishing truth and providing an overall picture of human rights violations, through the TRC process.

Likewise, the Research Department contributed by establishing the political context of the violations alleged by victims; providing an analytical capacity to enquire into the systematic patterns of abuse and the perspectives and motives that led to gross human rights violations.¹¹²

The Act outlined certain statutory obligations for the HRV Committee and in addition, gave it the scope to develop its own unique operational procedures. On 8 January 1996, the Committee held its first meeting at the Johannesburg International Airport [it was renamed in 2006 as the OR Tambo International Airport]. During this meeting, a work plan for the Committee was tabled and discussed and it was agreed that the Committee would need to function in a decentralised manner. The reasons for this decision were largely to allow the Commission to traverse the vast distances in South Africa and to neutralise logistical difficulties that could arise from holding hearings throughout the country. In this way, many more hearings could be held than would otherwise have been possible. Moreover, for the Commissioners, it was necessary to go where the people were, rather than to sit in a central venue and expect witnesses to come to them. The Commission agreed that it would maintain regional offices in four centres: namely Cape Town, Johannesburg, Durban and East London, with the headquarters of the HRV Committee in Johannesburg.¹¹³

¹¹¹ G. Newham, “Investigation units: The teeth of the Truth and Reconciliation Commission”, <<http://www.csvr.org.za/papers/papnwhm2.htm>>, 1995.

¹¹² Truth and Reconciliation Commission, Vol. 1, pp. 278-279. For more detail on the Research Department, their functions and how they operated, see Truth and Reconciliation Commission, Vol. 1, pp. 152, 374-381.

¹¹³ Boraine, p. 105; Truth and Reconciliation Commission, Vol. 1, p. 45.

It is noteworthy that the Commissioners decided to function in a decentralised manner to reach out and go to where the ordinary people were able to hear their stories. It cannot be denied that this arrangement placed an enormous burden on the commissioners who had to travel constantly and work in different places, under the public scrutiny of the media and the general public the whole time. Despite these inconveniences, the arrangement nevertheless resulted in a perception of the openness and availability of the Commission to all people; highlighting its transparency and accessibility.

The Cape Town regional office was located in the same building as the Commission's national office, and served the Commission's activities in the Western Cape and Northern Cape provinces. The Western Cape Province was divided into six distinct subregions: the Cape Metropolitan Area; the West Coast; the Boland and Breede River area, including the Cape Winelands; the Southern Cape, including the Little Karoo; the Overberg and the Central Karoo. The Northern Cape included Kimberley's commercial area, Upington and the greater Namaqualand region. Although this office did extensive work, many rural communities (particularly farm workers) were disappointed with the Commission's mandate, which did not extend, except in exceptional circumstances, to human rights violations relating to land and labour. This office also experienced difficulties in documenting repression on the Cape Flats as a number of activists wanted formal court proceedings and were reluctant to come forward to share their experiences.¹¹⁴ Concerning the dissatisfaction of the farm workers, it should be noted that, as already indicated, the TRC had a limited mandate which did not include all the abusive practices of apartheid. It was explained to these people through the Truth Commission that there was a constitutionally established Land Commission that was addressing these very issues, in its report.

¹¹⁴ Truth and Reconciliation Commission, Vol. 1, pp. 392-393. For more detail on the Cape Town regional office report, see Truth and Reconciliation Commission, Vol. 1, pp. 392-410.

The regional office in Durban operated across two provinces including KwaZulu-Natal and the Free State. Each province had widely different political and social dynamics. The greater part of the work was concentrated in KwaZulu-Natal as this province has almost three times the population of the Free State. In KwaZulu-Natal, the then ruling Inkatha Freedom Party (IFP), treated the Commission from the beginning with mistrust and scepticism and discouraged its members from taking part in the process. It is self-evident that this inevitably led to a skewed representation at the hearings.¹¹⁵

The East London regional office served an area stretching from the KwaZulu-Natal border to the Tsitsikamma forest on the border of the Western Cape Province. It incorporated the eastern part of the old Cape Province, the former 'independent homelands' of Transkei and Ciskei, and the so-called 'border corridor', a strip of land between the two homelands which previously formed part of white South Africa. This regional office was located at a central point in the region. There was some discontent from people in this region with the negotiated process of which the Commission was a product. Some families of the victims of human rights violations were suspicious of the Commission's work and at the time of the launch of the Commission, the Azanian Peoples' Organisation (AZAPO) and members of some of the victims' families publicly voiced their objections.¹¹⁶

The regional office in Johannesburg served four provinces including Gauteng, Mpumalanga, the North West Province and the Northern Province, with the office located in the heart of downtown Johannesburg. Although this area included some of South Africa's biggest and most industrialised urban areas, most of the territory is rural, with remote villages. The biggest challenge for this office was to deal with the large

¹¹⁵ Truth and Reconciliation Commission, Vol. 1, p. 411. For more detail on the Durban regional office report, see Truth and Reconciliation Commission, Vol. 1, pp. 411-422.

¹¹⁶ Truth and Reconciliation Commission, Vol. 1, pp. 423-424. For more detail on the East London regional office report, see Truth and Reconciliation Commission, Vol. 1, pp. 423-434.

population and the wide scope of human rights violations that had occurred in the region they covered. To deal with this challenge, three multi-functional teams were established to cover (a) the North West Province and the West Rand in Gauteng; (b) Mpumalanga province, Johannesburg, Soweto, Alexandra and the East Rand in Gauteng, and (c) the Northern Province and Pretoria in Gauteng. Apart from this process, due to the shortage of resources, this office acknowledged that it was not able to cover the full area comprehensively.¹¹⁷

Apparently, the different regional offices with their appointed commissioners and personnel, went to great lengths to face the challenges of each specific area they had to cover. It seems as if a variety of procedures were implemented to reach as many people as possible by covering the area as extensively as possible. It is self-evident that limited human and logistic capacity would heighten the problem of dealing with the wide scope of human rights violations that took place in each region. The TRC and its different regional offices did make use of the help and co-operation of civil society organisations, as well as the media, to draw attention to the workings of especially the HRV Committee and the fact that ordinary people had a chance to share their stories. One must take into account that certain people, for a variety of reasons (as explained later in this chapter), could not reach the specific regional office. However, the fact remains that the prerogative still rested with each individual to go to the specific office and/or statement takers to convey their narrative of the atrocities that occurred in the period 1960-1994.

The HRV Committee met on a regular basis, once a month, where a monthly report with recommendations was submitted to the Truth Commission for discussion and adoption. The Human Rights Violations Committee Findings Task Group, which included the vice-chairpersons, the executive secretary and one representative from each region (either a commissioner or a committee member), met prior to each national

¹¹⁷ Truth and Reconciliation Commission, Vol. 1, p. 435. For more detail on the Johannesburg regional office report, see Truth and Reconciliation Commission, Vol.

meeting to make policy recommendations in respect of the findings report process and to give an account of regional pre-findings. A primary focus of the committee meetings was to provide an operational policy framework for work in progress, anticipated work, processes and procedures. This resulted in policy formulation that was a dynamic context-driven process, which attempted to be sensitive to regional dynamics within a national operating framework.¹¹⁸

An enormous amount of important information and evidence was gathered at the five different hearings that were held by the Human Rights Violations Committee. Apart from the victim hearings, the Committee also held other public hearings in which the Commission could explore the motives and perspectives of the different role players. Moreover, the variety of public hearings enabled the Commission to gain a deeper understanding of the context within which violations of the past occurred. Sections 29 to 32 of the Act empowered the Commission to require persons to appear before the Commission for the purpose of gathering and establishing facts.¹¹⁹

The first public proceedings of the Commission were the victim hearings, where some of the victims who made statements were given an opportunity to testify in public. Tutu explains the reason for this decision as “to underline the fact that those who for so long had been consigned to the edges of society as voiceless and anonymous could now emerge from the shadows and occupy, for a while during the lifetime of the Commission, centre stage”.¹²⁰ Normally, these hearings lasted three to five days and involved the testimonies of twenty to sixty victims. Single-day hearings were also held in certain remote communities.¹²¹

1, pp. 435-447.

¹¹⁸ Truth and Reconciliation Commission, Vol. 1, pp. 278-279.

¹¹⁹ *Ibid.*, Vol. 5, p. 8. See also Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, pp. 28, 30, 32, 34.

¹²⁰ Tutu, p. 87.

¹²¹ Truth and Reconciliation Commission, Vol. 1, p. 280. See Truth and Reconciliation Commission, “Committee on Human Rights Violations”, <<http://www.doj.gov.za>

With the event hearings, the HRV Committee focused on specific events in which gross violations of human rights occurred. Specific events that were covered by the event hearings included: (a) the 1976 Soweto student uprising; (b) the 1986 Alexandra six-day war that followed attacks on councillors; (c) the KwaNdebele/Moutse homeland incorporation conflict; (d) the killing of farmers in the former Transvaal; (e) the 1985 Trojan Horse ambush by the security forces in Athlone in the Western Cape on 15 October 1985; (f) the 1986 killing of the 'Gugulethu Seven', following the security force infiltration of the African National Congress (ANC) structures in the Western Cape; (g) the 1990 Seven-Days War, resulting from IFP-ANC clashes in KwaShange/Imbali in the Pietermaritzburg area; (h) the Caprivi Trainees, who were trained by the South African Defence Force (SADF) and deployed in KwaZulu-Natal as a covert paramilitary force in 1986; (i) the 1960 Pondoland Rebellion, in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands; and (j) the 1992 Bisho Massacre, in response to an ANC national campaign for free political activity in the homelands.¹²²

Because of the fact that these hearings investigated the context in which a specific event occurred, victims gave testimonies, as well as alleged perpetrators and experts with specialised knowledge about the event or issues related to it. The aim of these 'window cases' was to provide detailed insights into particular events that could be representative of broader patterns of abuse, motives and perspectives. Under Section 29 of the Act, the TRC was mandated to subpoena individuals to appear before the Commission if additional information on events or the involvement of certain people during these events, was required. Section 29 hearings became a weekly occurrence in the four regional offices of the TRC. Thus, a more global perspective of human rights abuses could be provided by

[/trc/hrvtransindex.htm#VICTIM%20HEARINGS>](#), *s.a* for transcripts of the victim hearings that were held.

¹²² Truth and Reconciliation Commission, Vol. 1, pp. 147-148.

these event hearings, where affected communities received the opportunity to voice their collective experiences of abuse.¹²³

An attempt was made to acquire the experiences of vulnerable persons who had suffered gross violations of human rights. Children and youth, women and compulsory national military service were identified and special hearings were held to distinguish patterns of abuse experienced by these individuals and groups.¹²⁴

The HRV Committee used the institutional hearings to gain evidence from various social professions, institutions and organisations about their role in committing, facilitating, contributing or resisting the human rights abuses of the past. These institutional hearings examined the health care sector; the legal system; the media; the role of business; the prison system; faith communities; the state security system; the role of the armed forces and the involvement of the former state in chemical and biological warfare.¹²⁵

The political party hearings contemplated as carefully as possible, the question of accountability for gross violations of human rights. Political parties were provided with an opportunity to offer their perspectives on the nature and causes of the conflicts of the past, combined with an account of their involvement in and/or responsibility for human rights abuses. These hearings were conducted in two phases. Firstly, the political parties were allowed to make their submissions, with the Commission asking questions to clarify certain aspects thereof. During the second phase, based on the detailed investigation of their

¹²³ *Ibid.*, Vol. 1, p. 147; P. Meiring, "Unshackling the ghosts of the past. Reflecting on the truth and reconciliation process in South Africa" in *Missionalia* 30(1), April 2002, p. 61.

¹²⁴ Truth and Reconciliation Commission, Vol. 1, p. 148. See also Graybill, *Truth and Reconciliation in South Africa ...*, chapter 7 pp. 97-109, which focus specifically on women.

¹²⁵ Truth and Reconciliation Commission, Vol. 1, pp. 148-149, 281-282. For more detail on the institutional hearings, see also Boraine, pp. 171-187; Graybill, *Truth and Reconciliation in South Africa ...*, pp. 113-144; Tutu, pp. 171-183.

submissions, the Commission put substantive questions to the various parties.¹²⁶

Through these different hearings, open to the public and media, thousands of statements from victims from all parts of South Africa would be collected. People's voices needed to be heard. Recording the full accounts of what happened in the prescribed period under investigation resulted in respect for the testimony to the humanity of these victims who suffered. The stage was set for the stories to be told of what happened to our anguished society, for acknowledging it and recording it for generations to come. Many were invited to speak and South Africans were challenged to listen.

3.6 METHODOLOGY IN PROCESSING AND ASSESSING INFORMATION GATHERED BY THE HRV COMMITTEE

An important task for any truth commission is to collect and analyse data sources on which to base their findings. The methodologies used may play an important part in shaping the nature of the data available to a commission, the conclusions that can be drawn, as well as the credibility and validity thereof. Hayner emphasises that the information management system used by truth commissions to collect, organise and evaluate the vast amount of information available to it, is the factor that will most fundamentally affect the kind of truth that a commission will document.¹²⁷

An information management system, or 'Infocomm', was established by the Commission to ensure that all information gathered from victims was captured, processed and corroborated according to a uniform

¹²⁶ Truth and Reconciliation Commission, Vol. 1, p. 149. For more detail on the political parties and their submissions, see Boraine, pp. 145-171; Krog, *Country ...*, pp. 101-108. See also Truth and Reconciliation Commission, "Committee on Human Rights Violations", <<http://www.doj.gov.za/trc/hrvtrans/index.htm#SUBMISSIONS>>, *s.a* to view the submissions of the major political parties to the Commission.

¹²⁷ Hayner, *Unspeakable truths ...*, p. 80; Chapman and Ball, pp. 1-43.

methodology.¹²⁸ This would ensure that the findings of the HRV Committee would be as precise and justifiable as possible; maximising validity, reliability and precision. The purpose for the careful management of information was situated in two reasons: the Act required that findings be 'based on factual and objective information' (Section 4(e)). To be factual, the information had to be collected and stored without causing oversimplified distortions. To ensure that the information was objective, it had to be coded in standard forms and according to consistent and clear definitions. Secondly, the Act mandated in terms of Section 11(a) that victims should be treated with respect and statements with integrity while keeping them intact according to the limits of the available technology. Integrity, in this sense, meant that victims' narratives should not be fragmented nor portions discarded, through decisions of the Commission or inadequate representation.¹²⁹

The primary method by which the Commission would establish the identity of victims was by inviting them to make statements. The statement form which was used to record the victims stories was a called a 'protocol'. This protocol was developed to ensure that as much relevant information as possible could be gathered from these statements. With this protocol, an attempt was made to structure and systematise the evidence given by each victim, as well as to promote consistency and uniformity in the way statements were taken from victims. As the Commission's work evolved, it became clear that the initial protocol was inadequate. In advance of statement taking, new requirements were

¹²⁸ The Commission drew from a variety of prior human rights data projects in order to design its own database. At that time, the only two truth commissions to have undertaken quantitative analysis of human rights violation data on the scale proposed by the South African Commission, were the Haitian National Commission for Truth and Justice and the United Nations Commission for Truth in El Salvador. Their experiences were taken into account, while consultants from the Investigative Task Unit and non-governmental organisations (NGOs), who had participated in the Human Rights Documentation Project, also made suggestions. The Science and Human Rights Program of the American Association of Advancement of Science (AAAS), a non-governmental organisation in Washington, D.C., also helped design a system for South Africa. In addition, Sweden provided R1.4 million to set up the Commission's sophisticated computer data-base. See Hayner, *Unspeakable truths ...*, p. 229; *The Citizen*, 20.2.1997, p. 4.

¹²⁹ Truth and Reconciliation Commission, Vol. 1, p. 160.

identified, leading to a process of developing and adjusting the protocol. This led to a final, fifth¹³⁰ version of the protocol, on which the majority of victim statements were captured.¹³¹

Chapman and Ball criticise and question the quantity and quality of information that was derived from the victims. They base their criticism on the fact that the original interview protocol model was changed several times in an effort to increase the rate at which statements were taken. This led to more dominant closed-ended questions and reduced the space available for interviewers to record narrative and qualitative information. The format change led to a decline in the space and number of words written for each interview. According to them, it could lead to an increase in the rate of missing data, resulting in a lower quality of data.¹³² Wilson underlines this situation by quoting statement taker Thabiso Mohasoa, who complained “we were told to keep it as brief as possible and only focus on the major points ... we had to get to the facts, but people wanted to tell their story in broad terms”.¹³³

It seems as if the last approved statement form or protocol was a more structured questionnaire. It appears as if these changes were necessary as the process evolved to make the statement taking process and data processing more streamlined and to be able to deal effectively with the number of statements in a limited time period. Although the changes and differences in the protocol versions obviously would have a significant effect on the statement taking process as a whole. There was a definite change from the first to the last version in the way in which the victim's story was captured. It must be remembered that the victim came to tell his/her specific story and not simply to answer a questionnaire form with limited space wherein to write the narrative.

¹³⁰ According to Lars Buur the protocol officially went through eight versions before it found its final form in mid-1997. See L. Buur, “Monumental historical memory. Managing truth in everyday work of the South African Truth and Reconciliation Commission” in Posel and Simpson (eds), pp. 78-79.

¹³¹ Truth and Reconciliation Commission, Vol. 1, pp. 138-139; Wilson, p. 44.

¹³² Chapman and Ball, pp. 26-27.

¹³³ Wilson, p. 44. See also Wilson, pp. 44-46 for more detail on how the protocol changed with time.

The information management system prescribed that each statement be processed according to certain specified and consecutive steps, resulting in what was described as the Commission's 'informational flow'.¹³⁴ This process fulfilled three requirements of the Act, in terms of which the Commission was obliged to:

- (a) "identify those violations that constituted a 'systematic pattern of abuse' (Section 4(a)(i), the Act). To achieve this, the Commission used qualitative analyses to show statistical regularity;
- (b) describe the 'nature ... and extent' of gross human rights violations (Section 4(a)(ii), the Act). The 'nature' of violations meant the types of violations that were committed and in what ways, whereas the 'extent' of violations meant how many violations were committed;
- (c) produce a report on its 'activities and findings' (Section 4(e), the Act)".¹³⁵

This 'information flow' to collect information, process it into standard internal formats, capturing it in a computerised database and analysing it using qualitative and quantitative techniques, included seven major steps: statement taking, registration, data processing, data capture, corroboration, regional 'pre-findings' and national findings. Each step contained the following procedures and methods:

To capture the information as accurately as possible from the victims, the Commission appointed specially trained statement takers. Volunteers (called designated statement takers) were also employed from non-governmental organisations (NGOs), community-based organisations (CBOs), as well as from religious and civic organisations.¹³⁶

¹³⁴ Truth and Reconciliation Commission, Vol. 1, p. 140.

¹³⁵ *Ibid.*, pp. 158-159. See also Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 8.

¹³⁶ Initially there were forty statement takers in the four regional offices. A donation from the Netherlands government made the 'designated statement takers programme' possible in 1997. It added an extra 100 statement takers to the office's jurisdiction and another 300 for the whole country. Wilson, pp. 42-43.

These statement takers had to speak the major languages of the specific region in which they operated, to allow victims to convey their oral testimony in their mother tongue. Training was also provided to the statement takers to identify signs of emotional distress from statement makers, to offer preliminary assistance to those who found the process of making statements difficult or traumatic, and to refer victims in need of professional assistance to appropriate mental health care facilities. In this sense, the statement takers had to record accurately the stories told by the victims in their chosen language, distil the essential facts and record them in English, as this was the language the Commission decided to use for practical reasons. It also ensured that the information in English could be uniformly captured onto the database. The goal of the TRC was to ensure that the victims had a positive experience of the Commission when giving their testimony. Thus, the statement takers needed to be accurate and detailed and at the same time, bring to the interview qualities of respect and empathy when addressing victims.¹³⁷

Accordingly, these statement takers also had to act with empathy, serving a therapeutic purpose where victims had the opportunity to voice their suffering to people who listened sympathetically and acknowledged it. For the majority of the witnesses, the interviews with the statement takers represented their first, and often their only, face-to-face encounter with the Commission. Interviews generally took several hours, causing the deponent and the statement taker to relive the anguishing experiences. This put a heavy burden of responsibility on the statement takers.¹³⁸

The role of the statement takers must be emphasised. These people had a major responsibility as they were in the front rank of those who gathered the memories of the pain and violations suffered in the past. They had to hear and encounter hours of pain and suffering as the stories unfolded

¹³⁷ Truth and Reconciliation Commission, Vol. 1, pp. 138-140; Vol. 5, p. 5; M. Burton, "Looking back, moving forward – revisiting conflicts, striving towards peace", <<http://www.incore.ulst.ac.uk/research/projects/thepast/burton.html>>, 2004.

¹³⁸ Truth and Reconciliation Commission, Vol. 1, pp. 138-140; Vol. 5, p. 5.

from the victims. The statement takers had to be tactful and patient, showing feelings of empathy towards the victim.

Through the work of these statement takers the Commission could accomplish its aim of reaching the widest possible number of people across the country, making itself accessible to the people, allowing them to communicate in their mother tongue and protecting their privacy and memories. It is important to note that the victims could convey the narrative in their mother tongue, but the statement taker had to record it in English. In other words, the statement takers had to be skilled in both the written and spoken language, as well as the ability to carry out an ongoing translation process. In addition, they had to have listening skills to actually hear all the stories and note them down correctly, in suitable English. Furthermore, they had to have social skills in their interaction with the victim, having to communicate with a variety of people from different age groups and social classes. As indicated previously, these people had an intensely important and responsible role to perform in gaining quantitative and qualitative information for the TRC.

Statements were taken in the following three ways:

- (a) at the Commission's regional offices from victims who travelled to the specific office;
- (b) statements were gathered in communities. It was done in one of the following ways: where statement takers attended hearings by the Commission in various communities throughout South Africa; or by generating awareness about the Commission's work by holding public meetings in various communities or by implementing a communications strategy in specific areas from where statement takers made themselves available;
- (c) statements were collected through the designated statement taker programme. This project increased the number of statements solicited by the Commission by almost 50 percent. It could focus

especially on victims in rural communities and/or those communities who had experienced high incidences of human rights violations.¹³⁹

Thereafter, these statements were registered at the different regional offices on the Commission's database. Photocopies were made and the originals stored in strong rooms.¹⁴⁰

After this registration, the data processing started. A team of data processors was employed in each regional office. They read and analysed the statements that enabled them to identify each distinct violation of human rights mentioned therein. Each violation suffered by the victims was then categorised into one of the four violation types defined in the Act. Each violation was captured on the database as a separate act. A brief narrative summary of each statement was then made to provide a quick overview of the important facts for those working on corroboration and findings. The data processors identified the nature of each violation, the date and place, the political context in which it occurred, the consequences for the victim, the organisational affiliations of the victims and of the alleged perpetrators. An assessment of the categories of victims who had experienced the largest number of violations over certain periods of time, as well as an analysis of the number and kinds of violations suffered by each victim over a period could be gathered. With this outline, the basis for an effective and sophisticated analysis of the data was collected. After the data were analysed and processed, they were entered into the database that was shared among the four regional offices.¹⁴¹

Following this process, it was the task of a team of investigators to corroborate the basic facts of each matter according to a standard list of pointers. Confronted with the task of corroborating over 50 000 individual cases, this was an extremely time-consuming, enormous and

¹³⁹ *Ibid.*, Vol. 1, pp. 140-141; Boraine, p. 108.

¹⁴⁰ Boraine, p. 109.

¹⁴¹ Truth and Reconciliation Commission, Vol. 1, pp. 141-142. See also Wilson, pp. 46-48 for more detail on the data processing methods.

difficult task. Apart from the fact that a large number of statements were involved, each statement on average referred to between two and three victims. Regional researchers, through literature searches and field trips, conducted valuable background material and information on the political context in which gross violations of human rights had occurred. Documentary evidence such as court records, inquest records, police occurrence books, prison registers, hospital and other medical records were also consulted and scrutinised. Apart from providing the commissioners with valuable information to be able to make certain findings, the research process also established whether the allegations in the statements were, on a balance of probability, true. This specific step in the 'informational flow' of the Commission proved to be one of the greatest challenges faced by them. Many times a victim told a story without any supporting documentation or evidence on which a defensible finding could be made. The Commission itself then took the effort and responsibility to try to locate relevant documentation or evidence, in order to corroborate each statement.¹⁴²

Some examples of the types of incidents requiring corroboration that were faced by the Commission included: incidents that had occurred more than 1 000 km away from the closest office; incidents that had occurred more than twenty, and in some cases thirty, years ago; incidents that had occurred at a police station at which either no records of the event existed or all records had been destroyed; incidents in which all victims had been killed or were dead, and the whereabouts of the only eye-witness was unknown; incidents that had occurred in a neighbouring state or in Europe.¹⁴³

It is understandable that it is impossible for a truth commission to investigate all possible cases or events. It is a time-consuming effort to gain access to all available documents, sifting through the facts to unveil duplicity and distortions. The TRC was in a 'Catch-22' situation. The aim

¹⁴² Truth and Reconciliation Commission, Vol. 1, pp. 142-143; Boraine, p. 109. See also *Die Burger*, 26.6.1998, p. 9.

was to gather as many statements as possible from all deponents and also to gain detailed narrative truth about the events. Due to time and human resources constraints, these two worthy goals conflicted with each other.

The Human Rights Violations Committee was presented, on a regular basis, with the information taken from the statements, the corroborative material collected by the investigators and the background material provided by the researchers. These regional 'pre-findings' were made on a 'balance of probabilities'. It involved either rejecting statements as untrue (negative finding), or outside the mandate of the Act ('out of the mandate' finding), or sending them back for further corroboration, or finding them true. A negative finding could fall into one of these broad categories: there appeared to be no political motive; the violation was not sufficiently severe to qualify as a 'gross violation'; there was insufficient evidence to allow a finding to be made; or the person injured or killed was a combatant on active duty. In the case of a negative finding, the deponents were informed, and if they had additional information that could lead to a review, they had to submit it within a period of three weeks. This process introduced a new area of work in the last months of the Commission and led to the establishment of the Review Committee to deal with these appeals.¹⁴⁴ If the statement was found true and it included the names of the perpetrators, letters were sent to them, informing them that they had been adversely indicated in a statement and of their right to respond to the allegations.¹⁴⁵

It is important to note that the Commission was not a court of law and findings were made on this 'balance of probabilities'. This meant that the standard proof required was lower, as in criminal matters where guilt must be proved beyond reasonable doubt. Therefore, the findings that were made on the basis of probabilities should not be interpreted as judicial findings.

¹⁴³ Truth and Reconciliation Commission, Vol. 1, p. 143.

These 'pre-findings' on a regional level were approved at a national level and recorded on the database. The National Findings Task Group facilitated the process of making national findings. Policy issues were discussed at their regular meetings to ensure that the policy on findings was applied in a consistent way in each region. Two commissioners were also appointed to review a sample of each region's findings.¹⁴⁶

The Commission sent out letters to each statement maker, acknowledging their statement and thereafter, notification of the finding made. Each person also received a reference number to be used in the case of any enquiries. The Act required that the HRV Committee should establish the 'victim status' of a deponent¹⁴⁷ before the person could be considered eligible for reparation. This was an important aspect and depending on the findings of the HRV Committee, reparation could be accessed through the Reparation and Rehabilitation Committee. If the person was identified as a 'victim of a gross violation of human rights', the person was informed on how to apply for reparation.¹⁴⁸

The focus of this study is not on the Reparation and Rehabilitation Committee (RRC) of the TRC and the controversy that has surrounded the recommendations and the implementation thereof, from this Committee. Therefore, a detailed discussion will not be given. However, to place the reader in the correct context of the reparations for victims, it is sufficient to mention the following. The Act charged the TRC with making recommendations with respect to granting reparations to victims. Victims, who failed to provide a written submission to the commission, were not eligible for reparations. Victim witnesses at the HRV Committee hearings were asked by the commissioners to describe specifically what compensation they sought and how their experiences

¹⁴⁴ Truth and Reconciliation Commission, Vol. 5, pp. 13-14; *Sowetan*, 31.7.1998, p. 13.

¹⁴⁵ Truth and Reconciliation Commission, Vol. 5, p. 14; *Sowetan*, 31.7.1998, p. 13.

¹⁴⁶ Truth and Reconciliation Commission, Vol. 1, p. 144.

¹⁴⁷ The term 'deponent' is used by the Commission to describe those who made a statement to the Human Rights Violations Committee. They may or may not be victims of a gross violation of human rights themselves.

had affected their health and their families. Critics have complained that the compensation issue has in fact led to a 'revictimisation' of the witnesses, who have 'to earn' reparations by proving their 'victimhood'.¹⁴⁹ The TRC completed its policy and, as opposed to implementing a reparation scheme itself, it rested with the government to implement (or not) these recommendations.

Nevertheless, the whole area of compensation/reparation in relation to the TRC became fairly controversial. This was because of the government's initial failure to make progress with the individual reparations grants which contributed to the perception on the part of many victims, that they were being short-changed. Apart from this, the compensation that was offered to victims by the government was viewed as considerably less than if they had brought a civil action against the responsible perpetrator.¹⁵⁰

Clearly, there was no way to provide adequate financial compensation for people who had suffered such losses and even now it remains a very sensitive issue. How does one really compensate human rights violations and differentiate between the different forms thereof that would result in a fair token? Van Zyl has pointed out: "This prioritization of a specific category of victims over a moral general group of disadvantaged citizens is more difficult to defend when the policies of the prior regime resulted in both poverty and human rights abuse".¹⁵¹ Nevertheless, it was a part of the Reparation and Rehabilitation Committee's mandate to make recommendations according to the stipulations of the Act, and it is understandable that the victims (and commissioners) were not too pleased with the prolonged actions of the government with regard to reparations.

¹⁴⁸ Truth and Reconciliation Commission, Vol. 7, p. 2; Vol. 5, p. 9; *Sowetan*, 20.5.1998, p. 11.

¹⁴⁹ Graybill, "Pursuit of truth and reconciliation...", pp. 121-122.

¹⁵⁰ G. Simpson. and P. Van Zyl "South Africa's Truth and Reconciliation Commission", <<http://www.csvr.org.za/papers/papgpspv.htm>>, 1995; D. Shea, *The South African truth commission. The politics of reconciliation*, pp. 33, 34.

¹⁵¹ Shea, p. 36.

The issue of reparation to victims led to much controversy and unpleasantness. There was a concern that the ANC government would not be granting individual reparations at all. Finance Minister Trevor Manuel suggested in 2000 that “reparations are not necessary because the government is making efforts to uplift the poor through its policies”, thus talking-down the thought of individual reparations.¹⁵² However, in June 2003, after a five-year delay, President Thabo Mbeki announced the government’s official position on reparations. Although many victims had already received Urgent Interim Reparation (UIR) of R2 500 – R7 500, paid out by the TRC through the President’s Fund, a fund operated through the Department of Justice for the purpose of paying out reparations, Mbeki announced that the government would give a once-off payment of R30 000. This would be given to each person or family, designated a ‘victim of gross human right violations’ during the time-period 1960-1994 by the TRC. This was in stark contrast to the TRC’s initial recommendation of between R17 029 and R23 023 per annum for six years for the victims. The government also accepted the TRC’s recommendations for the rehabilitation of communities.¹⁵³ With this announcement, the issue of reparation was dealt with by the government, but for many critics, the apartheid era reparations were far from resolved.

After establishing victim status to be eligible for reparations, the HRV Committee now selected a number of witnesses for public hearing. The following criteria were used: the hearing had to reflect accounts from all sides of the political conflicts of the past, covering the entire thirty-four-year mandate period; women as well as men had to be heard, while also considering the experiences of the youth; and finally, there had to be an attempt to provide an overall picture of the experience of the region so that all people could identify in some way with what was demonstrated.

¹⁵² S. Wilson, “The myth of restorative justice: Truth, reconciliation and the ethics of amnesty” in *South African Journal on Human Rights* 17(4), 2001, p. 557.

¹⁵³ F. du Toit, “Reparations ten years on” in *SA Reconciliation Barometer* 4(1), March 2006, p. 4; W. Buford and H. van der Merwe, “Reparations in Southern Africa”, <<http://www.csvr.org.za/papers/papwbhv.htm>>, 2004.

Apart from these criteria, deponents making statements were asked whether they would be willing, on invitation, to testify in public. People definitely did want to tell their stories. The majority of them were willing but many were disappointed and even angry, when they were not selected. These people had to be reassured that their statement would be taken as seriously as those who were chosen to testify in public. Some feared possible repercussions, but this appeared to have been largely unfounded. Where there were any risks of intimidation or retaliatory attacks, the Commission's Witness Protection Programme was available.¹⁵⁴

It is apparent that not everyone who wished to tell his/her story was able to convey it at the TRC hearings. Only so-called 'window cases', which were representative, demonstrative and significant, were chosen from among the statements that would best reflect the turbulent history of the past. This could not have been an easy process of decision-making. How does one choose and measure the intense intimacy of torture and pain? Questions were raised concerning the criteria that were used in making selections by the Commission and how representative, demonstrative and/or significant the choices were. Although South Africa is a 'nation of victims', according to Omar, it was impossible for the TRC due to limited space, time and human resources, to let every single victim convey his/her story at the hearings. With only 1 818 people chosen to appear in hearings¹⁵⁵ from the more than 21 000 who gave statements, it is self-evident that some of these thousands of victims felt offended or despondent when they were not asked to testify. It is very natural that many victims felt their suffering was the most traumatic and wanted the world to hear their specific story of anguish and heartache. Notwithstanding, the limiting of victims due to practical implications is undoubtedly understandable.

¹⁵⁴ Truth and Reconciliation Commission, Vol. 5, pp. 5-6; Tutu, pp. 84, 87.

¹⁵⁵ Chapman and Ball, p. 38.

The Act required that protection should be available to any person giving evidence before, during and after any Commission hearing. With the institution of the Commission's witness protection programme on 1 May 1996, new ground was broken as it established a programme unique to the work of the Commission. If a witness met the admission criteria, an evaluation was conducted to determine the nature of the risk. If the person was assessed as a low risk, placement was done in community-based projects. Only persons who were assessed as medium- or high-risk were placed in safe houses. Geographically, the politically unstable KwaZulu-Natal received the most applications, followed by the former 'Vaal Triangle'.¹⁵⁶

It is comprehensible that the protection of persons at hearings was labour intensive and brought together security officers from various regions. However, this programme led to several successes in the disclosure of information from senior members of the security police, leading to important knowledge in solving certain high profile cases. Besides, such a programme could benefit society as a whole in the future.

The Committee was, among other things, also responsible for making findings confirming that victims had been the subjects of gross human rights violations as defined in the Act. This finding process turned out to be much more time-consuming and complex than the Commission had anticipated. With the publication of the *Final Report* in October 1998, at least one-third of the required findings had not been completed and confirmed by the national HRV Committee. This led to a decision by the Commission that the HRV Committee (and the Reparation and Rehabilitation Committee) would stay on with the Amnesty Committee to finish this outstanding work. Commissioner Yasmin Sooka and

¹⁵⁶ Truth and Reconciliation Commission, Vol. 1, pp. 154, 387-391; Simpson and Van Zyl; G. Newham, "Keeping wolves at bay: Issues and concerns in establishing a witness protection programme in South Africa", <<http://www.csvr.org.za/papers/papnwhm3.htm>>, 1995.

Archbishop Desmond Tutu remained behind to finalise the tasks of the HRV Committee after October 1998.¹⁵⁷

The outstanding tasks were identified as the following: making victim findings on the remaining statements (numbered 5 500 in total) receiving and confirming violations suffered by victims; auditing and verifying the negative findings (numbering more than 2 000) made at regional level; finalisation of the 'popular version' of the Commission's report; finalisation of the victim summary project; finalisation of the report on disappearances; finalisation of the report on exhumations; and carrying out an audit of the database with a view to cleaning up contaminated data.¹⁵⁸

Post-hearing workshops were established with the idea of involving significant stakeholders in communities, as well as deponents who had made statements to the Commission, but had not testified at public hearings. The aim was to encourage communities to assess the impact of gross human rights violations, as well as the hearing process. It was also a step in promoting reconciliation by attempting to hand this process back to communities, thus clearly outlining the limitations of the Commission itself.¹⁵⁹

Through the information management system the Commission established a process in which findings could be based on relatively consistent procedures. It was not a perfect system and certain weaknesses were detected over time because not all evidence was researched in detail. Nevertheless, it was evident that the Commission went through great lengths to provide, as far as possible corroborated evidence through a number of procedures and activities.

3.7 SETTING UP PUBLIC VICTIM HEARINGS

¹⁵⁷ Truth and Reconciliation Commission, Vol. 7, pp. 570-572; *Sunday Tribune*, 30.3.1997, p. 6.

¹⁵⁸ Truth and Reconciliation Commission, Vol. 7, p. 572.

¹⁵⁹ *Ibid.*, Vol. 1, p. 369.

The most visible activity of the HRV Committee was its public victim hearings programme. However, before the official first public victim hearing could be held, an enormous amount of hard work was involved. When hosting these hearings, an exceptional number of operational considerations had to be contemplated to ensure a contextual and victim-sensitive approach. Pre-hearing preparation required a number of steps which entailed making information available in each area where statements were to be taken, the logistics thereof, the briefing of statement takers, the statement taking process and follow-up visits after the hearing.

The Commission's concern was to be accessible for every area of the country; not only for the major cities, but especially for the smaller towns and rural areas. To realise this aim, hearings were held in large cities, as well as small rural towns, using city halls, church halls and educational institutions. To be able to conduct public victim hearings in these centres, some of the following aspects had to be taken into account: the safety and security of all activities and participants; the representivity of victims appearing at hearings; sensitivity with regard to the choice of hearing venues; seating arrangements at hearings; simultaneous translation services; the format and length of hearings; the length of the testimony of victims; legal assistance to victims; and psycho-social support for victims and their families who testified.¹⁶⁰

Each of the Commission's regional offices developed an extensive hearings schedule, aimed at ensuring that as many communities as possible were accessed and granted an opportunity to testify. Part of the preparatory work was to inform the public if a hearing was selected for that specific area. Public workshops and meetings were held, organised with the assistance of local municipalities, faith organisations, civic bodies, non-governmental organisations (NGOs) or any other appropriate grouping. At these gatherings, the Commissioners would explain the aims of the Commission and the processes involved; they would answer questions and attempt to allay fears or respond to criticism. Information was also given on statement taking in the area and

¹⁶⁰ Boraine, p. 110.

where statements could be made. The media and communication staff assisted with leaflets, banners and press releases.¹⁶¹

A primary concern for the Committee was to ensure that the human and civil dignity of victims was restored by giving them an opportunity to relate their own version of violations. To attain this objective, the Committee had to make sure that the environment at the hearing was safe and supportive, welcoming and affirming and therefore contributory to achieving these objectives.¹⁶²

Furthermore, it was policy (Section 11(f) of the Act) that victims could convey their stories in the language of their choice. This posed a unique challenge in the multi-lingual nature of the South African society. The Commission had to secure the availability of appropriate translation services to ensure that victims testifying had access to translation services. An interpreting service agreement was finalised with the Unit for Language Facilitation and Empowerment (ULFE) of the University of the Free State. The Unit had to make provision for interpreters in all eleven official languages and provide a service at a maximum of five simultaneous hearings at a time.¹⁶³

This Unit went through a strenuous period of two months to recruit and appoint interpreters. After the selection process, these interpreters went through an intensive training session of two weeks to ensure that they would be able to manage the service. This was not the end of any intervention in terms of training, as in-service training was provided on an ongoing basis.¹⁶⁴ The total number of interpreters who were used at the HRV Committee hearings, accumulated to 373.¹⁶⁵

¹⁶¹ Tutu, pp. 87-88; Truth and Reconciliation Commission, Vol. 5, p. 4; Vol. 1, p. 155.

¹⁶² Truth and Reconciliation Commission, Vol. 1, p. 283; Tutu, pp. 81-82; A. Odendaal, "For all its flaws. The TRC as a peacebuilding tool" in *Track Two* 6(3&4), December 1997, p. 5; *Democracy in Action*, 15.12.1994, p. 20.

¹⁶³ M.M. Oelofse Private Collection, *Interview with A. Lotriet*, 17.1.2007; M.M. Oelofse Private Collection, *Documentation received from A. Lotriet*, January 2007; Truth and Reconciliation Commission, Vol. 1, p. 283; Vol. 6, pp. 749, 751; Boraine, p. 111; *Beeld*, 19.4.1997, p. 5. See also Republic of South Africa, "Promotion of National Unity and Reconciliation Act ...", p. 14.

¹⁶⁴ In total more than 250 applications had been received from which a total of 102 candidates were shortlisted for interviews. Based on the interviews, 49 candidates were invited to the selection test during the three rounds at the ULFE's interpreter

A professional interpreter is trained not to allow let him-/herself and his/her feelings to interfere with the process of interpreting as he/she should be objective, neutral, distant and technical. The nature of the translator's work at the TRC meant that he/she did absorbed a great deal of the anger and pain of the witness as the interpreter translated the stories in the first person. Interpreters absorbed all sides of every story and the related emotions, by not only hearing or reading about the atrocities but also by speaking about them in the first person. It cannot be denied that because of the narratives that were revealed at the TRC hearings, the interpreters experienced emotional pressure and displayed, with time, emotional stress. The extent of the trauma and the emotional component of the narratives that were interpreted, resulted in some resignations from interpreters. On the other hand, some interpreters revealed typical Post-Traumatic Stress Syndrome symptoms due to the extent of the severe emotions they had to interpret in the first person. The symptoms of 'vicarious trauma' – the phenomenon of becoming traumatised by extended or intense exposure to the trauma of others – was also displayed by many of the TRC interpreters. Contributory to the emotional stress, was the fact that many interpreters were confronted, through the narratives, with their own perceptions and ways of thinking about events that had taken place in South Africa. Although psychological support services were available for the interpreters, it was still a non-obligatory service and was not utilised properly by all the interpreters.¹⁶⁶

Taking into account the emotional burden with which interpreters were confronted and the limited period of time that was given to training, studies have shown that the accuracy level of the interpretation done for

training centre in Bloemfontein. The selection test consisted of a written component, as well as a practical oral component. Of the 49 candidates, 27 passed the selection test and would go through intensive training. A total of 23 of the trainees passed the respective training courses and were appointed as interpreters for the TRC. M.M. Oelofse Private Collection, *Interview with A. Lotriet*, 17.1.2007; M.M. Oelofse Private Collection, *Documentation received from A. Lotriet*, January 2007. See also A. Lotriet, "Interpreter training in South Africa: The challenges" in *Acta Varia* (3), 1997, pp. 60-71.

¹⁶⁵ Truth and Reconciliation Commission, Vol. 6, p. 751.

the TRC was surprisingly very good. It seems as if the interpreters focused on the basic code of conduct for any interpreter; that of transmitting a message in a thorough and faithful manner and interpreting everything that was said without omitting, adding, condensing or changing anything. It seems as if the interpreters strived to be, as far as possible, objective.¹⁶⁷

The availability of simultaneous translation services into any of the local languages being used, was pointed out as one of the significant features of the hearings. The most outstanding attribute was the fact that the interpretation services saved an enormous amount of time. If the consecutive mode of interpreting was used, as in the case of the South African courts, the duration of the interpretation process is normally multiplied by two to three per interpreted language. According to the TRC's *Final Report*, that would have resulted in hearings continuing into the year 2020, whereas the interpretation services reduced the total operating time of the Commission by more than five times.¹⁶⁸

Apart from this, the availability of simultaneous interpretation was also important in the sense that it was the first time in the history of South Africa that people had had the opportunity to make use of this service. Through this service, the fact that South Africa is a multi-lingual country, was emphasised. It is doubtful if the TRC would have been so successful in gaining the information it did on past events from the victims, if these people were not given the opportunity to convey their stories in the language with which they felt most comfortable with. It is more difficult to express emotions in a third or fourth language and a great deal of information would have been lost if victims could not have conveyed their stories in their mother tongue.

¹⁶⁶ M.M. Oelofse Private Collection, *Interview with A. Lotriet*, 17.1.2007; M.M. Oelofse Private Collection, *Documentation received from A. Lotriet*, January 2007.

¹⁶⁷ *Ibid.*

¹⁶⁸ Truth and Reconciliation Commission, Vol. 6, p. 749; M.M. Oelofse Private Collection, *Interview with A. Lotriet*, 17.1.2007; M.M. Oelofse Private Collection, *Documentation received from A. Lotriet*, January 2007.

The role these interpreters played in bringing the words conveyed through ordinary people into a language comprehensible to the majority of people in the country, is significant. Through their efforts and skills the uniqueness of the TRC was further highlighted, as every person could speak in the language he/she preferred at the TRC hearings. These interpreters were subjecting themselves to a demanding and intense emotional environment; yet, they continued, keeping their composure in spite of emotionally draining interpretations. It is clear that these interpreters wanted to contribute their abilities and to be part of an inimitable historical process.

The Commission contributed in underlining the importance, benefits and services rendered by the interpreting industry in South Africa. The performance, as well as weaknesses experienced through the TRC interpretation services, could be used in future for additional interpreting training courses and to streamline the process of simultaneous interpretations even further.

Apart from the interpretation services, careful attention was also given to the placing and arrangement of tables for the Commission members and the witnesses during the hearings. The Commission wanted the witnesses to take pride of place without the feeling of being in court. All the hearings also had a ceremonial aspect where the chairperson's opening remarks were often followed by prayer, by hymns or songs or by a ritual candle-lighting. The call for this procedure came from Tutu to the Commission, who accepted this solemn atmosphere. The precise schedule for a day of hearings was not known until the proceedings actually began, mainly for security reasons.¹⁶⁹

The Mental Health Unit of the Commission undertook support for witnesses at human rights violation hearings. This Unit made interventions before and after the hearings. Such interventions included

¹⁶⁹ Tutu, p. 72; Truth and Reconciliation Commission, Vol. 5, p. 3; Boraine, p. 99; B. Bozzoli, "Public ritual and private transition: The Truth and Reconciliation Commission in Alexandra Township, South Africa 1996" in *African Studies* 57(2), 1998, p. 170; *The Star*, 27.10.1998, p. 8; *Mail and Guardian*, 27.3.2003, p. 23.

the preparation and briefing of witnesses before hearings, the containment and upholding of witnesses during hearings and debriefing after hearings. This process was done by specially trained Commission personnel, known as briefers. They provided direct support and comfort by their presence with the witnesses throughout the process of public testimony, ready to provide a shoulder on which the victims could lean for emotional support. Community briefers were to supply longer-term support to people in need.¹⁷⁰

It was unfortunately beyond the mandate and resources of the Commission to provide direct psychological services to all the role-players, as well as ongoing support to those in need of counselling. The almost complete lack of reference to the issue of psychological support in the Act created some discrepancy with issues relating to psychological support services.¹⁷¹ It must be noted that at an early stage in the life of the Commission, the potential of staff to experience emotional stress was recognised and preventative steps were implemented by the TRC. These steps included a mental health care specialist who was appointed permanently to coordinate support for the staff involved. The TRC also contracted several psychologists around the country to run support groups on a regular basis for the staff.¹⁷²

According to Wendy Orr the TRC has made every effort to offer emotional support to deponents. She lists the following: training statement takers in basic counselling skills; helping statement takers identify those deponents who need referral for counselling and providing them with a resource list for this purpose; providing specific briefing and

¹⁷⁰ Truth and Reconciliation Commission, Vol. 1, pp. 283-284, 364-366; Tutu, p. 83; Boraine, p. 110; J. Edelstein, *Truth and Lies. Stories from the Truth and Reconciliation Commission in South Africa*, p. 92; De Ridder, p. 30.

¹⁷¹ De Ridder, p. 30; Truth and Reconciliation Commission, Vol. 1, p. 364.

¹⁷² T. de Ridder, "Vicarious trauma. Supporting the TRC staff" in *Track Two* 6(3&4), December 1997, pp. 34-35. The existence of the TRC also acted as a catalyst for the creation of self-help groups, such as the Khulumani (the term is derived from the Zulu words 'speak out') support groups. These open, small groups are located in communities. Within these groups, victims have the space to vent their emotions and are supported by the other group members. Members also receive information regarding available resources and how to report past abuses to the appropriate authorities. See A. Allan and M.M. Allan, "The South African Truth and

debriefing for those witnesses who did come to public hearings; encouraging deponents to form support groups within their own communities; arranging follow-up visits to each region where a hearing was held; to assess the impact of the healing and facilitate appropriate intervention if needed; and engaging society to provide the above services.¹⁷³

The psychological effects of the trauma experienced by victims cannot be denied or ignored. It is understandable, given the mandate of the TRC, that the best the Commission could provide was to attempt to cater for the immediate needs of the victims, which did not include extensive psychological help.

The first victim hearing commenced on 15 April 1996 in East London. The preparation and organisation of this first public hearing became the chief goal of the HRV Committee in the first few months. It was a deliberate decision to hold the first hearing in the Eastern Cape, because of the very special place this area occupies in South African history. The Commission wanted to focus attention on an area that had witnessed some of the worst features of apartheid persecution by the previous government's security forces, in direct response to some of the most militant resistance. The area has had a history of oppression and resistance. The following reasons for choosing this area were mentioned: it is the area where whites and the indigenous people first waged full-scale wars as they competed for the same geographical space; it is the birthplace of black resistance and political awareness to the depredations of white expansionism; the first area to establish educational institutions of higher learning for blacks; and also the birthplace of many black political leaders including Nelson Mandela, Winnie Madikizela-Mandela, Govan and Thabo Mbeki, Steve Biko and others. Of all those detained without trial in South Africa, one-third came

Reconciliation Commission as a therapeutic tool" in *Behavioral Sciences and the Law* 18, 2000, p. 472.

¹⁷³ W. Orr, "PTSD and the Truth and Reconciliation Commission" in *CME – South Africa's continuing medical education monthly* 16(2), February 1998, p. 142.

from the Eastern Cape. In addition, it was also known as an area where the authorities dumped some of their more reluctant elements in the most vicious ways. In security circles, it was apparently assumed that whoever destroyed the Eastern Cape would rule the country.¹⁷⁴

The selected venue for the first public hearing was the East London City Hall in the centre of the city. This four-day hearing would set a precedent for future hearings. All the planning and preparations for the hearings in the previous months came together, resulting in stringent security measures provided and maintained by the South African Police Services. Transport services led to heavy costs and considerable logistical difficulties. Food and accommodation was provided for the deponents and for some of their families who attended to support them. Provision was made for the media and interpretation services for simultaneous translation into all the languages to be used. Preparations were made for the Commission 'briefers' who accompanied the witnesses or if they chose, by a family member or other supporter.¹⁷⁵

The day before the East London hearings took place, a special inter-faith ceremony was held in Mdantsane, a ghetto township near East London.¹⁷⁶ On the first day of the hearing, people from far and wide flocked to East London and before the hearing could start, the local police were reported to have been telephoned to warn of a bomb in the City Hall, which would explode at any time. The deliberations were adjourned as police entered to inspect the hall. There was no bomb, but this experience reinforced the Commission's security measures. In spite of

¹⁷⁴ SABC News Production, "Bones of memory. Experiences and memories lay bare the pain and bravery of apartheid's victims", *South Africa's human spirit. An oral memoir of the truth and reconciliation commission*, CD 1 no. 6; Krog, *Country ...*, pp. 33-34; Truth and Reconciliation Commission, Vol. 5, p. 2; Boraine, pp. 99-100.

¹⁷⁵ Truth and Reconciliation Commission, Vol. 5, pp. 2-3; Tutu, p. 83; Krog, *Country ...*, p. 26; *The Star*, 26.10.1998, p. 7.

¹⁷⁶ Tutu, p. 85.

the bomb threat, the first public victim hearings were held successfully and in the course of four days, 32 victims came forward to testify.¹⁷⁷

After the East London hearings, Desmond Tutu received an anonymous letter, stating: “As an ordinary member of the public I would like you to know that I have been intensely moved and inspired by the testimonies heard ... My pain and inspiration come from the awesome, horrific and humbling stories, and the extraordinary forgiveness of those wounded people. We are all wounded ... The pain belongs to us all”.¹⁷⁸

The beginning of the human rights violation hearings in East London set in motion the search to establish as much of the truth about a specific segment of the past to provide as complete a picture as possible of the atrocities arising from the conflict of the past. To be successful in this endeavour, the Human Rights Violation Committee constituted an essential part of the activities of the TRC. This Committee would go to great lengths to succeed in their main aim to provide victims with the opportunity to tell their own stories in public, in their own language, vocabulary, accent and speech rhythm. This Committee was also active in changing the public’s perception and understanding of the type and extent of atrocities that had occurred during the period 1960-1994; emphasising the notion that ‘all South Africans are victims of their past’.

During the two-and-a-half years of its existence, the HRV Committee held 140 public hearings in 65 locations countrywide. See Appendix 2 for an outlay of the dates and venues of these public victim hearings that were held throughout the country. Furthermore, over 21 000 victims submitted statements and the names of 27 000 victims were officially recorded, of whom 2 400 testified.¹⁷⁹ Villa-Vicencio and Verwoerd

¹⁷⁷ Truth and Reconciliation Commission, Vol. 5, p. 6; Meiring, “Unshackling the ghosts of the past ...”, p. 57.

¹⁷⁸ Tutu, pp. 89-90; Meiring, “Unshackling the ghosts of the past ...”, pp. 57-58.

¹⁷⁹ Meiring, “Truth and Reconciliation: ...”, p. 190; Meiring, “Unshackling the ghosts of the past ...”, p. 60; Picker, p. 2; N.S. Ndebele, “South Africa: Quandaries of compromise” in *The UNESCO Courier* 52(12), December 1999, p. 23.

indicate this number of statements as “making this probably the biggest single human rights survey in the history of the world”.¹⁸⁰

It is evident that the Commission devoted profound energy and time to the victims in trying to be sensitive to their plight. In the Commission’s *Final Report* they acknowledge that, especially on the physical side, more was done for victims than for perpetrators. In the *Report* it is set out as “hundreds of thousands of rands and hours were spent on locating victims, transporting them to hearings and providing them with food and accommodation, the hours that were spent on foot trying to locate victims or hiring bulldozers to enable victims in flood-stricken areas to attend amnesty hearings”.¹⁸¹ In addition, the total amount of time and resources spent on victims during the amnesty process was substantially more than of that which was spent on the amnesty applicants.¹⁸²

The holding of these public victim hearings throughout the country and the wide media coverage they received, resulted in a distinct awareness of the Commission and its work. In order to get as close as possible to the truth and present a more complete picture of the past, a chance was given to everyone who wished to, to recall their memories and share their stories with the public. These narratives, which reflected the perspectives and versions of the past, grabbed the attention of the whole country; highlighting in the process, the activities of the TRC in bringing these stories to the nation.

3.8 EXTENSIVE MEDIA COVERAGE

It was important for the Commission to reach out to all South Africans. The aim was to engage South Africans in the work of the Commission and to ensure that none would lose out by default. The main focus was that everybody should realise that he/she had the opportunity to share

¹⁸⁰ C. Villa-Vicencio and W. Verwoerd, “Constructing a report: Writing up the “Truth”” in Rotberg and Thompson (eds), *Truth v. Justice. The morality of truth commissions*, p. 281.

¹⁸¹ Truth and Reconciliation Commission, Vol. 6, pp. 738-739.

his/her story and experience. To fulfil these aims, different aspects of the media were used.

The Media and Communications Department of the Commission was the first source of information for journalists and members of the public, for enquiries about the Commission and specific hearings. This department was also responsible for ensuring that the Commission enjoyed maximum publicity. To achieve this objective efficiently, the Commission developed and implemented a media and communications strategy by using the professional services of the media to take advantage of the South African print, broadcast and electronic media to communicate its message through newspaper, television and radio. The Commission realised that if it could meet the demands of the media for newsworthy material, it could help the Commission to fulfil its mandate of reporting on human rights violations to the nation.¹⁸³

When the Commission started its work, the primary task of the media liaison officers was to ensure that the Commission's public image reflected the reality of its challenges, as well as the successes and the difficulties. The task of the media liaison office was further to render technical and strategic advice to the Commission on the best ways to communicate news, provide support and to be continually available to journalists. In implementing the media liaison policy, the Commission attempted to adhere to the principles of transparency and the pre-emptive release of news to achieve circumstances conducive to an early, single, detailed and thorough explanation of what the Commission was doing.¹⁸⁴

For the first time, a truth commission held its hearings in public, with microphones and television cameras present at all times. Thus, the TRC could be defined as a media event.¹⁸⁵ The large media contingent

¹⁸² *Ibid.*, pp. 738-739.

¹⁸³ Truth and Reconciliation Commission, Vol. 1, pp. 249-250, 353.

¹⁸⁴ *Ibid.*, pp. 353-355.

¹⁸⁵ According to Dayan and Katz, media events convey a sense of seriousness and weigh more heavily than routine news. This seriousness demands that the audience as a

included national and international representatives who used both the print and electronic media to carry the Commission and its work into every corner of South Africa and abroad. The media helped to ensure that the process of the Commission's work was as inclusive and non-elitist as possible.¹⁸⁶

One of the Commission's researchers explained this process as follows: "The TRC's direct impact on the process of national reconciliation [was] powerfully mediated by the mass media. The public domain in which this unfolded [was] increasingly a 'mediasized' arena."¹⁸⁷ Journalist Hugh Lewin, experienced the media coverage of the TRC as "producing some of the most consistent and sustained reporting we have ever seen" and it has changed the "whole nature of story-telling and how we report it".¹⁸⁸ For Anthea Garman, South Africa's TRC and the media have been "inseparable".¹⁸⁹ All this extensive media coverage resulted in an "electronic monument to apartheid's past".¹⁹⁰

For Garman, the TRC unsuspectingly, has "thrown up some very stiff challenges to journalism in South Africa".¹⁹¹ It became clear that the role of the mass media during the TRC hearings was twofold. It was supposed to be a neutral observer and an objective critic of the TRC. Moreover, it had to serve as the means by which the work of the TRC was communicated to the people of the nation. Evidently, it was a dual and sometimes conflicting, role.¹⁹²

whole interrupt their daily routines and consider the importance of the media event and its meaning. See R. Krabill, "Symbiosis: Mass media and the Truth and Reconciliation Commission of South Africa in *Media, Culture & Society* 23(5), 2001, pp. 569-570.

¹⁸⁶ *Sunday Times*, 9.8.1998, p. 21; *The Star*, 4.8.1998, p. 13.

¹⁸⁷ Posel and Simpson, p. 7. See also *The Cape Times*, 17.11.1995, p. 6.

¹⁸⁸ H. Lewin, "The never-ending story" in *Track Two* 7(4), December 1998, pp. 41-42.

¹⁸⁹ A. Garman, "Media creation. How the TRC and the media have impacted on each other" in *Track Two* 6(3&4), December 1997, p. 36.

¹⁹⁰ Du Pisani and Kim.

¹⁹¹ Garman, p. 37.

¹⁹² Krabill, p. 568.

Particular attention was paid to the use of radio¹⁹³ to ensure communication in all the official languages of the country to guarantee that even the illiterate were not missing out. In this way, people could follow the proceedings, whether at work or at home or in their cars. Hearings were broadcast live throughout South Africa for four hours per day (from 11:00-13:00 and from 14:00-16:00) on Radio 2000. Extensive news, commentaries, discussions, and current affairs coverage of the Commission on South African Broadcasting Corporation (SABC) Radio was supplemented by a weekly 'wrap-up' on activities of the Commission on all language stations.¹⁹⁴ Antjie Krog was the leader of the team of radio journalists who covered the news in the official eleven languages for SABC Radio.¹⁹⁵

The South African Broadcasting Corporation (SABC) had a special television documentary 'TRC Special Report'¹⁹⁶ broadcast on Sunday evenings by Max du Preez, the programme's executive producer and presenter. This TV programme had about 1.2 million viewers per week. The programme provided a summary of the previous week's events at the Commission and a preview of the coming week's events. Although the programme was more popular among black South Africans, a substantial number of its viewers were whites. Often this programme captured a greater audience than the English news at 8 p.m.¹⁹⁷ According to Max du Preez, the Truth Commission hearings were perfect for television journalism. For him, it "was not a story about politicians – it was about

¹⁹³ Radio was judged the most effective communication medium reaching the widest number of people and penetrating all corners of the country in the home language of the majority of South Africans. Radio listenership figures far outstrip newspaper readership. See Truth and Reconciliation Commission, Vol. 1, p. 357.

¹⁹⁴ Tutu, p. 84; Truth and Reconciliation Commission, Vol. 1, pp. 19-20, 356; Boraine, p. 89, A. Boraine, "Truth and reconciliation in South Africa: The third way" in Rotberg and Thompson (eds), p. 155, N. van Driel, "Healing our land" in *SA Now* 1(6), 1996, p. 18.

¹⁹⁵ *Beeld*, 13.4.1996, p. 8.

¹⁹⁶ Competing against all print and electronic media, this programme won the Foreign Correspondent Association of South Africa's 1996 Award for Outstanding Journalism. *The Citizen*, 21.11.1996, p. 21.

¹⁹⁷ Truth and Reconciliation Commission, Vol. 1, pp. 19-20; *The Star*, 29.7.1999, p. 18; Meiring, "Truth and Reconciliation: ...", p. 189; G. Theissen and B. Hamber. "A state of denial: White South African's attitudes to the Truth and Reconciliation Commission" in *Indicator South Africa*, 1998, p. 11.

the way ordinary men, women and children felt about the horrors of apartheid. The TV cameras could take the close-ups of these feelings into every living room in the country. ... For the first time, the nation acknowledged the victims. ... We were making the truth a South African burden and taking it into people's homes. ... That was the impact of the TV coverage".¹⁹⁸

The Commission also allowed cameras into hearings, which was a contributing factor to creating a high public profile. Added to this effort, many newspapers appointed specialist correspondents to cover the Commission practically on a full-time basis. Among these were *Beeld*, *Business Day*, *City Press*, *Daily News*, *Rapport*, the *Sowetan*, *The Cape Argus*, *The Cape Times* and *The Star*. These journalists built up a specialist knowledge of the proceedings of the Commission, which resulted in a high quality of reportage.¹⁹⁹ Theissen indicates that daily newspapers ran about 1.4 articles on the TRC in each issue for more than three years (1996-1996).²⁰⁰ He concludes by focusing on the remarkable media event of the TRC, stating that "only few societies have been able to achieve such an intensive public reckoning with their own recent past during the immediate post-authoritarian era".²⁰¹

Tutu and Boraine especially, were outspoken in their appreciation for the media coverage of the TRC. Tutu expressed his gratitude as follows: "I express my appreciation and that of the Commission to the media who have been doing a splendid job in publishing the Commission and especially the hearings that are taking place ... we appreciate the role that they are playing. It is the role that is contributing to the process of

¹⁹⁸ J. Thloloe, "Showing faces, hearing voices, tugging at emotions: Televising the Truth and Reconciliation Commission" in *Nieman Reports* 52(4), Winter 1998, pp. 53-55. See this article for more information on the broadcast team and how they went about broadcasting this programme. See also M. du Preez, "When cowboys cry" in *Rhodes Journalism Review* Special Edition, May 1997, p. 9.

¹⁹⁹ Truth and Reconciliation Commission, Vol. 1, p. 356.

²⁰⁰ G. Theissen, "Common past, divided truth: The Truth and Reconciliation Commission in South African Public Opinion". Paper presented at the Workshop of the International Institute for the Sociology of Law (IISL) on "Legal institutions and collective memories", Oñati, Spain, 22-24.9.1999.

²⁰¹ *Ibid.*

healing ... We give thanks too for the SABC for its radio coverage which is happening all the time and the SABC TV for having been, up to this point, so wonderfully sensitive in the way that they have reported what has been taking place”.²⁰² Boraine emphasised that the TRC “owes a huge debt” to the media of South Africa. According to him, the work of the TRC would be “disadvantaged and immeasurably poorer” without the account of proceedings on the TV screen, without coverage in newspapers and magazines and without the voices being beamed through radio across the country.²⁰³

On the other hand, there was also criticism. The essence of these critiques was that the media had simply reflected the TRC activities and had not probed beyond the TRC itself. In other words, the media was reflecting a reality rather than challenging it; being event-driven and not so much issue-driven. Furthermore, for some black South Africans, the media did not reveal anything new and failed to investigate or uncover new truths.²⁰⁴ This latter criticism was in all fairness untrue, as it became clear that the TRC hearings did reveal new information about the violations of the past.

Because of the presence of the national and international media, some critics argued that the TRC hearings were set up as a spectacular show in order to attract the attention of the world. They reasoned that the emotional and personal aspects of the testimonies from the selected testifiers made some impressive footage. This ‘good television’ would catch the attention of the world and enhance the image of the TRC. Hence, the danger of sensationalising the hearings was underlined.²⁰⁵

²⁰² A. 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”, <http://cas1.elis.rug.ac.be/avrug/trc/02_08.htm>, 2002. See also *The Star*, 4.8.1998, p. 13.

²⁰³ Garman, p. 36; Krabill, p. 567.

²⁰⁴ B. Hamber, “Reflecting on the truth: Has the media coverage of the TRC changed the way the public sees itself, its history and its responsibility?”, <<http://www.csvr.org/articles/artcros.htm>>, 1997; *The Sunday Independent*, 11.2.1996, p. 11.

²⁰⁵ Verdoolaege; *The Sunday Independent*, 11.2.1996, p. 11.

It is true that public opinions and perceptions are formed by what people see, hear and read via the media. It is also self-evident that the different forms of media coverage should edit the information and footage of the hearings. Only a few minutes should convey the message of hours of hearings, resulting in brief pictures or a few lines or a series of sound bites, rather than conveying the total message in terms of its complexity and its challenges. It was also the case that certain sections of the media could have used the public hearings to pursue their own political agendas or to settle former disputes. This could result in deliberate distortions and an incorrect emphasis on sensation.

Nevertheless, it cannot be denied that the media created public awareness of the work of the Commission. From the media the TRC has received a remarkable and far-ranging public exposure of human rights violations that occurred. This media coverage culminated in unquestionable benefits for the Commission, especially with regard to the transparency aspect of the TRC. By confronting people with vivid images on the front pages of their newspapers or on their television screens, understanding, as well as public debate were produced on crucial aspects of South Africa's past. The public consciousness was challenged with events and information that could no longer be denied and resulted in the forming and changing of perceptions. In the process, a historical awareness and greater perspective, as well as a record of the crimes of the past was created, causing people to dispute half-truths and lies; searching for confirmation.

3.9 AN ANALYSIS OF A CROSS-SECTION OF DEONENTS WHO APPROACHED THE COMMISSION

The HRV Committee focused a greater part of its energy and resources on gathering and processing statements from deponents, in order to establish as complete a picture as possible, of the conflicts of the past. The Commission appealed to South Africans to come forward to share

their stories and experiences with the HRV Committee. At the end, 21 296 people came forward and told the Commission of about nearly 38 000 gross violations of human rights, from which nearly 10 000 were killings.²⁰⁶ More than 19 050 were found to be victims of a gross violation of human rights and in addition, more than 2 975 victims emerged from the amnesty process. The HRV Committee also made more than 15 000 findings during its period of operation.²⁰⁷

From those who came forward, ninety percent were black, with female deponents as the majority. The greatest number of those who approached the Commission did so on behalf of dead people to whom they were related. The basis of the HRV Committee's conclusions about the nature of the conflict was made from these corroborated allegations of gross violations of human rights embodied in the statements that were made.²⁰⁸

It is important to take note of the fact that deponents who came to the Commission decided for themselves to make statements of their own violation. Section 4(b) of the Act required the Commission to accept statements from all South Africans who wished to do so. Thus, the Commission did not carry out a census of violations, nor did they carry out a survey of human rights violations in the sense of a conventional 'market research' approach and therefore did not draw a probabilistic sample of victims. By taking the route of gathering information from those who wished to tell the Commission about violations that they had experienced and suffered, the sample was self-selecting. Thus, those who

²⁰⁶ Truth and Reconciliation Commission, Vol. 7, p. 1. Volume 6 of the TRC *Final Report* indicates that a total of 21 519 victim statements were collected during the two year operational period and contained more than 30 384 violations.

²⁰⁷ Truth and Reconciliation Commission, Vol. 6, p. 570; Vol. 7, p. 1. Volume 7 of the *Truth and Reconciliation Commission of South Africa Report* is a tribute to the victims and intended to acknowledge those who did come forward to tell their stories. This volume records the names of those who had been found to be victims of gross human rights violations and provides a brief summary of each victim's story.

²⁰⁸ Truth and Reconciliation Commission, Vol. 1, pp. 165, 173.

made the decision to come forward defined the spectrum of people from whom the Commission received information.²⁰⁹

There were a variety of reasons for a person wanting to approach the Commission and participating. They included a desire to contribute to national reconciliation; finding out what happened to disappeared family members; demanding that the perpetrator pay or account to the public in person and requesting financial aid to pay for expenses incurred as result of violations.²¹⁰ For many victims, the primary aim was to gain information on what had happened to loved ones or who was responsible for what they had suffered.²¹¹ In some cases, this was possible and the Commission was able to provide answers; in others, the Commission was unsuccessful.

This 'self-selection' of the sample presents a number of factors that need to be considered when interpreting findings. First of all, people who lived in remote inaccessible areas, far from where the data were collected and the offices where statements were taken, had less chance of being included in the sample; also people who were ill, injured, elderly, traumatised, or suffering profound depression, were less likely to give statements.

Furthermore, events that took place in the past were under-reported because of deponents who had passed away before the Commission started its work. Furthermore, people who had no access to the media (radio, newspapers or television) were less likely to contact the Commission; people from constituencies who were hostile to the Commission were also less likely to make statements; and finally some were afraid and chose not to participate.²¹²

It is apparent that the final number of statements does not reflect every victim in South Africa who suffered abuses. For a variety of reasons, not

²⁰⁹ *Ibid.*, pp. 163-165; Boraine, pp. 107-108.

²¹⁰ Truth and Reconciliation Commission, Vol. 1, p. 366.

²¹¹ *Die Burger*, 21.3.1997, p. 4.

all people had access to the Commission. Apart from the reasons mentioned, some people learnt too late about the process of the Commission and could not get hold of a statement taker before the cut-off date for taking statements by 15 December 1997. Many people complained that they had made statements to their liberation movement who had not forwarded these to the Commission. Some people complained of unreliable statement takers who had promised to come back and had failed to do so. This resulted in more than 8 000 statements that were collected throughout the country after the Commission's cut-off date for taking statements.²¹³

Furthermore, some victim groupings were poorly represented; for example, the military operatives of the liberation movements who in general, did not report violations they had experienced, although those who were arrested did suffer severe torture. It may also be seen as the result of being reluctant to voice themselves as 'victims', as opposed to their view of soldiers, prepared to suffer for a moral cause.²¹⁴

The most prominent political activists and leadership figures were also absent. In addition, males dominated as victims within the narrow mandate of violations investigated by the Commission. Women's experiences in the political conflicts of the past were, in many ways, not evident in the testimonies. Violations, especially, involving sexual torture, were infrequently reported in the HRV statements to the Commission.²¹⁵

Against these factors, it was not possible for the Commission to use data to calculate how many violations, in total, occurred in South Africa. The overall total of all potential victims could also not be estimated. What is known is that there were *at least* just over 21 000 gross violations of human rights. Because of the fact that the Commission's data were based on corroborated findings, it may further be predicted that the mentioned

²¹² Truth and Reconciliation Commission, Vol. 1, p. 163; Vol. 7, p. 2. See also D. Skinner, "An evaluation of a set of TRC public hearings in Worcester: a small rural community in South Africa" in *Psychology, Health & Medicine* 5(1), 2000, p. 104.

²¹³ Truth and Reconciliation Commission, Vol. 6, p. 575.

²¹⁴ *Ibid.*, Vol. 7, pp. 6, 8-9.

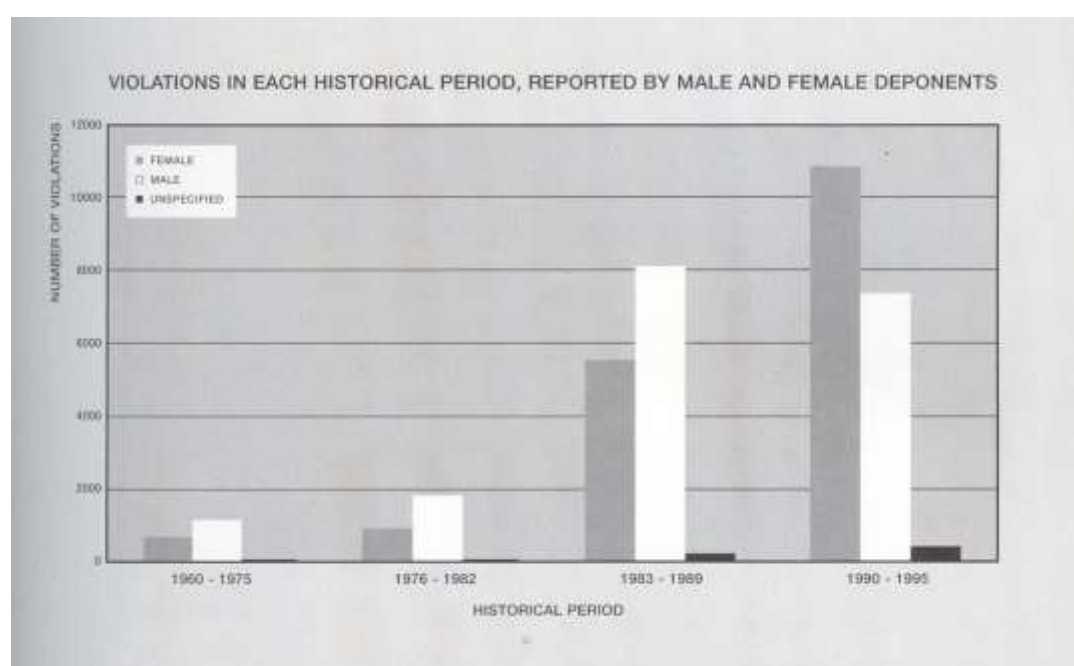
violations, at least, happened at the indicated times and places. In addition, the findings of the Commission were based on data, as well as on the accounts of journalists, historical records and analyses of reported situations by NGO human rights groups.²¹⁶

The conclusion may be made that the Commission's database represented an unequalled collection of data on a series of events that took place in a specific period of time in the history of South Africa.

This study will set out a cross-section of deponents who came to the Commission, in terms of their broad demographics and what they spoke about, in order to provide an illustration of this constituency.

3.9.1 Historical period

The Commission's mandate period covered four major historical periods. The graph below shows the violations in each historical period, reported by male and female deponents.



²¹⁵ *Ibid.*, Vol. 7, pp. 6, 8-9; M. Minow, *Between Vengeance and Forgiveness*, p. 84.

Most violations took place in the period after the unbanning of political parties (1990-1994), followed by the years in which states of emergency were in force (1983-1989). The lower number of reported violations in early periods, may be due partly to the fact that people from that period were either too old to come and make statements or had passed away. It may also be partly as a consequence of a different political climate during those years.²¹⁷

3.9.2 Geographical coverage

Statements were gathered in all nine provinces in South Africa. The table indicates the number of statements taken in each province, starting with the largest number. For purposes of comparison, it also indicates the total population of each province and the average number of statements taken per 1 000 people in the province.²¹⁸

PROVINCE	OFFICE RESPONSIBLE	NUMBER OF STATEMENTS TAKEN IN EACH PROVINCE	STATEMENTS FROM EACH PROVINCE %	TOTAL POPULATION IN EACH PROVINCE, IN 1,000's ²¹⁹	AVERAGE NO. OF STATEMENTS TAKEN PER 1,000 PEOPLE
KWAZULU-NATAL	DURBAN	9,506	44.6	7,672	1.24
GAUTENG	JHB	3,511	16.5	7,171	0.49
EASTERN CAPE	E-LONDON	2,847	13.4	5,865	0.49
WESTERN CAPE	CAPE TOWN	1,320	6.2	4,118	0.32
MPUMALANGA	JHB	1,112	5.2	2,646	0.42
NORTH WEST PROVINCE	JHB	861	4.0	2,470	0.35
FREE STATE	DURBAN	862	4.0	3,043	0.28
NORTHERN PROVINCE	JHB	723	3.4	4,128	0.18
NORTHERN CAPE	CAPE TOWN	450	2.1	,746	0.60
OTHER		106	0.5		
TOTAL		21,298	100.0	37,859	0.56

²¹⁶ Truth and Reconciliation Commission, Vol. 1, pp. 163-165.

²¹⁷ *Ibid.*, p. 172.

²¹⁸ *Ibid.*, p. 166.

²¹⁹ Census 1996 with the preliminary estimation of the size of the population of South Africa, Central Statistics Services, June 1997.

It is obvious that the more populous a province, the larger the number of statements would be. The number of statements taken per 1 000 provincial residents is illustrative of this tendency. However, certain provinces experienced greater political instability, resulting in more violations of human rights and accordingly, larger numbers of deponents.

In KwaZulu-Natal, where levels of violence were very high, the average number of statements per 1 000 people was more than double that of the national average. It is noteworthy that the Durban regional office gathered the largest number of statements – nearly half of all statements came from KwaZulu-Natal. This number is almost three times the statements taken from the highly populated province of Gauteng.²²⁰

Even though the IFP told its members at the last moment to submit statements, it still remains surprising that KwaZulu-Natal had such high levels of deponents who gave statements. This is surprising, taking into account the hostile approach of the IFP leadership and its members towards the Commission throughout the process, constantly discouraging its members from becoming part of the activities of the Commission. This attitude of hostility was rather disheartening to people who wished to make statements. The figure could have been even higher had the Commission received a more positive response from this region specifically.

²²⁰ Truth and Reconciliation Commission, Vol. 1, pp. 166-167. In the final weeks before the cut-off date for submission of statements to the Commission, the Durban regional office received approximately 5 000 statements. This meant that over 40% of all statements received in Durban were submitted in the last two weeks before the cut-off date. The main reason for this lies in the fact that the Inkatha Freedom Party (IFP), who consistently discouraged its members from supporting the Commission, told its members at the last moment to submit statements, to avoid losing out on possible financial reparations. Truth and Reconciliation Commission, Vol. 1, p. 156; P. Pigou, "False promises and wasted opportunities?: Inside South Africa's Truth and Reconciliation Commission" in Posel and Simpson (eds), p. 46; *Beeld*, 11.11.1997, p. 2; *Sowetan*, 20.5.1998, p. 11.

3.9.3 Population groups

The Commission's focus was on violations in the political context of the apartheid state, which classified people on racial and ethnic groupings into one of four population groups, namely White, African, Coloured and Asian. Therefore, the Commission retained this terminology and statement takers asked deponents to which population group they had been allocated in terms of this terminology. Besides, the conflicts of the past affected the ethnic groups in different ways, as did the consequences of the violations. The responses are reflected in the table below, coupled with the national breakdown for comparison.²²¹

POPULATION GROUP	NUMBER OF STATEMENTS	% STATEMENTS FROM EACH GROUP	% TOTAL POPULATION IN EACH GROUP ²²²
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	21,297²²³	100.0	100.0

It is clear from the table that it was overwhelmingly Africans who came to tell their stories to the Commission. The lower percentage of white people who made statements may be a result of the hostility towards the Commission, as well as the fact that conflicts of the past affected this group to a lesser degree, in comparison to the rest of the population.

3.9.4 Gender

The breakdown of deponents by gender and population group was as follows:²²⁴

POPULATION GROUP	FEMALES	MALES	TOTAL STATEMENTS ²²⁵
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²²¹ Truth and Reconciliation Commission, Vol. 1, p. 168.

²²² These numbers reflected the South African Survey 1995/1996, Race Relations.

²²³ There were 1 523 statements from deponents whose population group was unknown. In the *Final Report* the Commission indicated that since it was likely that the cross-section of these deponents is the same as those whose population group was known, the results were not likely to be significantly affected.

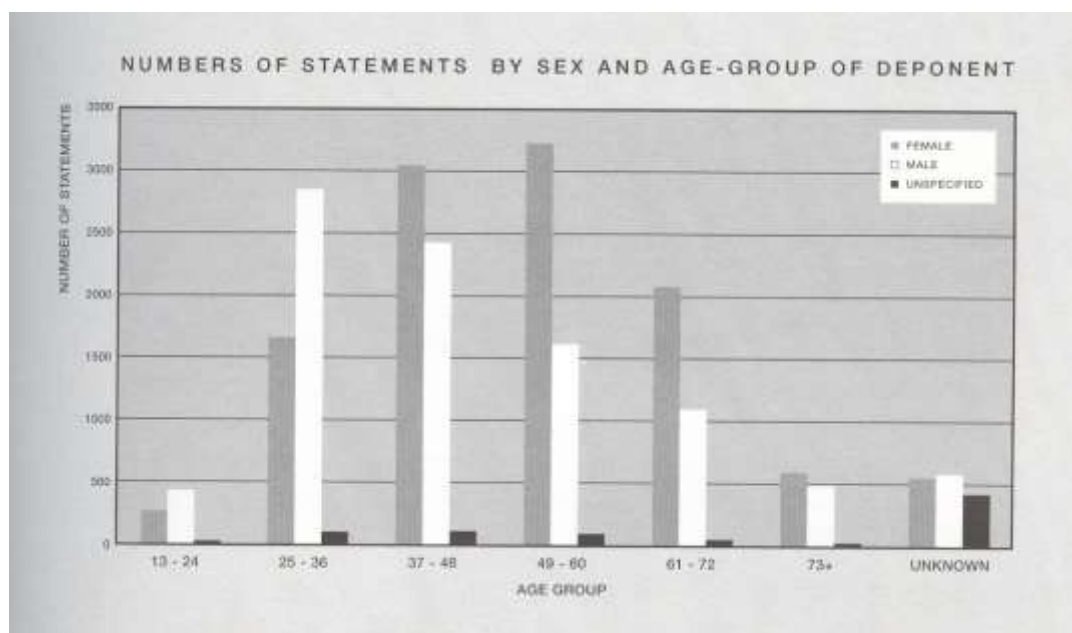
²²⁴ Truth and Reconciliation Commission, Vol. 1, p. 169.

	NUMBER	%	NUMBER	%	
AFRICAN	10,571	55.9	8,329	44.1	18,900
COLOURED	134	38.0	219	62.0	353
ASIAN	9	20.5	35	79.5	44
WHITE	91	40.1	136	59.9	227
TOTAL	10,805	55.3	8,719	44.7	19,524

The violence of the past resulted in the death of mainly men, so the majority were women who came to the Commission, with African women as the highest percentage. Men dominated the white, Coloured and Asian deponents.

3.9.5 Age groups

Statements were taken from deponents of all age groups, except children, i.e. those below the legal age of majority. The chart below shows the number of statements made by both gender groups in each age group.²²⁶



The majority of the statements were made by those aged thirty-seven and above, with women dominating the middle-aged to elderly age

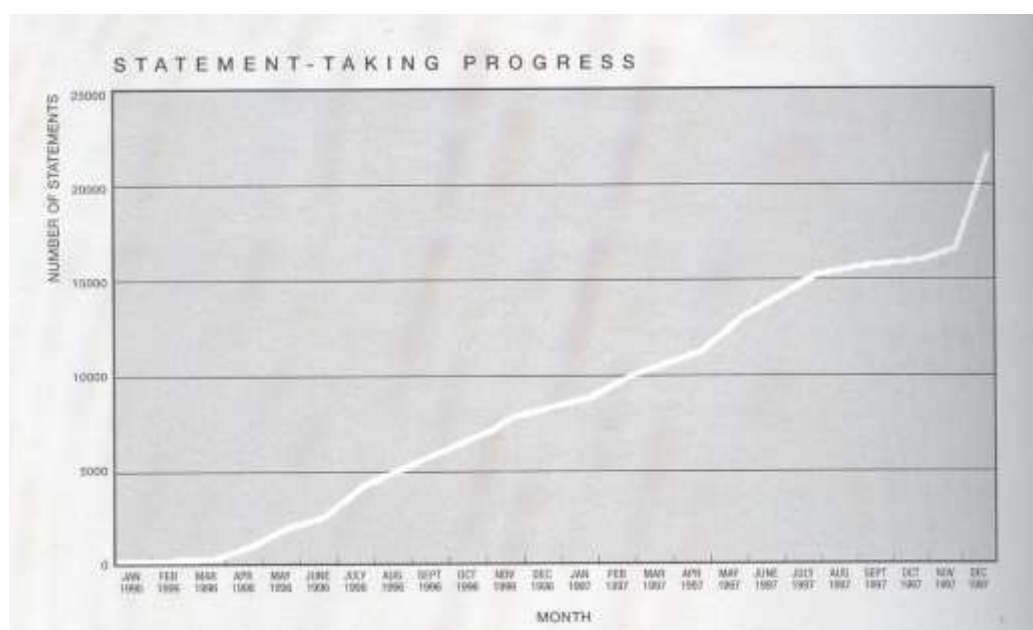
²²⁵ There were 716 statements from deponents whose sex was not recorded. In the *Final Report*, the Commission indicated that since it was likely that the proportion of females to males of these statements was the same as those where the sex was known, the results were not likely to be significantly affected.

²²⁶ Truth and Reconciliation Commission, Vol. 1, p. 170.

groups, with men in the majority of the younger age groups (youths and young adults). The reason for this pattern is to be found in who the victims were and when the violations took place.

3.9.6 Statement taking

Statements were taken from the moment the Commission began its work until the cut-off date for human rights violation statements in December 1997. Over a period of two years, progress was made by the Committee in taking statements from deponents. The graph below indicates the progression.²²⁷



Statements were taken steadily from the beginning, stretching over two years with a lull towards the end of 1997, followed by an intense response in the very last month with a rush from deponents to meet the deadline.

The statements that were gathered were analysed by a team of data processors in each of the four regional offices. The table below shows the

²²⁷ *Ibid.*, p. 167.

total amount of information gathered by each office through statements that were collected.²²⁸

OFFICE	VIOLATIONS (GROSS & ASSOCIATED) ²²⁹	GROSS VIOLATIONS OF HUMAN RIGHTS	NUMBER OF VICTIMS	AVERAGE VIOLATIONS PER VICTIM
CAPE TOWN	4 267	3 122	2 350	1.8
DURBAN	19 383	16 803	14 207	1.4
E- LONDON	6 380	5 460	3 252	2.0
JHB	16 666	11 550	8 941	1.9
TOTAL	46 696	36 935	28 750	1.6

Again, it is evident that violations reported in Kwa-Zulu Natal account for the overwhelming majority.

The *Final Report* of the TRC indicates that a statement may describe more than one violation. A victim may also have suffered more than one violation. On average, 140 victims and 160 violations were mentioned in every 100 statements. In total, 46 696 violations, which involved 28 750 victims were reported to the Commission.²³⁰

3.9.7 What did deponents talk about?

The aim of the deponents' coming to the Commission was to share their stories about gross violations of human rights that were experienced either by themselves or by someone close to them. Men were the most common victims of violations, where six times as many men died as women while twice as many survivors of violations were men. Thus, although it was mostly women who testified before the Commission, most of their testimonies were about men. Most of the men who appeared before the Commission shared the violations they had

²²⁸ *Ibid.*, Vol. 3, p. 3.

²²⁹ Gross violations of human rights included killings, torture, severe ill treatment and abduction. In addition, a number of violations were reported which did not fall into these categories. These were called 'associated violations' by the Commission.

²³⁰ Truth and Reconciliation Commission, Vol. 3, p. 4.

experienced, whereas women rather reported violations experienced by someone other than themselves, and those victims tended to be men.²³¹

According to Boraine, the major objective of the people who came forward seemed to be a desperate need to tell their stories and the need to know more about what had happened to their loved ones. For Boraine, the telling of stories by the deponents revealed the depth of the horror of apartheid and the lengths to which the security forces and the authorities were prepared to go in order to defend the system. The stories also revealed that many people all over the country, from major centres to small towns and villages, were oppressed and repressed. The stories also revealed the remarkable courage of the people who survived.²³² David Thelen summarises the feelings and emotions of the victims who came forward as confusion, guilt, suspicion, helplessness, meaninglessness, terror and overwhelming vulnerability, anger, depression, self-doubt, regret, and also shame and blame.²³³

People who gave public testimony represented only a small percentage (about 10%, or less than one-tenth) of those who approached the Commission. The Commission wanted to ensure that the witnesses had ample time to tell their stories and that they were duly acknowledged. As a result, the Committee was able to choose only a representative cross-section of witnesses to hear in any particular area.²³⁴

It is clear that these statistics do not reflect all the victims. Certain questions arise, such as: "Who is left out? What is left out? What stories were not heard?" There were many more victims than those who came voluntarily to the Commission. The list could be longer if there were, among other things, more time and resources in terms of staff and finances. It is important to take cognisance of the fact that these victims,

²³¹ Truth and Reconciliation Commission, Vol. 1, pp. 170-172; Boraine, p. 115; F. Ross, "Is the TRC true?" in *Rhodes Journalism Review*, Special Edition, May 1997, p. 7.

²³² Van Driel, pp. 14, 16.

²³³ D. Thelen, "How the Truth and Reconciliation Commission challenges the ways we use history" in *South African Historical Journal* 47, November 2002, p. 164.

²³⁴ Tutu, p. 84.

who shared the pain and suffering, cannot be encompassed and defined by statistics. There is a definite realisation that the final numbers and statistical information cannot do justice to the enormity of the violations that were experienced by victims.

3.10 CONCLUSION

Without the victims and their willingness to come forward and convey their stories, there would have been no Truth and Reconciliation Commission in South Africa. Their participation enabled the Commission to carry out its task of establishing as complete a picture as possible of the violations of human rights in the past. These victim hearings became the public human face of the Commission.

The TRC, through the Human Rights Violations Committee, provided a voice for ordinary people to find expression, where previously, there existed only silence. The truth needed to be known, and the Commission engaged itself in a truth-telling process, trying to unravel the complexities of the past. In the process, enormous numbers of valuable primary data were collected, establishing a new archive of a formerly voiceless history of South Africa.

Those who came to the Commission were a wide cross-section of South Africans. They did so voluntarily and came from every part of the community, from all over the country and included old and young, men and women, black and white. The overwhelming majority of people coming to the Commission were ordinary South Africans, from all sides of the conflicts of the past, caught up in political action and/or in an environment in which they became victims of gross human rights violations.

For those who addressed the Commission, the value of the simple act of telling their story before a supportive audience, was in itself significant. It became clear that the victims identified two fundamental outcomes of

their victimisation, which included a desire, above all, for truth, as well as the restoration of individual dignity through an official acknowledgement and public recognition of their experiences. In the process the TRC wanted the victims to become more valuable citizens.

These public hearings on human rights violations especially helped to highlight the actions of the previous government's political order and also offered an important kind of acknowledgement of the suffering and sacrifices that people experienced. It publicised the wrongs committed under the previous government. In this sense, the TRC was a fundamental agency for recognising and recording these stories through a 'victim-centred' approach.

It is clear that many people, through no fault of their own, as well as through the choices they made, did not tell of the violations they had suffered. In spite of this, the victim hearings could help individual victims who testified, as well as those who did not, to position their experiences within the larger milieu of political violence. Even to those who were too afraid to testify or for whom it was too painful, could gain some benefit from the testimonies of others who shared their experiences partially similar or parallel to their own.

Apparently, not all truth was uncovered and revealed for all victims. The reasons could have been the heavy volume of work facing the TRC with limited time and a shortage of resources, which could have resulted in not successfully investigating all the thousands of cases. Certain documents were also destroyed, which could have impeded the work. Nevertheless, the victims had certain expectations, perhaps unrealistic. Therefore, it is understandable that some of these victims were disillusioned and frustrated with the TRC and the revelatory process of the truth, as they expected to gain more knowledge and more truth.

Apart from this, not all 'victims' have shared their experiences with the Commission. Taking into account this series of non-participation by all

victims, it was impossible for the TRC to record a full truth of South Africa's past.

It should be noted that the TRC has only started a healing process through storytelling. However, the traumatised victims still need help and support that ought to be accessible to them. The community should be empowered to provide these services and counselling, through trauma centres and support groups.

The extensive media coverage cannot be ignored. Through the variety of these media, scores of people could listen to hundreds of individual sagas of loss, pain and suffering from victims and casualties from all sides of the conflict. It was an enormous advantage for the nation to participate in the hearings, open to anyone to attend or to follow the proceedings through the extensive media coverage. It highlighted the transparency of the Commission to be open to the general public and the media. It also facilitated a strong educative opportunity, as the hearings became a process of public education in healing and reconciliation.

The task set out for the HRV Committee was enormous. To the benefit of the Committee was the fact that it drew no political or moral distinctions between the experiences of victims from all sides of the conflict. The victim hearings were successful from the aspect of revealing the extent of gross violations of human rights; making it impossible for people to deny that such violations had indeed taken place.

Chapter 4

BREAKING THE SILENCE: HUMAN RIGHTS VIOLATIONS COMMITTEE HEARINGS

4.1 INTRODUCTION

For the first time in South African history a platform was provided for victims, giving them an opportunity to voice their anguish and feelings and to convey their stories about their past experiences, suffering and grief that would shed light on the happenings of the violent past. For many, the victim hearings represented the symbolic core of the Truth Commission process, where the voice of the oppressed would finally be heard.

The Truth and Reconciliation Commission of South Africa (TRC) wished to hear and publicise the victims' accounts of their experiences. All this would be done within the greater purpose of finding out what had happened in the past and even more specifically, what had happened to loved ones during the kidnappings, torture and murders.

The Human Rights Violations Committee (HRVC) hearings wanted to offer a new structure for narrating experiences of the atrocities and violence to a comprehensive public. In the process of narrating these experiences, the audience and the South African nation, as well as the world via the media, were paying attention and listening to what these victims had to tell. Emphasis was put on concepts such as 'giving voice to the voiceless' and 'restoring dignity' by 'being heard'.

It became clear that the core element of the Human Rights Violations hearings was to provide victims with the opportunity to tell their stories

in public; to contribute to the 'healing of a traumatised and wounded people' that would serve as a mechanism for building national unity and facilitating reconciliation based on a shared knowledge of past suffering and to confront the public, thus correcting the perception and understanding of the Apartheid era.

The HRV Committee had therefore the declared aim of facilitating a truth recovery process. To be able to fulfil this purpose, statements were taken from victims and families of victims of gross violations of human rights. Thereafter, so-called demonstrative and representative cases were chosen from among the statements and taken to be presented at public hearings. The vast majority of testifiers were women who often talked about what happened to a husband, son or brother. The majority of testifiers were also black people, with some Coloured and Indian testifiers and a few whites.

In general, the proceedings of the Human Rights Violations Committee are viewed as having been the most successful. These public victim hearings brought into open the layers of human experience and made "individuality and humanity more visible than usual".¹ As explained by SABC anchor Max du Preez, the hearings were a "grand process of the people" and a "human moment", in which people "get thinking very fundamentally about how they experienced their humanity, their strengths and their weaknesses, the things they recognised and denied in themselves, the kind of relationships and society they wanted actively to make".²

This chapter focuses on the unique place of storytelling and testimony and having a voice to share experiences. In addition, it is debated if whether psychological healing would necessarily take place after the victim has shared the memories of a violent event. The patterns and procedures outlining the public victim hearings will be assessed, as well

¹ D. Thelen, "How the Truth and Reconciliation Commission challenges the ways we use history" in *South African Historical Journal* 47, November 2002, p. 163.

² *Ibid.*, p. 179.

as the perceptions of victims towards the HRV Committee. Some of the narratives shared by victims during the HRV hearings will be highlighted to indicate specific atrocities and the suffering that victims endured in the period covered by the TRC. The emphasis on forgiveness by the Commission will also be examined by focusing on various examples. Furthermore, the TRC's own acknowledgement of the 'unfinished business' of women's testimonies will be explored. Finally, the criticism levelled against the HRV hearings is determined, ending with the final stage when the *Report* was handed over.

4.2 STORYTELLING, TESTIMONY AND HAVING A VOICE

As already indicated in Chapter 3, value is attached to oral tradition in the South African context, making the process of storytelling important.

The ability to narrate experience is widely and positively valued. The Commission explicitly used 'storytelling' as part of its methodological approach to establish 'truth'.³ The *Final Report* of the Truth Commission voiced the importance of storytelling for the Commission, stating: "the process of storytelling was particularly important. Indeed, this aspect is a distinctive and unique feature of the legislation governing the Commission ... The Act explicitly recognised the healing potential of telling stories".⁴

For Jackson, storytelling offers a way for the subjective to become social and explains: "Stories make it possible for us to overcome our separateness, to find common ground and common cause. To relate a story is to retrace one's steps, going over the ground of one's life again, reworking reality to render it more bearable. A story enables us to fuse the world within and the world without. In this way we gain some purchase over events that confounded us, humbled us and left us

³ F.C. Ross, "On having voice and being heard. Some after-effects of testifying before the South African Truth and Reconciliation Commission" in *Anthropological Theory* 3(3), September 2003, pp. 328, 330.

helpless. In telling a story we renew our faith that the world is within our grasp".⁵

Consequently, narratives, stories and testimonies are fragments of people's accounts of their lives. The narrations thereof are synopses of experience, specific instances as told at particular times for particular audiences and positioned in certain contexts.⁶ Narrative is also a more basic cultural form of making sense of experience through meanings, emotions and synthesising perceptions. According to Kundera, a narrative does not only come out of experience, but also "shapes experience and what is generated as narrative is as much a product of forgetting as remembering".⁷ Portelli elaborates on this and indicates that the telling of a story "preserves the teller from oblivion; the story builds the identity of the teller and the legacy which she or he leaves for the future".⁸

For telling one's story in public, four main sources of motivation may be identified: to share one's pain and suffering; to gain public acknowledgement; to rectify lies and eventually to achieve closure and healing.⁹ One deponent explained the value of telling one's story as follows: "It was very mixed emotions and it brought back a lot of memories about the day that happened. It was quite traumatic from that point of view and reliving the past is not easy in that situation. On the other hand, I felt a sense of not relief but a good feeling that this is out, it's in writing and his name has gone down in history books. It was like an achievement that he would be now acknowledged".¹⁰ Another deponent valued the forum the hearings provided to rectify distorted

⁴ Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, Vol. 1, p. 112.

⁵ Ross, p. 332.

⁶ *Ibid.*

⁷ M. Humphrey, "From terror to trauma: Commissioning truth for national reconciliation" in *Social Identities* 6(1), March 2000, p. 9.

⁸ A. Portelli, *The death of Luigi Trastulli and other stories. Form and meaning in oral history*, p. 59.

⁹ R. Picker, "Victims' perspectives about the Human Rights Violations Hearings", <<http://www.csvr.org.za/papers/pappick.htm>>, s.a.

¹⁰ *Ibid.*

versions of the truth, explaining: "I think initially, it gave me a sense of – inner fulfilment ... I was finally able to speak about that particular morning out in the open to people who would not shoot me, people who would not put me in jail, and people who would understand what I am saying."¹¹

For Michael Lapsley the telling of his story had a significance all of its own. According to him the experience "relates to that point about the moral order, that here the legitimate representatives of the new state listened to my story with reverence and respect. Somehow, I felt that my own story was joined with the millions of stories, the giant story of our nation, permanently, indelibly, forever".¹²

Apart from having significance, most important for the sharing of narratives is also the 'reverencing' of the victim's suffering. An old black man said: "Today, the nation cried my tears with me".¹³ Minow emphasises the value of publicly shedding tears: "Tears in public will not be the last tears, but to know one's tears are seen may grant a sense of acknowledgement that makes grief less lonely and terrifying."¹⁴

The Human Rights Violations hearings were understood to be 'giving voice' through 'giving testimony'. In other words, it was more than just the telling and sharing of 'life-stories'.¹⁵ According to Ingrid Agger, the concept 'testimony' has a special double connotation as it contains "objective, judicial, public and political aspects, as well as subjective, spiritual, cathartic and private aspects".¹⁶ For Felman and Laub, testimony is an "act of public remembering which has become a

¹¹ *Ibid.*

¹² M. Lapsley, "Confronting the past and creating the future: The redemptive value of truth telling" in *Social Research* 65(4), 1998, p. 755.

¹³ P. Storey, "A different kind of justice: Truth and reconciliation in South Africa" in *Christian Century* 114(25), October 1997, p. 789.

¹⁴ L.S. Graybill, *Truth and Reconciliation in South Africa. Miracle or Model?*, p. 83.

¹⁵ H. Grunebaum-Ralph, "Re-placing pasts, forgetting presents: Narrative, place, and memory in the time of the Truth and Reconciliation Commission" in *Research in African Literature* 32(3), Fall 2001, p. 201.

¹⁶ Ross, p. 331.

privileged contemporary mode of transmission and communication”.¹⁷ In other words, testimony depends on remembering, while at the same time serves as a vehicle for remembering, a means for producing the truth.

Through testimonies, silence can be broken. There are a variety of reasons why people could not break the silence previously and speak out. The political repression of the past did not allow a process of voicing of what happened in detention, during torture and/or imprisonment. To talk about psychological harm inflicted by the Apartheid state could be perceived at the time as a sign of weakness. On the other hand, the violation and its psychological consequences were understood as collective or communal phenomena. The reason for this was that the personal experience of atrocities was very generalised in the victims’ communities. Lastly, some felt ashamed and had intense feelings of guilt about having betrayed ‘comrades’ and/or having broken or divulged information under torture. Others who were harmed and/or were tortured by members of the liberation movements were too frightened to speak the truth of what had happened in the camps and detention centres in exile. The TRC provided the space to testify about the previously unspeakable, to acknowledge publicly what took place in torture situations and to make ‘collective’ experiences ‘individual’.¹⁸

Michael Humphrey emphasises that what is testified to as trauma is mediated through filtering cultural codes, making cross-cultural communication of pain particularly traumatic. Therefore, testimonies produced at truth commissions are “not an autonomous source of ‘truth’ upon which a broader collective ‘truth’ is built. Testimony to trauma is a mode of communication through which the audience ‘borrows memories’ to create the illusion of a personal connection with events and thereby having a more intimate understanding of them”.¹⁹

¹⁷ Humphrey, p. 9.

¹⁸ T. de Ridder, “The trauma of testifying. Deponent’s difficult healing process” in *Track Two* 6(3&4), December 1997, pp. 30-33.

¹⁹ Humphrey, pp. 10-11.

Testimony provides a further purpose on a global level when it can contribute a means for the global audiences, who stand apart from the events, to connect on a personal level with the level of experience of the victim and gain an understanding thereof.²⁰

It must be noted that some things may remain unspeakable. Narratives involving extreme human rights violation may leave individuals with the inability to articulate the pain, suffering and loss they felt. Words may become inadequate and speech may fail in conveying degradations and humiliations. This complete breakdown in language and 'unspeakability' may cause the sufferer to revert back to pre-linguistic states of whimpering, crying and inarticulate screeching, which forms part of bodily expressions that are framed as outside language.²¹ David Morris argues that: "Silence stands in opposition to every voice, weak or strong, ordinary or unique, prosaic or poetic. The basic opposition between voice and silence matters here because suffering, like pain ... exists in part beyond language."²²

Thus, bearing witness is not spontaneous and on certain occasions, not easy. The South African poet Ingrid de Kok captures its difficulties in a poem:²³

*Cut down as flowers,
chopped up like wood
burned in a blaze of fire.*

Bones unfleshed.

*Throat choked.
Cheek charred
in the cave of the mouth.
Ear burst. Eye torn.*

²⁰ *Ibid.*, p. 15.

²¹ N. Motsemme, "The mute always speak: On women's silences at the Truth and Reconciliation Commission" in *Current Sociology* 52(5), September 2004, pp. 915-916.

²² F.C. Ross, *Bearing witness. Women and the Truth and Reconciliation Commission in South Africa*, p. 162.

²³ *Ibid.*, p. 4.

Gravel. Grave in sand.

*O listen, let us not turn away
from seeing and hearing
the witness speak with bowed neck.*

Prayer, apostrophe, curse.

*A bandaged story about
the broken world, stumps
on which to hang our shame
as useless hands, forever.*

4.3 SHARING NARRATIVES: PSYCHOLOGICAL HEALING FROM THE PAST?

Bringing about healing, to some extent, in a divided society was one of the primary motives of the TRC. The idea was that the access to truth through detailed information gained from the victim hearings would enable people to come to terms with the past. Through the public hearings, the victims gained acknowledgement of their pain and suffering from the community. Official acknowledgement of the past was a step forward to healing a hurting society and thus focusing on a freer existence in the future.²⁴

Giving testimony before the TRC made private pain public and identified the specific political origins of that pain. The personal testimonies were supposed to produce a cathartic healing through the public sharing of pain.²⁵ Archbishop Desmond Tutu told the audience gathered in the city hall in East London on 15 April 1996: "We are charged to unearth the truth about our dark past and to lay the ghosts of that past so that they will not return to haunt us; and that we will thereby contribute to the

²⁴ A. Boraine, *A country unmasked. Inside South Africa's Truth and Reconciliation Commission*, pp. 293-295; K. Christie, *The South African Truth Commission*, p. 57; Graybill, p. 164.

²⁵ Humphrey, pp. 9, 12.

healing of the traumatised and wounded – for all of us in South Africa are wounded people”.²⁶

On a psychological level, it would be important for the victims to tell their stories. This would make the person feel respected as a human being and the telling of his/her story would lead to healing and a cathartic experience.

Martha Minow stresses that therapists who work with victims of political atrocities have found the process of developing and revising testimony, an important element of healing. Facing the trauma, rather than forgetting it, is important if a victim hopes to avoid reproducing it in the form of emotional disturbance.²⁷

Allowing people to talk about their experiences, emotions, cognitions, and behaviour in the right setting can be therapeutic. According to Wendy Orr, many testifiers who testified to the TRC found the encounter of being able to recount their experiences in a supportive, respectful and affirming environment to be extremely positive.²⁸ For Glenda Wildschut, most of the victims stated that for the first time they felt dignified merely by having a statement taker listening sympathetically to their stories. Those victims who testified publicly stated that they felt relieved that they had had an opportunity to share their experience, even if some of the questions remained unanswered.²⁹

For one deponent there was healing and closure because she could testify in public. “That day, after I testified, when I came off the stage, I cried. I am not really a person who can cry easily in front of people. It was just too much. I can’t, I am always smiling. But I kept everything inside. I kept

²⁶ National Archives and Record Service of South Africa, “East London – East London Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 1, 1996.04.15-18; M. Meredith, *Coming to terms. South Africa’s search for truth*, p. 3.

²⁷ M. Minow, *Between Vengeance and Forgiveness. Facing history after genocide and mass violence*, p. 66.

²⁸ W. Orr, *From Biko to Basson. Wendy Orr’s search for the soul of South Africa as a commissioner of the TRC*, pp. 31-32.

the pain inside for all those years. And when I went to the Truth Commission, I don't know, I just stood and cried and screamed. My husband said people could hear me outside the hall ... The Truth Commission helped me to some extent in that way. Since then, until today, I don't take the nerve pills anymore."³⁰

It is important to take note of the fact that The Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) does not use the word 'healing'. However, the concept was often used as a metaphor by members of the TRC which produced a widespread view that the Commission was a mechanism designed to promote healing of the individual and the social body.

Much though was made by the TRC that by telling your story, a process of healing is set in motion. For Brandon Hamber it was essential to provide space for victims to tell their stories, especially as it was the first time that many South Africans were able to do so to a sympathetic ear. Commissioner Mary Burton agrees that giving public testimony resulted in healing for many survivors and contributed to a process of healing in many cases. However, Hamber questions the actual psychological impact of giving public voice to trauma, as it has had varying consequences for victims. For some victims it was the final leg of a personal healing journey, while others experienced it only as the first step. For many, there was an initial sense of relief at having unburdened themselves. On the other hand, a disturbing number of these individuals found, in the weeks following, a return and intensification of symptoms associated with the original violations. For some, there was also the onset of new symptoms that may be related to an actual retraumatisation caused by retelling the story. The act of telling their story may have tended to collapse or weaken the defence mechanisms that each had built against

²⁹ G. Wildschut, "Abuse of power/victims of abuse: Understanding our past - A way to creating a future". Paper presented at the 9th International Symposium on Victimology, Amsterdam, 25-29.8.1997.

³⁰ Picker.

the negative feelings associated with the original trauma, thereby causing a further crisis for some individuals.³¹

Officials of the Trauma Centre for Victims of Violence and Torture, a non-governmental group that provides services in the Cape Town area, reported that 50 to 60 percent of the victims they had encountered, suffered serious difficulties after giving testimony.³² This notion is emphasised by Ruth Picker who interviewed victims who testified at the public hearings. Her research shows a significant deterioration of the overall physical and psychological health of the victims after testifying.³³

Thus, for many, and even some of those who found the initial experience therapeutic, the medium- and long-term effects may have been anti-therapeutic. The especially long drawn-out process with compensation and reparations, made victims feel that they had been sacrificed for the benefit of the community.³⁴ A victim voiced his scepticism with the process: "We now feel that we have been used in a cynical process of political expediency".³⁵

There was a popular assumption that the TRC provided the space for a cathartic release of emotions that could form the basis for psychological healing – for individual deponents and for society as a whole, but this is questionable. For Hamber, it is only partially true; a simplistic assumption that catharsis, through telling one's story, is sufficient for

³¹ B. Hamber, "Truth: The road to reconciliation?", <<http://www.csvr.org/articles/artrcant.htm>>, 1997; De Ridder, p. 32; L. Graybill and K. Lanegran, "Truth, justice, and reconciliation in Africa: Issues and cases" in *African Studies Quarterly* 8(1), Fall 2004, p. 6; A. Allan and M.M. Allan, "The South African Truth and Reconciliation Commission as a therapeutic tool" in *Behavioral Sciences and the Law* 18, 2000, pp. 472-473.

³² A. Gutmann and D. Thompson, "The moral foundations of truth commissions" in R.I. Rotberg and D. Thompson (eds), *Truth v. Justice. The morality of truth commissions*, p. 30.

³³ Picker.

³⁴ Allan and Allan, p. 469.

³⁵ J.M. Statman, "Performing the truth: The social-psychological context of TRC narratives" in *South African Journal of Psychology* 30(1), March 2000, p. 26.

emotional healing to take place. Sufficient healing usually requires ongoing support from professionals and other support structures.³⁶

Boraine rationalises that to have real healing take place, the truth must be known, as truth sets a nation free – it does not bind it. For Boraine, truth-telling may be both cathartic and therapeutic. However, Michael Ignatieff explains that people need to explore assumptions such as ‘the truth heals’. According to him, it is “an open question whether justice or truth actually heals ... the assumption is that truth is one, not many; that truth is certain, not contestable; and that when it is known by all, it has the capacity to heal ... it is putting too much faith in truth to believe that it can heal”.³⁷

NGOs warned throughout the TRC process that the procedure of uncovering the past could cause more psychological damage than leaving it undisturbed. Trauma does not simply disappear with the passage of time, but is likely to have emotional consequences for the individual. The TRC was criticised for not providing sufficient psychological support for victims.³⁸ It must be understood that the provision of such services did not form part of the TRC mandate and legislation. The TRC was already faced with an enormous workload and the current staff could not ‘just get involved’ on this level as this process needed educated, specialised people and that would have involved additional costs.

It is true that for some people such as Lucas Baba Sikwepere, an ANC activist who testified before the TRC in Cape Town in 1996, who had been blinded when the police shot him in the face; it was a relief to tell his story. He stated: “I feel what ... has brought my sight back, my eyesight back, is to come here and tell the story. I feel what has been making me sick all the time is the fact that I couldn’t tell my story. But

³⁶ Hamber. See also P.B. Hayner, *Unspeakable truths. Facing the challenge of truth commissions*, p. 6 where the author also argues that this is a questionable assumption and clear that this notion of healing is somewhat overstated, at least.

³⁷ E.A. Christodoulidis, “‘Truth and reconciliation’ as risks” in *Social and Legal Studies* 9(2), June 2000, p. 196; P. Reynolds, “Traditions and truth” in *Rhodes Journalism Review* Special Edition, May 1997, p. 7; *Sowetan*, 7.12.1994, p. 7.

now it feels like I got my sight back by coming here and telling you the story".³⁹ Beth Savage was severely wounded during a grenade attack by armed anti-apartheid activists of the Azanian People's Liberation Army (Apla)⁴⁰ at a country club in King William's Town. She told the press that after confronting and forgiving her attacker at the TRC hearing, she was able to sleep without nightmares for the first time since the assault.⁴¹ For Matthew Goniwe's brother it was a relief; he indicated that the "first time after telling his story, it was as if a huge weight has been lifted from his shoulders".⁴² Thus, it seems as if victims have benefited by telling their stories and numbers of them said that they now feel able to move forward with their lives. Nonetheless, almost every story of healing that was experienced, may be matched by an opposite reaction.

Allan and Allan indicate that there is no empirical or other data that suggest that any long-term healing followed for witnesses who experienced catharsis while giving testimony to the TRC. As a result, it may be debated that the TRC process did start a healing process in some cases where the presence of a cathartic release of emotions represents only a small step in a prolonged healing process.⁴³

Purely on a psychological level, it is impossible to address all the levels of pain and the sense of loss experienced by victims. For some victims the process of testifying can be psychologically beneficial where hidden

³⁸ B. Hamber and S. Kibble, *From truth to transformation. The Truth and Reconciliation Commission in South Africa*, p. 16.

³⁹ National Archives and Record Service of South Africa, "Cape Town – Heideveld Hearing", *Human Rights Violation Hearings – Video Tapes*, Box 1, Case No. CT/00508, 1996.04.22-25; SABC News Production, "Bones of memory. Experiences and memories lay bare the pain and bravery of apartheid's victims", *South Africa's human spirit. An oral memoir of the Truth and Reconciliation Commission*, CD 1 no. 8; J.D. Tepperman, "Truth and consequences" in *Foreign Affairs* 81(2), March-April 2002, p. 135; Graybill, p. 83.

⁴⁰ The Azanian People's Liberation Army (Apla) is the armed wing of the Pan Africanist Congress of Azania (PAC), formed in 1959 when the 'Africanist' element left the African National Congress (ANC).

⁴¹ Truth and Reconciliation Commission, Vol. 5, pp. 373-374; Boraine, pp. 104-105; Graybill, p. 43; D.M. Tutu, *No future without forgiveness*, pp. 112-113; A. Krog, *Country of my skull*, pp. 80-81; SABC News Production, "Bones of memory ...", CD 1 no. 6; *The Star*, 26.10.1998, p. 7.

⁴² S. Leman-Langlois, "Mobilizing victimization. The construction of a victim-centred approach in the South African Truth and Reconciliation Commission" in *Criminologie* 33(1), 2000, p. 17.

⁴³ Allan and Allan, p. 473. See also Hayner, p. 135, emphasising this same argument.

traumas may be revealed. However, it can also be argued that the TRC did not really help victims to cope with their tragedies in a persuasive manner or to deal with the ongoing personal and social difficulties created by their victimisation. The *Final Report* of the TRC admitted that: “Clearly, everyone who came before the Commission did not experience healing ...”.⁴⁴ Boniwe Mafu, a statement taker agrees to this: “In the past, you know, you didn’t know you had sick people in this society, traumatised. Only now people are being identified as traumatised, and it’s clear that some people need help. It’s true that the Truth Commission is a healing process – if not 100 percent, then 60 percent. Perhaps 60 percent feel better, but those people are only healed 60 percent”.⁴⁵

It seems as if knowledge does not necessarily heal, although it does present a new and different approach in dealing with the past. Public acknowledgement may restore the dignity of victims, but psychological healing may still remain distant as it is an exceptionally personal matter. One must be realistic, as it would be short-sighted to believe that a single hearing would have the same effect as a long-term therapeutic process of intensive and sustained therapeutic intervention in the potential healing of a traumatised person. Besides, it must be emphasised that the main purpose of a truth commission is not therapy. Promoting psychological healing rather focuses the attention on the subjective dimensions of the work of a truth commission and not on its primary aims.

4.4 PATTERNS AND PROCEDURES WITHIN THE PUBLIC VICTIM HEARINGS

The HRV hearings took place from April 1996 until June 1997 in 65 locations in South Africa.⁴⁶ From the 21 296 written statements the TRC received, only 1 818 people were given an opportunity to testify in public hearings as their stories were considered broadly representative or

⁴⁴ Truth and Reconciliation Commission, Vol. 5, p. 350.

⁴⁵ Hayner, p. 138.

⁴⁶ Picker. See Appendix 2 for a list of the dates and venues for the victim hearings.

“window cases”.⁴⁷ The victim-centred approach of the Commission, entails processes that include norms of respectful listening, which allow people to share their stories; showing respect; granting acknowledgement for coming forward and sharing information; as well as supplying support services.⁴⁸

Each testifier was to be given an even-handed opportunity to tell his/her story in the way, manner and language in which that person felt most comfortable. The TRC wanted to provide the opportunity to as many people as possible to testify in the public hearings. Nevertheless, the testimonies had to take place within the specific time frame and within the provided time setting. Thus, because of logistical reasons it was important and necessary to stick to the time schedule, resulting in time limits to the freedom of speech which sometimes created many time constraints and a lot of pressure.

Some of those who did not have the chance to testify in public believed that not testifying meant that their cases had less likelihood of being investigated and in the end they would have less chance of receiving reparations. According to Hugo van der Merwe, these people felt that the TRC had failed to deliver on its fundamental “social contract”.⁴⁹ In a case-study done on the impact of the TRC on Duduza and Katorus townships, Van der Merwe found that the Commission’s work rather created the idea with victims as “failure of the TRC to deliver on its promises”.⁵⁰ He explained that “each victim wanted the TRC to investigate his/her case, mainly in order to track down the perpetrator(s) and to find out exactly what had happened. After months of waiting, however, victims became frustrated that nothing seemed to be happening. When a few cases were investigated, there was again suspicion about who was prioritised and

⁴⁷ B. Hamber, *et al.*, “‘Telling it like it is ...’: Understanding the Truth and Reconciliation Commission from the perspective of survivors”, <<http://www.csvr.org.za/papers/papbhdn.htm>>, 2000.

⁴⁸ E. Kiss, “Moral ambition within and beyond political constraints. Reflections on restorative justice” in Rothberg and Thompson (eds), p. 73.

⁴⁹ Statman, pp. 25-26.

⁵⁰ *Ibid.*, p. 25.

why. Suspicion often centred on the relationship between the TRC and certain local stakeholders, and some victims believed that the TRC had been instructed by local leaders to focus on certain cases”.⁵¹

As indicated previously, it was impossible for the Commission to let everyone who made statements to also testify during the public hearings. According to the TRC, the selection for testifiers occurred on the basis of presenting a representative mix in terms of variables such as race, gender and age and in general, reflect the types of human rights abuses that had occurred in that area.

The procedure of giving testimony during the public hearings virtually followed the following pattern/structure: the sound equipment is checked, while the translators and transcribers are ready to capture every word. A person, usually a woman, sits facing a panel of commissioners. Sometimes the testifier is accompanied by family member(s), sometimes the person is alone. The appointed community briefer is seated next to the testifier for emotional support to provide comfort when the testifier’s words choke and the person weeps. The chairperson welcomes the testifier, introductions are made, there is a brief explanation of proceedings, and the person is given the choice of taking an oath or affirmation. Some personal questions reflecting on the testifier’s family and/or job are posed. After this small talk to make the testifier feel at ease, the testifier tells a story of loss and suffering and pain while one of the commissioners proceeds gently to ‘lead’ the person through his/her evidence. The remainder of the commissioners listen, nodding in sympathy. When the story is finished, questions are asked by the panel to clarify information and to determine the effect of the incident on the personal life of the victim. Questions are also posed to determine the specific needs that the person may have as a result of the violation. Lastly, appreciation is expressed for participating and sharing

⁵¹ *Ibid.* See also D. Skinner, “An evaluation of a set of TRC public hearings in Worcester: a small rural community in South Africa” in *Psychology, Health & Medicine* 5(1), 2000, p. 103.

his/her encounters. Usually at this last stage, the Chair transcends the story by linking it to the whole community and the country.⁵²

Antjie Krog emphasises that the priority of the HRV hearings lay with the victims. The moment the victim was called to the stage, he/she was put at ease. The earphones were explained, as well as the translation. The person was addressed in his/her mother tongue and addressed in terms of respect. The person was welcomed.⁵³

On average, each testifier was given approximately thirty minutes to tell his/her story. Occasionally, the testifiers read from prepared statements, but more generally, they spoke without notes, guided and prompted by Commissioners. To avoid the atmosphere of a courtroom, witnesses were led to 'tell what's in your heart', and 'relive what you experienced'.⁵⁴ In the process the testifiers could recreate what they went through in their own voices. Moved by a Commissioner's question, the testifier may shift from giving a linear account of the original event to re-inhabiting the original moment and may suddenly be overwhelmed by feelings, conflicts and thoughts he/she could no longer tame in a narrative. In the process, what was put forward was "less a story than the unravelling of a story".⁵⁵

Due to the strict time limits and to respect the schedule of hearings to be covered, it seems as if it was impossible for victims to tell their whole story in endless detail and in ample time. Often testifiers were interrupted by the Commissioners and were asked to shorten their stories. It appears as if the testifier could give some background information, but then had to focus mainly on the most important part of his/her story which made the person a victim – the human right

⁵² W. Corry and M. TerreBlanche, "Where does the blood come from?: True stories and real selves at the TRC hearings" in *Psychology in society* 26, 2000, pp. 11-12; A. 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", <http://cas1.elis.rug.ac.be/avrug/trc/02_08.htm>, 2002; Studie- en Informatiecentrum Menserechten, "Truth and Reconciliation in South Africa and the Netherlands" in *Netherlands Institute of Human Rights*, pp. 18-19.

⁵³ Studie- en Informatiecentrum Menserechten, p. 19.

⁵⁴ Thelen, p. 171.

⁵⁵ *Ibid.*

violation. In conjunction with this, the testifiers had to do so in the shortest time possible, without too much side-tracking.⁵⁶

Commissioners were interrupting witnesses to come to the point, using phrases such as: "I'm very sorry to have to interrupt you here. We have another five witnesses to hear before lunch"; "Could you please tell us briefly what happened because time escapes us"; "We would like to shorten this because we are running out of time. Could you please tell us your last point"; "I shall be interrupting because you can't go on and on and on ... Say it in brief"; "Could you please confine yourself to the question ... to those issues that deal with your ill-treatment or maltreatment ... we wish that you bear in mind that there are six more witnesses which we still have to take ...".⁵⁷ While interrupting the testimony of Mono Badela several times, he asked the Commissioners: "If you do not want me to say the things that I want to say now, why am I here in this Commission?"⁵⁸

It is understandable that the victim wanted to share his/her whole story in detail when given the opportunity to do so. Many times background information is necessary to understand the events that led to the human right violation that took place. By first establishing the historical setting, the interviewee can also become more comfortable with the process. It is thus evident that a victim would not have jumped right into the human right violation. Nonetheless, one must also reason that the TRC had a specific time mandate to adhere to, likewise taking into account limited resources. Already, the TRC focussed only on less than ten percent of those who made statements. Therefore, they could not afford to limit the number of testifiers in public even further. Besides, to give every testifier ample time to tell everything he/she wanted to share, would have drawn out the period extensively. It is also important to keep the interviewee

⁵⁶ Verdoolaege; Skinner, p. 103.

⁵⁷ Verdoolaege; Truth and Reconciliation Commission of South Africa, "Victim Hearings", <http://www.doj.gov.za/trc/trc_frameset.htm>, 2003.

⁵⁸ Verdoolaege; Truth and Reconciliation Commission of South Africa, "Victim Hearings", <http://www.doj.gov.za/trc/trc_frameset.htm>, 2003.

(in this case the victim as storyteller) to the point and guide the person with questions to prevent the interviewee from side tracking.

The TRC's aim was to give the survivors as much freedom as possible to voice their experience, but according to Annelies Verdoolaege, the TRC had to limit this freedom of expression to a certain extent in order to give all testifiers equal opportunities. Thus, the time constraint led to a process in which the testimonies had to have a certain pattern. Within the limited amount of time, the TRC wanted to have certain items raised and consequently the testifiers had to adhere to a well-defined structure.⁵⁹

The testifiers were only allowed to share the events that had been described in their written statements beforehand and could only implicate people who had been mentioned in their written statements. This limited the cases where victims could raise unexpected issues and/or unanticipated topics and prevented the hearings developing into chaotic situations. It also emphasised the orderly manner in which the proceedings were conducted to confirm the credibility of the TRC. Nevertheless, by guiding the testimony through questions and interruptions by the Commissioners, the story-telling process of the testifiers was subjected to certain conditions and criteria which followed a specific pattern and fitted a predetermined structure.⁶⁰

It must be noted that when a testifier was selected, the person was briefed about what to expect from the hearings, as well as being informed about the restrictions and regulations of the hearings. This means that the testifiers understood in advance the specific structure and time schedule of the hearing.⁶¹ Verdoolaege emphasises that "through this whole text trajectory the testimonies had already been structured and modified to the context before they were actually told at the public

⁵⁹ Verdoolaege.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*; Ross, *Bearing witness ...*, p. 14.

hearings ... during the hearings the Commissioners only finished off the contextualization process that had started long before".⁶²

The Commissioners and/or chairperson normally assured the testifier at the end of the testimony-process that there would be a follow-up of the specific case. However, it is important to stress that the point was also clearly made to the testifier that the TRC could only recommend reparations to the government and that the testifier should not be displeased if this was not realised immediately.⁶³

The testifiers were not hindered in expressing their emotions spontaneously. Due to the shedding of many tears by the testifiers because of the emotional stories that were shared, the TRC was labelled by some critics as the "Kleenex Commission".⁶⁴ A large number of testifiers wept as they spoke; sometimes members of the audience did too. This emotional environment was occasionally increased by the emotions shown by the different Commissioners who themselves sometimes had a difficult time listening to the testimonies. This was especially noticeable if the testimonies had to do with elements of torture. On a number of occasions the Commissioners asked the testifier to provide more details about the torture experiences they had suffered. Questions such as: "What was the main part of the torture?"; "Tell us about the ways in which you were tortured"; "What exactly did they do to you when you were being tortured?" and "Could you describe some of the torture?", were asked by the Commissioners.⁶⁵

Tutu warned that "the truth is going to hurt", and "looking the beast in the eye" was not always easy. At the end of the second day of testimony, Tutu laid his head on the table and wept openly. "I don't know if I'm the

⁶² Verdoolaege.

⁶³ *Ibid.*

⁶⁴ The reference to "Kleenex" has to do with the well-known brand name of tissues.

⁶⁵ Verdoolaege; Truth and Reconciliation Commission of South Africa, "Victim Hearings", <http://www.doj.gov.za/trc/trc_frameset.htm>, 2003.

right person to chair the Commission” he said later, “because I’m weak. I thought I was tough. Until today.”⁶⁶

Questions were also raised by the Commissioners about the physical conditions of the testifier during the atrocities experienced; whether the person was medically treated after the incident and the psychological effects on the person and his/her family assessed. Information was also gained as to whether the testifier was still in need of medical treatment and/or psychological counselling.⁶⁷

It is thus clear that the testifying process during the Human Rights Violations hearings was intensely personal, evidently unfolding a variety of emotions. One cannot ignore the emotional hurt and anguish of any type of atrocity. It is therefore self-evident that talking about it, for many for the first time, would engage a whole range of emotions. On the other hand, the Commissioners made sure, through specific questions focusing on the type and method of atrocities used, that the devastating effects of apartheid were emphasised.

The presence of an audience when sharing a story may have advantages, as well as disadvantages. In the case of the TRC’s public victim hearings, the presence of the audience generated public affirmation and support for the victims, while also highlighting the transparency process of the Commission. It definitely made the victims feel important and respected, which also increased their dignity and self-awareness. Conversely, testifying in front of an audience could create more tension and scrutiny, causing the testifier to feel intimidated and influencing the quality and quantity of the story-telling process. The danger is also situated in dramatising the experience due to the attention given to the whole event, especially through the extensive media coverage.⁶⁸

⁶⁶ Meredith, p. 4; P. Hawthorne, “Truth, tears and pain” in *Time* 147(18), 29.4.1996, p. 29.

⁶⁷ Verdoolaege; Truth and Reconciliation Commission of South Africa, “Victim Hearings”, <http://www.doj.gov.za/trc/trc_frameset.htm>, 2003.

⁶⁸ Verdoolaege.

Another aspect that received attention during the hearings was national unity and reconciliation. As the main statutory agent of national unity and reconciliation, the TRC's hearings were not supposed to be used as platforms for the public expression of anger or for outcries for revenge. Rather, the hearings encouraged, shaped, expected and rewarded expressions of forgiveness on the part of victims, remorse on the side of perpetrators and demonstrations of reconciliation between these two parties. This discourse of 'forgiveness' was a result of the more Christian character of the TRC. Archbishop Desmond Tutu established the religious character of the HRV hearings explicitly in his opening address: "We will be engaging in what should be a corporate nation-wide process of healing ... through contrition, confession and forgiveness".⁶⁹

According to Richard Wilson, in the Christian ethic of forgiveness and redemption "lay a redemptive template across testimonies ... which conjoined individual suffering and a narrative of nation building".⁷⁰ He notes further that "Commissioners' responses were formulaic, predictable and they regularly contained the following stages: a recognition of suffering; the moral equalising of suffering; the portrayal of suffering as a necessary sacrifice for the 'liberation' of the nation; and finally the forsaking of revenge by victims".⁷¹

Furthermore, it seems as if the hearings were structured in such a way that expressions made by victims for a desire for revenge, hatred and bitterness were rendered unacceptable, as an "ugly intrusion on a peaceful healing process" where the "virtues of forgiveness and reconciliation were so loudly applauded".⁷²

C. van der Walt made a detailed analysis of the transcripts of six Human Rights Violations Committee hearings. He found that victims whose

⁶⁹ National Archives and Record Service of South Africa, "East London – East London Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 1, 1996.04.15-18; S. Young, "Narrative and healing in the hearings of the South African Truth and Reconciliation Commission" in *Biography* 27(1), Winter 2004, p. 148.

⁷⁰ Statman, p. 26; Hamber, *et al.*

⁷¹ Statman, p. 26; Hamber, *et al.*

testimony seemed to conflict with the TRC forgiveness paradigm were frequently challenged by Commissioners, interrupted and given less time in which to present their story, as compared to those whose narratives and emotional demeanour complied with the TRC's expectations of forgiveness and reconciliation. Thus, it seems as if the hearings, to some extent, took on a quality of scripted and staged morality, rather than creating an empowering space in which victims could not only voice their stories, but also express their actual feelings and emotions, no matter how socially (un)acceptable and/or complicated.⁷³

This is not to indicate that revenge and vengeance is the preferred course of action. Revenge may imprison the victim, leaving him/her embittered. Rather, feelings that accompany victimisation need to be openly acknowledged where the desire for revenge is understood and legitimised, providing both private and public space for people to express their feelings of sadness and rage.⁷⁴

At the end of a testimony, a Commissioner often explicitly asked the testifier whether he/she would consider the whole idea of forgiveness towards the perpetrator, especially if the person had submitted a written statement where forgiveness and reconciliation had been expressed. The Commissioner would then read the appropriate fragment to the victim and in this way, the person had to confirm that he/she favoured such a reconciling process, particularly at the time when the statement was given. The atmosphere of forgiveness and reconciliation was further notably stressed in the concluding remarks of the Commissioners, specifically praising the testifiers if any signs of forgiveness were shown. It can be argued that this atmosphere most probably made it more difficult for the next group of testifiers to express anger and a desire for revenge.⁷⁵

⁷² Statman, p. 27.

⁷³ *Ibid.*

⁷⁴ Hamber, *et al.*

⁷⁵ Verdoolaege.

It cannot be ignored that the concept of reconciliation formed an important part of the ideology of the TRC. However, it must be remembered that the TRC never claimed to be able to achieve reconciliation in the country and was never expected to do so. The aim of the Commission was to at least start a process of reconciliation. The victim hearings could be used as a vehicle to portray the willingness of people from different cultures to forgive and, in the process, promote reconciliation.

4.5 COMING TO TERMS WITH THE PAST: VICTIM'S STORIES

The nation of South Africa was invited to come and share their stories of happenings of gross violations of human rights in the period 1960-1994. The silences of a violent past were to be broken into telling, sharing, crying, confessing, knowing and acknowledging. The veil was lifted for voices to be heard and the people wanted to recount their experiences. This was voiced in the outcry of one of the testifiers who noted: "When the officer tortured me at that time in John Vorster Square, he laughed at me: 'You can scream your head off, nobody will ever hear you!' He was wrong. Today there are people who hear me."⁷⁶

It is obvious that it will be impossible to convey every testimony that was shared by those invited to speak at the different public victim hearings. Therefore, certain testimonies will be highlighted to stress specific sufferings that were inflicted on a variety of victims. These testimonies include victims of different races, gender, ages, educational backgrounds, political affiliations, as well as different forms of gross violations of human rights that were experienced. This will be done with the sensitive awareness of the words spoken by Charles Villa-Vicencio: "It is difficult to

⁷⁶ Graybill, p. 83.

conceive how any historical text can ever capture the pain of testimony of the heart".⁷⁷

The narrative element of the Human Rights Violations hearings made them compelling. Antjie Krog highlights the importance of the narratives shared at the TRC hearings and is convinced that these narratives alone are enough to justify the existence of the TRC. She declares: "Because of these narratives, people can no longer indulge in their separate dynasties of denial".⁷⁸

The first witness to appear before the TRC first hearing of the Human Rights Violation Committee in East London, was Nohle Mohapi. After taking the oath, Alex Boraine spoke the following welcoming words: "In welcoming you as the first witness in the proceedings of the Truth and Reconciliation Commission, we are mindful of the suffering that you have endured in the past. ... We remember the anguish and horror of those days ... We thank you for coming here today. This is a testimony to your commitment, to truth, to justice, to reconciliation and to peace between you and all people and all South Africa".⁷⁹

Nohle's husband Mapetla Mohapi, had been a leader in the Black Consciousness Movement and was arrested and detained in terms of Section 6 of the Terrorism Act of 1967, which provided *inter alia*, for solitary confinement in conditions where only the security police had access to a detained person. Mr Mohapi died as a twenty-five-year-old activist teacher in police cells in Port Elizabeth in August 1976. He had been found hanged in his cell, with a suicide note. Mrs Mohapi contested this and claimed that her husband had been murdered by the state. All

⁷⁷ South African History Archive, "Learning to live together with bad memories" in *The Charles Villa-Vicencio Collection*, AL 3136f, p. 9.

⁷⁸ Krog, p. 89.

⁷⁹ Boraine, p. 98; SABC News Production, "Bones of memory ...", CD 1 no. 5.

her previous efforts, through legal processes of an inquest and civil action, had come to nothing.⁸⁰

After testifying before the TRC, Mohapi told the media that she felt relieved and for the first time felt dignified and honoured because she was testifying before people who seemed to understand the pain she had carried for almost two decades and who believed her story. This was further emphasised when victims realised that matters were going to be genuinely investigated and every effort made to discover the truth.⁸¹

Following her testimony, were the widows of the “Pebco Three”, (Sipho Hashe, Champion Galela and Qaqawuli Godolozzi) members of the Port Elizabeth Black Civics Organisation, a group responsible for mobilising anti-apartheid activists in the Eastern Cape. They had disappeared without trace on 8 May 1985. This happened after they had received a message to meet a British Consular official at the local airport to discuss funding from abroad. In fact, the meeting had been set up by the security police to lure them into a trap. They were killed at a deserted police station, Post Chalmers, near Cradock.⁸² Later on, the black askari,⁸³ Joe Mamsela, described their death as follows: “It was brutal. They were tortured severely. They were brutalised. I strangled them. They were beaten with iron pipes on their heads, kicked and punched. They were killed. They died one by one. I have never seen anything like it in my life. It was blazing hell on earth”.⁸⁴

⁸⁰ National Archives and Record Service of South Africa, “East London – East London Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. EC 0007/96, 1996.04.15-18.

⁸¹ D.B. Ntsebeza, “The uses of Truth Commissions. Lessons for the world” in Rotberg and Thompson (eds), pp. 160-161; *The Cape Times*, 26.10.1998, p. 7.

⁸² A. Minnaar, “The PEBCO Three, Cradock Four (Goniwe) and Motherwell killings” in C. Schutte (eds), *The hidden hand. Covert operations in South Africa* (2nd edition), pp. 283-289; National Archives and Record Service of South Africa, “East London - East London Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. EC 0003/96, EC 0004/96, EC 0005/96, 1996.04.15-18; *City Press*, 10.7.1994, p. 16.

⁸³ Askaris is an Arabic-derived East African name for soldiers or policemen. In South Africa, it denoted former ANC and/or PAC members working for the South African Police.

⁸⁴ J. Edelstein, *Truth & lies. Stories from the Truth and Reconciliation Commission in South Africa*, p. 120; SABC News Production, “Portraits of truth. Former Vlakplaas Joe

This was followed by the widows of the “Cradock Four”. These women indicated the four activists (Matthew Goniwe, Fort Calata, Sparrow Mkhonto and Sicelo Mhlauli) whose bodies had been found badly mutilated near Port Elizabeth in June 1985, several days after they had disappeared while travelling to Cradock from Port Elizabeth. The deaths of the “Cradock Four” had ignited a popular uprising throughout the Eastern Cape. Although the first inquest led to nothing, the second inquest in 1994 held the security forces responsible for the killings, but still failed to detect any culprits.⁸⁵ According to Nyameka Goniwe, wife of Matthew Goniwe, the security police hated her husband for raising the level of political awareness of people in the Eastern Cape. The family was persecuted for years by the security police and their movements were also closely watched. Therefore, the police must have known what had happened to her husband and his three colleagues.⁸⁶

Nombuyiselo Mhlawuli described how she had discovered by reading her husband’s, Sicelo Mhlawuli, post-mortem documents that his face had been disfigured by acid and his right hand had been chopped off. According to her, she had subsequently heard that the hand had been preserved in a bottle at security headquarters in Port Elizabeth.⁸⁷ Their daughter, Babalwa, remembered how a few days after her father’s body had been found, a policeman returned day after day to their house, standing outside the house, howling like a dog and waving his hand loosely in the air. Babalwa told her story as the child of an activist, living through all the harassment that her mother suffered at the hands of the security police. Finishing her testimony, she said that she wanted to

Mamasela”, *South Africa’s human spirit. An oral memoir of the Truth and Reconciliation Commission*, CD 4 no. 2-5; See also Minnaar, pp. 284-286.

⁸⁵ Minnaar, pp. 289-293. For more detail on the search of the people ultimately responsible for the deaths of the Cradock Four, and the inner workings of the apartheid government’s State Security Council, see the book of C. Nicholson, *Permanent removal. Who killed the Cradock Four?*; as well as the chapter in G. Bizos, *No one to blame? In pursuit of justice in South Africa*, pp. 163-227.

⁸⁶ National Archives and Record Service of South Africa, “East London – East London Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. 0080/96, 1996.04.15-18.

⁸⁷ *Ibid.*, Case No. EC 0079/96, 1996.04.15-18; *The Cape Times*, 26.10.1998, p. 7.

know who had killed her father and ended by saying: “We do want to forgive, though we don’t know who to forgive”.⁸⁸

For Nomonde Calata the grief of those days is still raw. While recalling the news of hearing about her husband’s death, she broke down and started to wail from the depths of her soul. Antjie Krog describes in her book *Country of my Skull*, this wailing as: “For me, this crying is the beginning of the Truth Commission – the signature tune, the definitive moment, the ultimate sound of what the process is about. She was wearing this vivid orange-red dress and she threw herself backwards and that sound ... that sound ... it will haunt me for ever and ever”.⁸⁹ The body of Fort Calata had many wounds, while his fingers were cut off. Two weeks after Calata’s funeral in July 1985, the security police turned up to search her house. Realising that she had a baby without a father, one of them jeered at her in Afrikaans: “Don’t you want us to be the father of the baby?”⁹⁰

Ernest Singqokwana Malgas drew a lot of attention with his testimony. As a member of the ANC, he was a veteran of the struggle who had been harassed and arrested many times and had spent fourteen years on Robben Island. While he was in prison, his house had been repeatedly firebombed and one of his sons was burnt to death with acid. At the time of the hearing, he was an old man who had suffered from a stroke and while suffering from a speech impediment, found it difficult to speak. His tortured speech, as well as being confined to a wheelchair, added extra pathos to his person. In his account of his life, he told the Commission of his suffering and that he had been tortured many times. While trying to explain a specific torture method known as ‘the helicopter’, which involved handcuffing the hands behind the back, manacled the ankles

⁸⁸ SABC News Production, “Bones of memory ...”, CD 1 no. 6; Hawthorne, p. 29; Meredith, p. 11.

⁸⁹ Krog, p. 42; SABC News Production, “Bones of memory ...”, CD 1 no. 6. See also *The Star*, 27.10.1998, p. 8.

⁹⁰ National Archives and Record Service of South Africa, “East London - East London Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. EC 0028/96, 1996.04.15-18.

together and then suspending the person upside down from a wooden stick and beating and kicking him in the process - often until he was unconscious, Malgas broke down and cried. This was also too much for Tutu who put his head on the table and sobbed.⁹¹

Tutu explained in his book *No future without forgiveness*, that this was “mercifully the last time that I cried in public during the lifetime of the Commission. I begged God not to let it happen again ... I have been close to breaking down many times but managed to stop myself actually doing so”.⁹²

Charity Kondile had spent nine years searching for her son, Sizwe, after the police claimed to have released him from detention in 1981. In 1990, she had been told of a newspaper story relating how Sizwe had been so badly tortured by the security police that the decision was made to take him to a remote spot on the Mozambique border and kill him. His body was put on a pile of wood with a tyre, near the Komati River at night, where it took his murderers nine hours to burn his body. During this time the security police were drinking beer and enjoying a barbecue while the body burned nearby.⁹³

Nontuthuzelo Mpehlo described how her husband, Mick, a businessman in Grahamstown, had been victimised for years after being falsely accused of betraying Steve Biko, the Black Consciousness leader who died in police custody in 1977. Reacting on an alarm that the comrades were burning his shop, Mick walked up to the door of his shop and somebody in the crowd shot him in the back.⁹⁴

⁹¹ National Archives and Record Service of South Africa, “East London - East London Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. 0001/96, 1996.04.15-18; Boraine, pp. 103-104; *Cape Argus*, 27.10.1998, p. 12.

⁹² Tutu, p. 110.

⁹³ Meredith, pp. 8, 82-85; *City Press*, 10.7.1994, p. 16.

⁹⁴ Meredith, pp. 8-9.

Maki Skhosana was a twenty-four-year-old ANC activist living in Duduza. She was the first officially acknowledged 'necklacing'⁹⁵ incident in South Africa, where she was burned to death. In June 1985 a group of young black students in Duduza had been given hand grenades by a member of the ANC and taught how to use them. When they pulled the pins in an effort to blow up a local power station, the grenades turned out to be booby-trapped and eight died. Soon afterwards, Maki was alleged to have been involved in causing their deaths. Going to their funeral she was chased by the crowd, stoned and beaten, her clothes ripped off her body and her body set alight. She died next to their graves. Later, it would become known that Joe Mamasela, the Vlakplaas⁹⁶ operative, admitted infiltrating the group and offered them the booby-trapped weapons.⁹⁷ Maki's sister, Evelina Moloko, who has always believed in her sister's innocence, testified at the Duduza hearing, describing the body: "Then I saw her body. I approached her from the feet and I could only identify the feet, ... I could not see her face because there was a large rock on her face as well as on her chest and I went around to try to identify the body. I was disgusted at the way she was killed ... she was actually scorched by fire ... she had been gruesomely hurt to death".⁹⁸

Towards the end of the eighties, the Van Eck and De Neyschen families went on holiday to a game farm, Klerskhuop, in the district of Messina, on the northern border of South Africa. While looking for game one afternoon, their bakkie struck a landmine. Three women and four children between the ages of three and nine, died in the blast; there were four survivors. Mr Johannes Van Eck testified: "We were immediately in

⁹⁵ Necklacing is where a rubber tyre is placed around the victim's neck and set alight. Queenstown was known as the 'Necklace Capital of the World'. It is thought that 39 necklace murders took place in Queenstown over a four year period – more than nine a year, almost one a month. See Krog, p. 134.

⁹⁶ Vlakplaas was a 44-hectare farm near Pretoria bought by the South African Police (SAP) in 1981 as a home for former ANC and/or PAC members now working for the SAP, called askaris. They became the C1 unit. Among the commanders of Vlakplaas were Captain Dirk Coetzee, Brigadier Jack Cronje and Eugene de Kock.

⁹⁷ Edelstein, p. 163. See also *Cape Argus*, 27.10.1998, p. 12 for more information on the so-called necklace murders.

⁹⁸ National Archives and Record Service of South Africa, "Johannesburg – Duduza, Benoni, Katorus Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 5, Case No. JB 0289/013ERKWA, 1997.02.04-07; Edelstein, pp. 163-164; *Beeld*, 5.2.1997, p. 4.

flames. Mr De Neyschen was lying on his steering wheel ... his hair burning, blood spouting from his forehead ... Right behind the vehicle I found my wife and Martie de Neyschen both severely maimed and killed outright. I searched further. I came upon little Kobus de Neyschen who had some life in him. I went back to his father and said: "The child is still alive, but severely maimed and burnt." His father asked there on the scene to let his child go ... which is what happened. ... Then I searched further for my son of three years, but could not find him ... until today I could not find him ... I and my son buried our two family members and the next day our two friends. Since then it has been down the hill for me all the way. I sit for days ... I simply sit ...".⁹⁹

Johannes van Eck addressed the Commissioners directly about the horrific experience in question form: "Do you know, you the Commissioners, how it feels to be blasted by a land mine? Do you know how it feels to be in a temperature of 6 000 and 8 000 degrees? Do you know how it feels to experience such a blast that is so intense that even the fillings in your teeth are torn out? Do you know what trouble reigns if you survive the blast and that you must observe the results thereof? Do you know how it feels ... to see crippled loved ones lying and burning? Do you know how it feels to look for your three-year-old child and never, Mr Chairman, never to see him again and forever after to wonder where he is? Mr Chairman, do you know how it feels to try to cheer up a friend while your wife and two children lie dead? Do you know how it feels to leave a baby of eighteen months behind to go and look for help?"¹⁰⁰

Johannes Roos also testified to the effects of being hit by a landmine. The family was driving back home on a Sunday evening from church in two separate cars. His wife and three children drove in front of him and close to their house, hit a landmine. He testified as follows: "I saw the whole event. I saw the flames boiled out from under the car. I saw how the car

⁹⁹ National Archives and Record Service of South Africa, "Johannesburg – Nelspruit Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 3, 1996.09.02-05; Krog, p. 48.

shot up into the air. Right out of the road, ninety degrees, into the bush to the road, pieces of metal, dust, earth flew through the air. I pulled up, jumped out, crying: 'God why?'. I went closer, I looked at my wife. She sat in her seat, crushed. Pieces of her feet were gone, her body was bloody, full of cuts, she moaned and asked, 'Where are my legs?' My son who had stood up behind her was sitting on the back seat, head skew and unconscious. My other two children, my baby boy and girl, were fearful and just crying ... We bent open the driver's door of the wreck. We lifted my wife out. I took off my jacket, put it on the grass and laid her down ... I knelt next to her and said: 'My wife, don't lose hope. Look up to the Lord'. And I prayed for her ... At daylight my father and I went back to the scene of the accident. I knew a piece of my wife's leg from the shin down ... we find a piece of my son's skull in which he had a hole ... some of his brains were also on the seat. I put it in a tissue and buried it at home. Do you know how it feels ... what it does to you? How can you be human again after such an experience".¹⁰¹

Mr Mzikhaya Mkhabile came to testify at the Worcester hearings. He was an elderly man who had been tortured and imprisoned on Robben Island in the 1960s. His evidence of the early years of the struggle was remarkable in the sense that many people who were active then were no longer alive. He gave testimony of maltreatment and degradation at the hands of the prison warders. A favourite method of punishing prisoners was to bury the offender in the sand and urinate in his face. He spoke about his arrival on Robben Island, when he and his fellow prisoners were asked "Who has a driver's licence; who will drive the Robben Island trucks?" It turned out later in his testimony that the Robben Island trucks

¹⁰⁰ National Archives and Record Service of South Africa, "Johannesburg – Nelspruit Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 3, Case No. 0707, 1996.09.02-05; Meredith, p. 205.

¹⁰¹ National Archives and Record Service of South Africa, "Johannesburg – Nelspruit Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 3, Case No. 1350, 1996.09.02-05; Krog, p. 141; *Cape Argus*, 27.10.1998, p. 12.

were the wheelbarrows that they “had to fill with limestone from the quarry; we all got to drive them”.¹⁰²

The public hearing in Paarl where Mrs Anne-Marie McGregor told her story was reported to have the largest white audience of all the hearings held by the TRC.¹⁰³ Her son, Matthew William Wallace McGregor, had been killed while serving in the South African Defence Force at Oshakati on the Angola-Namibian border during operations in northern Namibia/Angola in 1986. His body was brought home in a sealed body bag and his mother was asked not to open it but to respect the military code of secrecy. Mrs McGregor wanted to discover the truth from the TRC: was it her son that she had buried and how had he died?¹⁰⁴

Wallace’s brother, Owen, asked that a statement be read at the hearing. What was different from Owen’s statement was that he made his dead brother the narrator of the testimony and himself the subject. It read: “He was told that there were forty thousand Cuban soldiers wanting to invade South Africa, that the blacks of Namibia were communists and wanted to take over South Africa, and that there was a small rebel group called the ANC. My brother did not have time to learn that this was all lies. According to him he died a hero because that’s all he knew. I regret that he did not live long enough – my brother – to know the truth ... I want you to know, my brother, that the people you defended against the ANC all along supported the ANC ... I want to ask the National Party if they thought they could get away with these lies. I want them to know that now we all know the truth. To P.W. Botha and his cabinet of those days, why did my brother die? Explain to my mother and my father and to all South Africans how and why my brother died. *Why did I die?*”

¹⁰² National Archives and Record Service of South Africa, “Cape Town – Worcester Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 2, Case No. CT/00234, 1996.06.24-26; Orr, pp. 79-80.

¹⁰³ Edelstein, p. 30.

¹⁰⁴ National Archives and Record Service of South Africa, “Cape Town – Paarl Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 3, 1996.10.14-16.

Regards, Wallace”¹⁰⁵ ‘Why did I die’ was the question coming from the grave to the audience at this public hearing.

Testimony also came from within the ANC. A former MK¹⁰⁶ commander, Diliza Mthembu, told the TRC how he had been detained for more than four years in Quatro Camp¹⁰⁷ in Angola. He was subjected to various forms of torture, including electric shocks; hit with broomsticks; beaten on the buttocks continuously for a whole day; suffocated with a gas mask and forced at gunpoint to simulate sexual intercourse with a tree.¹⁰⁸

Joseph Seremane came to the victims’ hearing to testify and express a feeling of betrayal by compatriots and comrades. He wanted to state, on behalf of the family, his disappointment and the way they felt cheated. He needed to talk about the hypocrisy that was prevalent in the country. Seremane wanted answers as to what had happened to his younger brother while in the ANC camps across the border in Angola. He had heard in 1994 that his brother had been “brutally disfigured” before being shot at Quatro in 1982. His efforts to find out more about his brother’s death had been thwarted. During his testimony he lashed out at the ANC and asked pertinent questions: “I want to ask for the true records of those trails in Quatro camp. I want somebody to come and tell me what my younger brother actually did to deserve being shot like an animal – to be put down after being brutally disfigured that his best friends could not recognise him. I want that comrade of mine to come up and be honest and tell a little lie at least to the family ... suddenly no-one remembers this Seremane. Suddenly no-one has a record to show what kind of trial he faced in Quatro. Was he defended? ... but my movement

¹⁰⁵ *Ibid.*; Edelstein, p. 31.

¹⁰⁶ MK: Umkhonto weSizwe (Spear of the Nation) the armed wing of the African National Congress (ANC).

¹⁰⁷ Quatro Camp was also known as Camp 32 and as the Morris Seabelo Rehabilitation Centre. This facility was opened in 1979 and closed down in 1989, when inmates were moved to a government facility in Uganda. The commanders of Camp 32 were successively: Sizwe Mkhonto, Morris Seabelo, Afrika Nkwe, Mzwondile Damoyi and William Masango. For further detail on Camp 32 see SASOL Library Collection, *Further submissions and responses by the African National Congress to questions raised by the Commission for Truth and Reconciliation, 12 May 1997.*

¹⁰⁸ Meredith, p. 207.

can't offer me even a piece of paper on how they conducted the trial ... why do you think we supported you in your call to be treated under the Geneva Convention – and you couldn't even treat your own that way? ... Why do you cheat me of my brother's bones? ... Where is the accountability?"¹⁰⁹

The Bonteheuwel Military Wing was formed in 1985 by a group of politically active high school students from the Cape Flats. Aged between fourteen and twenty-five, these young men were recruited by MK, the military wing of the ANC. Some went outside the borders of South Africa to be trained by the ANC to carry out various sabotage operations against non-civilian targets when they returned to the country. Due to the fact that this cell had little support or guidance from senior ANC structures outside or inside the country, maintaining security and discipline were a problem. The security police easily infiltrated the unit and because many of the BMW members were arrested, tortured and killed, it eventually became non-functional.¹¹⁰

One of the testifiers of the BMW cell was Yazhir (previously Mark) Henry. According to Wendy Orr, watching Henry read his statement at the hearing was "one of the most agonising experiences I had in the TRC. It is difficult to describe the mental energy it took for Yazhir to hold himself together emotionally, in order to tell his story without breaking down ... He was, without doubt, teetering on the edge of a psychotic breakdown ...".¹¹¹

Yazhir went into exile in 1986 with two other members, Ashley Forbes and Peter Jacobs. Early in 1989, Yazhir returned, together with Anton Fransch, known to him as Mohammed. Soon after returning Yazhir was arrested by the security police. Under the threat of killing his family, he disclosed information about the whereabouts of Mohammed. This resulted in the death of Mohammed. After realising the turn of events,

¹⁰⁹ Krog, pp. 199-200; Meredith, p. 208.

¹¹⁰ Orr, pp. 261-262.

¹¹¹ *Ibid.*, p. 262.

Yazhir was tortured with the thought: “Who sold me to the police?”, knowing that Anton had died with the same question on his lips. After Yazhir’s release, he was viewed as a sell-out and his whole world changed.¹¹² In his testimony he begged that the death of Anton Fransch should be “viewed in the political and psychological circumstances that prevailed at the time. I do not believe that I can be held solely responsible for his death”.¹¹³

It is self-evident that many stories involved physical injuries and disabilities caused especially by torture and severe ill treatment. Physical scars and disabilities were described by one victim as: “a tattoo, a permanent physical reminder of what was done to us, a symbol that in any case brings shame”.¹¹⁴

On 4 June 1987, Mr Namadzavho Phaniel Davhula was shot in a case of mistaken identity. The wound in his shoulder resulted in a permanent physical disability. At the Venda hearing, he described his anguish: “I can’t even wash myself. People have to bath me. But in the past, I used to bath myself. This is painful”.¹¹⁵

Mr Karl Webber was one of the victims of a hand-grenade and rifle attack on the Highgate Hotel in East London in May 1993, which was later attributed to Apla. Five people were killed in the attack and three people permanently disabled.¹¹⁶ His testimony also reflected the physical disability in combination with a loss of independence and dignity: “I lost my left arm. It was amputated ... It took me plus/minus a year to teach myself how to get dressed, to feed myself. There are things I can’t do. I can’t get to the right hand side of my face because of the fixtures in my

¹¹² National Archives and Record Service of South Africa, “Cape Town – Tygerberg Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 2, Case No. CT 00405, 1996.08.05-07; Orr, pp. 262-274; Krog, pp. 52-55.

¹¹³ National Archives and Record Service of South Africa, “Cape Town – Tygerberg Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 2, Case No. CT 00405, 1996.08.05-07; Orr, p. 273.

¹¹⁴ Truth and Reconciliation Commission, Vol. 5, p. 138.

¹¹⁵ National Archives and Record Service of South Africa, “Johannesburg – Thohoyandou (Venda) Hearing”, *Human Rights Violation Hearings - Video Tapes*, Box 3 & 4, Case No. Venda, 1996.10.03-04; Truth and Reconciliation Commission, Vol. 5, p. 140.

elbow. I need assistance when I need to be shaved. I need assistance when I need to be bathed. And there are many other things I need to be helped with which I can't do. ... I want to be independent and I want to lead a normal life again".¹¹⁷

Father Michael Lapsley, a New Zealander, was trained in Australia as an Anglican priest in the Society of the Sacred Mission and sent to the University of Natal in 1973. He was deported from South Africa in 1976 and went to Lesotho, where he trained Anglican priests and joined the ANC. With his move to Zimbabwe in 1983, he was denounced as the 'ANC's chief external ecclesiastical propagandist'.¹¹⁸ In April 1990, Lapsley received a letter bomb. It is believed to have been sent by a government death squad. He lost both hands and an eye. He testified: "It was a normal warm autumn day ... when I became the focal point of all that is evil ... I started opening the manila envelope ... I tore off the plastic and opened the magazine ... and that was the mechanism that detonated the bomb ... I felt I was being blown into the air ... throughout it all I never lost my consciousness ... Someone had to type my name on the manila envelope; somebody made the bomb. I often ask the question: 'What did these people tell their children they did that day?'"¹¹⁹

A friend from Lesotho visited Lapsley three days after the explosion in the Harare Hospital and recalled the horror of his injuries: "It was terrible to witness ... his face was charred and black ... his beard had melted into his face which was swollen to twice its normal size ... both his hands had been amputated, and he had to keep the stumps in the air, since anything touching them caused him insufferable pain ... he lost his

¹¹⁶ Orr, p. 43; *The Cape Times*, 26.10.1998, p. 7.

¹¹⁷ National Archives and Record Service of South Africa, "East London – East London Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. EC 0035/96, 1996.04.15-18; SABC News Production, "Bones of memory ...", CD 1 no. 6; Truth and Reconciliation Commission, Vol. 5, p. 140.

¹¹⁸ Krog, p. 132; Edelstein, p. 137.

¹¹⁹ National Archives and Record Service of South Africa, "Father Michael Lapsley", *TRC Special Report – Video Tapes*, 16.06.1996; Edelstein, p. 137.

one eye ... his eardrums were burst ... I wanted to comfort him; I wanted to hold him ... but there was nowhere I could touch him".¹²⁰

Many families in South Africa have shared the continued uncertainty about the fate of loved ones who have disappeared. These families were normally trapped in the past, caught between near certainty that the missing person had not survived and a faint hope that the person may return.

The Commission was requested by individuals and political parties to establish the whereabouts of those who had disappeared during the period of the Commission's mandate. The mothers of these disappeared victims said: "We know what happened; we know who did it, but we don't know where the bodies were buried. We need to know, we have unfinished business. We cannot move on in our lives".¹²¹

Many cases of reported disappearances were investigated by the Investigation Unit of the Commission. In the process, secret burial sites were exposed and, in most cases, it was found that the perpetrators had covered up the identity of the victims and their final burial places. Most of the secret graves are located in the former Transvaal, KwaZulu-Natal and the Free State, near the borders of Swaziland, Lesotho and Mozambique. The lengthy procedures involved in each exhumation made it impossible for the Commission to complete this task and not all the cases were finalised. Unfortunately, it was impossible to deal with all the cases, as the Commission was not permitted by law to continue with this process once the Commission's operational period came to an end. In the exhumation process the Commission made extensive use of the services of the South African Police Services' video unit and specifically, their canine (sniffer-dog) unit. When the correct spot was located, a

¹²⁰ Krog, p. 133.

¹²¹ Lapsley, p. 747.

pathologist would supervise the removal of soil until the body was discovered.¹²²

In the process of the exhumations, truth was uncovered and families were helped to lay uncertainties about 'disappeared' loved ones to rest by facilitating dignified reburials.

The last hearing for victims that was held was the public hearing in Ladybrand on Thursday, 26 June 1997. Commissioner Richard Lyster, gave a closing address stating: "This brings us to the end ... it brings to an end a unique experiment in South Africa's history. And it brings to a close one of the most far-reaching steps that this new Government has taken to acknowledge the loss, the pain and suffering of thousands of victims of this country's political past".¹²³

This brought an end to one of the most important objectives of the Commission – to provide victims with a public forum to convey their stories, while the public took cognisance thereof. The process involved both truth-telling and truth-searching so as to come to a point of gaining knowledge and receiving acknowledgement and ultimately to move forward on the road of acceptance and closure.

4.6 THE PLACE OF FORGIVENESS IN THE POSSIBILITY OF FORGIVING THE UNFORGIVABLE

In the process of restoring memory, the emphasis is also on restoration for both victim and perpetrator. In Archbishop Tutu's view in particular, forgiveness between these two parties could lead to healing. Confession and the seeking of forgiveness may transform lives and transcend

¹²² Truth and Reconciliation Commission, Vol. 2, pp. 543-545; *The Star*, 4.8.1998, p. 13.

¹²³ National Archives and Record Service of South Africa, "Durban – Ladybrand Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 7, 1997.06.24-26; Krog, p. 207.

behavioural changes in individuals and to a greater extent, in a nation. Tutu especially believes this is possible. After a visit to Rwanda, he said: "Confession, forgiveness and reconciliation in the lives of nations are not just airy-fairy religious and spiritual things, nebulous and unrealistic. They are the stuff of practical politics".¹²⁴

The observation was made that the TRC, especially during the public victim hearings, promoted the concept of forgiveness. What does forgiveness entail? Wilson describes it as the "forswearing of resentment: changing the way you feel towards a person who committed an intentional, unexcused wrong against you".¹²⁵ According to Tutu, forgiving does not condone what has happened, but it does draw out the sting in the memory and causes the victim to abandon the notion of the right to take revenge. It is an act of faith that believes that the wrongdoer can be rehabilitated, which also liberates the victim.¹²⁶ If this conviction that people can change by recognising, acknowledging and confessing their wrongdoing and ultimately asking for forgiveness was not true, Tutu felt that the Commission would "have had to shut up shop".¹²⁷

Boraine agrees that the concept of forgiveness is not a popular one, but needs to be followed as an approach to create hope in the world in order to deal with the past. Boraine quotes Donald Shriver's explanation of forgiveness: "Forgiveness in a political context ... is an act that joins moral truth, forbearance, empathy, and commitment to repair a fractured human relation. Such a combination calls for a collective turning from the past that neither ignores past evil nor excuses it, that neither overlooks justice nor reduces justice to revenge, that insists on the humanity of enemies even in their committing of dehumanising deeds and that values

¹²⁴ Truth and Reconciliation Commission, Vol. 5, p. 351.

¹²⁵ S. Wilson, "The myth of restorative justice: Truth, reconciliation and the ethics of amnesty" in *South African Journal on Human Rights* 17(4), 2001, p. 537.

¹²⁶ Tutu, pp. 219-220.

¹²⁷ *Ibid.*, p. 74.

the justice that restores political community above the justice that destroys it.”¹²⁸

An important factor that may lead to forgiveness is that the wrongdoer shows remorse and willingly apologises for the wrongs of his/her actions. For the process of forgiveness and healing to take place and to be successful, this acknowledgement by the wrongdoer is essential. True reconciliation therefore does not turn a blind eye to wrongdoing, but exposes the truth for what it is.¹²⁹

It is common knowledge that forgiveness is seldom easy. It is a misconception to believe that making concessions is a sign of weakness; in fact, it is a sign of strength.¹³⁰ In the process of forgiving, the victim must eliminate any feelings of anger, bitterness or repressed resentment towards the wrongdoer, although the victim may still demand punishment for the perpetrator. This is a process that should take place inside a person – a relinquishing of a sense of grievance and a desire for revenge.¹³¹

Forgiveness is not about forgetting. Memory is an important part of forgiveness and remembrance forms part of the reconciliation process. By accepting responsibility and accountability for the memories of the past, one can use them to transform and change the future. Although there are memories, it is not a ‘troubled preoccupation with the past’, but a past where the wrongs remain in the past to assure a freer present and future.¹³²

Forgiveness cannot be demanded or imposed or it may not be granted. However, conditions conducive to forgiveness can be created.

¹²⁸ Boraïne, p. 439.

¹²⁹ Tutu, pp. 218-221.

¹³⁰ *Ibid.*, pp. 227-228.

¹³¹ Wilson, p. 538; T. Govier and W. Verwoerd, “Forgiveness: The victim’s prerogative” in *South African Journal of Philosophy* 21(2), 2002, p. 99; J. Tempelhoff, “Menseregte, boetedoening en die kultuurhistoriese toe-eieningsproses” in P.H. Kapp (ed.), *Die Suid-Afrikaanse verlede en die skuldvraagstuk. Verslag van ‘n simposium oor die Afrikaanse geskiedskrywing en die toewysing van skuld*, p. 15.

Forgiveness is not cheap sentimentality, and a victim will not necessarily feel obligated to forgive if the perpetrator expresses feelings of genuine remorse. Tutu is very aware of the fact that forgiveness is a 'risky undertaking', but he nevertheless emphasises that it is worthwhile, since "in the end there will be real healing from having dealt with the real situation".¹³³

Even after a wrong has been confessed and forgiven this is still not the end of the process, since it forms part of a continuum.¹³⁴ It is still possible that, although forgiveness has been granted, there may be resentment or other obstacles standing in the way of reconciliation.¹³⁵ Yet, Tutu believes that "God wants to show that there is life after conflict and repression – that because of forgiveness, there is a future."¹³⁶

Despite the emphasis placed on forgiveness, it must be clearly stated that forgiveness was *not* a requirement for the purpose of the TRC. Nothing in the legislation of the TRC required either forgiveness or repentance. Glanda Widschut, one of the commissioners in the TRC, said that: "Forgiveness was not a prerequisite of reconciliation", while Dumisa Ntsebeza, the head of the Human Rights Investigation section of the TRC, underlined this in a similar way, arguing that the Commission's work was not about forgiveness.¹³⁷ Boraine defends this vision by claiming that "it was not the intention of the Commission to demand forgiveness, to pressurise people to forgive, but to create an opportunity where this could take place for those who were able and ready to do so."¹³⁸ These statements indicate that the TRC merely created the space for forgiveness to take place, but never intended to demand any forgiveness.

¹³² D.J. Louw, "Guilt and change – The healing power of forgiveness" in *Scriptura* 59(4), 1996, pp. 384, 391-394; Govier and Verwoerd, p. 100.

¹³³ Tutu, p. 218.

¹³⁴ *Ibid.*, p. 221; Govier and Verwoerd, p. 98.

¹³⁵ Louw, p. 384; Govier and Verwoerd, p. 101.

¹³⁶ Graybill, p. 26; Tutu, p. 230.

¹³⁷ Christie, p. 165.

¹³⁸ Boraine, p. 356.

Nevertheless, it seems that tremendous pressure was exerted on victims to forgive their assailants. This elicited criticism, particularly against Archbishop Tutu. At the end of their testimony during the early Human Rights Violations hearings, victims were routinely asked whether or not they forgave the wrongdoer(s). This practice was later abandoned. Still, given the context of these hearings, the Commissioners placed great emphasis on forgiveness and reconciliation, creating the impression that it was hoped for.¹³⁹ Apart from this, some people did feel pressurised to forgive. A testifier angrily voiced her criticism with the whole forgiveness process: "What really makes me angry about the TRC and Tutu is that they are putting pressure on us to forgive. For most black South Africans the TRC is about us having to forgive ... I don't know if I will ever be ready to forgive. I carry this ball of anger inside me ... what makes me even more angry is that they are trying to dictate my forgiveness."¹⁴⁰

Nonetheless, one of the outcomes of the TRC was the empathy that developed between victims and perpetrators. The stories were made even more remarkable by the extraordinary capacity and willingness on the part of some victims to forgive perpetrators and, according to Tutu, it was "merciful and wonderful" and he "marvelled at their magnanimity", as he listened to the stories of victims who had suffered so much and still had no "lust for revenge".¹⁴¹

The following are only a few examples of victims who personified forgiveness during their testimonies:

Beth Savage – one of several victims of a grenade attack on the King William's Town Golf Club on 28 November 1992. Armed members of the Azanian People's Liberation Army (Apla - armed wing of the PAC), stormed the Golf Club, opened fire and hurled hand grenades into the clubhouse. This woman had to undergo months of medical treatment and

¹³⁹ Wilson, pp. 547-548; Graybill, p. 107.

¹⁴⁰ South African History Archive, "Learning to live together ..." p. 10; W.J. Verwoerd, "Toward the Truth about the TRC: A response to key moral criticisms of the South African Truth and Reconciliation Commission" in *Religion and Theology* 6(3), 1999, p. 305.

is still carrying shards of shrapnel in her body. She recounted how much harm had been done. Four of her friends died in the attack, while her own injuries had been horrific where half of her large intestine had been removed. Her father, a firm opponent of apartheid according to Beth, had fallen into a deep depression and died; her mother, distraught without him, died a few months later; while her daughter had suffered a nervous breakdown. Still, according to her, the experience has enriched her life: "All in all, what I must say, is through the trauma of it all, I honestly feel richer. I think it's been a really enriching experience for me and a growing curve, and I think it's given me the ability to relate to other people who may be going through trauma". She ended her testimony with these words: "I would like to meet the man who killed my friends and injured me. I would like to meet that man who threw that grenade in an attitude of forgiveness and hope that he could forgive me too, for whatever reason".¹⁴²

Beth's wish was fulfilled at the amnesty hearing of Mr. Thembelani Xundu, the former Apla commander responsible for her injuries. She told the press afterwards that she no longer had nightmares about the attack.¹⁴³ This attitude left many speechless and Alex Boraine honoured this woman for having "acknowledged the responsibility of the beneficiaries of apartheid for some of the horror and tragedy of the conflict which had raged in South Africa. Her willingness to forgive and her brave testimony were a rebuke to many white South Africans and political leaders".¹⁴⁴

On 25 July 1993, APLA soldiers opened fire on 400 worshippers at St. James' Church in Kenilworth, Cape Town. Eleven people were killed and

¹⁴¹ Graybill, p. 43.

¹⁴² National Archives and Record Service of South Africa, "East London – East London Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 1, Case No. EC 0051/96, 1996.04.15-18; SABC News Production, "Bones of memory ...", CD 1 no. 6; Boraine, pp. 104-105; Graybill, p. 43; Tutu, pp. 112-113; Krog, pp. 80-81; *Cape Argus*, 27.10.1998, p. 12.

¹⁴³ Truth and Reconciliation Commission, Vol. 5, pp. 373-374; Meredith, pp. 9-10; Boraine, pp. 104-105; Graybill, p. 43; Tutu, pp. 112-113; Krog, pp. 80-81; P. Meiring, *Kroniek van die Waarheidskommissie. Op reis deur die verlede en hede na die toekoms van Suid-Afrika*, pp. 26-28.

more than fifty wounded. One of the men whose wife was killed in the attack, Dawie Ackerman, responded to the perpetrator's plea for forgiveness: "I want you to know that I forgive you unconditionally ... but I cannot forgive you the sin that you have done. Only God can forgive you for that."¹⁴⁵

Neville Clarence, a former South African Air Force captain, was left totally blind when a massive car bomb exploded in front of the South African Air Force headquarters in Church Street, Pretoria, on 20 May 1983. It was an attack by Umkhonto weSizwe (MK), which killed 21 people and injured 219. Already during the HRV hearing, Clarence said: "I have absolutely no grudge whatsoever to bear, never have and never will, against the perpetrators of that car bomb explosion ...".¹⁴⁶

Aboobaker Ismail, the leader in charge of the operation, told the Amnesty Committee he regretted what had happened. When these two men approached each other at the amnesty hearing, Mr Ismail apologised to Mr Clarence. The latter reacted by speaking the following words: "I forgive you for what you have done ... I wanted you to know I harbour no thoughts of revenge." The two men shook hands and agreed to meet again. Clarence, who declared that he bore no grudges or felt any bitterness, later said "it was as if we did not want to let go of each other as we shook hands".¹⁴⁷

Amy Biehl, the American Fulbright scholar from California who was studying at the University of the Western Cape, was stoned and stabbed to death in Guguletu township, near Cape Town, on 25 August 1993 by members of the Pan-Africanist Students' Organisation (PASO – the student wing of the PAC). Her parents, Mr. Peter and Mrs. Linda Biehl,

¹⁴⁴ Boraine, pp. 104-105.

¹⁴⁵ Graybill, pp. 43-44; SABC News Production, "Worlds of licence. Self-confessed violators of human rights from across South Africa's political landscape", *South Africa's human spirit. An oral memoir of the Truth and Reconciliation Commission*, CD 3, Disc 1, no. 7.

¹⁴⁶ National Archives and Record Service of South Africa, "Johannesburg – Pretoria Hearing", *Human Rights Violation Hearings - Video Tapes*, Box 2 & 3, Case No. JB 00702, 1996.08.12-16.

supported the process of amnesty and reconciliation and the mother explained her ability to forgive: "I don't think I have anything to forgive. I never truly felt hatred."¹⁴⁸

Johan Smit told the TRC about the killing of his eight-year-old-son, Cornio, in 1985 by a bomb planted by an ANC supporter at a shopping centre in Amanzimtoti, KwaZulu-Natal, just before Christmas. He met the parents of the boy who had planted the bomb. At the hearing he testified to the Commission: "It was a great relief seeing them and expressing my feelings ... that I felt glad that I could tell them that I felt no hatred for them and no grudges. And there was no hatred in my heart."¹⁴⁹

Mr. Krish Rabilall died in Mozambique in the 1981 Matola cross-border raid. His brother, Nundlal Rabilall, gave testimony at the Human Rights Violations hearing, indicating that the realisation came that "hate is a boomerang that circles back and hurts you ... we have the right to fight injustice without hating the personalities or circumstances involved and, to taste the sweetness of life, one must have the power to forget the past."¹⁵⁰

There were also those who could not forgive and many who appeared before the Commission found it impossible to forgive. In spite of Tutu's words about the "mercy and generosity and forgiveness God planted in people's hearts", there were still those who felt that "unless justice is done, it is difficult for any person to think of forgiving".¹⁵¹

¹⁴⁷ Truth and Reconciliation Commission, Vol. 5, pp. 392-393; Graybill, p. 45; Boraine, p. 355; Tutu, p. 120; SABC News Production, "Worlds of licence ...", CD 3, Disc 2, no. 4.

¹⁴⁸ National Archives and Record Service of South Africa, "The murder of Amy Biehl", *TRC Special Report – Video Tapes*, 13.07.1997; Graybill, pp. 45-46; Tutu, pp. 118-119; Meiring, pp. 130-131; *Cape Argus*, 4.7.1997, p. 1; *Die Burger*, 9.7.1997, p. 12.

¹⁴⁹ National Archives and Record Service of South Africa, "Johan Smit", *TRC Special Report – Video Tapes*, 05.05.1996; Truth and Reconciliation Commission, Vol. 5, pp. 376-378; Boraine, p. 354; Graybill, p. 46; Tutu, p. 118; *The Star*, 9.5.1997, p. 13.

¹⁵⁰ Truth and Reconciliation Commission, Vol. 5, pp. 375-376.

¹⁵¹ Graybill, pp. 48-49.

Even though Eric Taylor, who was involved in the killing of the so-called 'Cradock Four', apologised to the families and asked for forgiveness,¹⁵² the widow of Fort Calata rejected it, saying: "You have teased our grief for nearly twelve years and you think you can reconcile in fifteen minutes?"¹⁵³ Forgiveness was also problematic for the son of Fabian and Florence Ribeiro. His parents were gunned down outside their home in December 1986. Chris Ribeiro criticised amnesty and stated: "If the killers are not going to face the music, then I am not interested in the Truth and Reconciliation Commission".¹⁵⁴ Mrs Monica Godolozzi was also outspoken and proclaimed: "I won't forgive them. There's nothing they could do to make me forgive them".¹⁵⁵

Another example concerns the families of the victims of the Heidelberg Tavern shooting, in the Cape Town suburb of Observatory. On the penultimate day of 1993, just before midnight, six Apla cadres entered the Tavern and opened fire, killing four people and wounding several others. According to Krog, most of the survivors and the victims' families, apart from Jeanette Fourie, whose daughter Lyndi was killed, were "ablaze with anger". Roland Palm, whose Coloured daughter died in the attack, told the amnesty applicants: "I cannot begin to describe the rage I feel and have felt for the past years ... You say you did so to liberate Azania. I say to you [that] you did it for your own selfish and criminal purposes".¹⁵⁶

The examples of forgiveness given and refused, demonstrated for Tutu the important point that "forgiveness could not be taken for granted; it was neither cheap nor easy. As it happens, these were the exceptions".¹⁵⁷

Psychologists may argue that anger is crucial in the progress towards healing.¹⁵⁸ In the process of reconciliation, there should also be room for

¹⁵² See Meiring, pp. 123-126 for a layout of events where forgiveness from victims did occur towards Mr Taylor.

¹⁵³ SABC News Production, "Worlds of licence ...", CD 3, Disc 2, no. 3.

¹⁵⁴ Graybill, pp. 48-49.

¹⁵⁵ Hayner, p. 3.

¹⁵⁶ Krog, p. 228.

emotions such as anger, sorrow, a desire for revenge, rage and trauma. The ideal was that the TRC would offer the opportunity and space for the expression of all types of emotions that need to be worked through when dealing with wounds of the past, so that they may eventually be healed. However, forced forgiveness may also be destructive.

It is thus clear that the process of forgiveness did not occur universally within the TRC. Truth alone is never enough to guarantee forgiveness and the possibility of reconciliation and these processes will not necessarily follow where the truth has been exposed. The Commission initiated a process of forgiveness, which may also lead to healing and reconciliation. However, the attainment thereof is a long-term project that requires time and patience and must be continued by all in the country.

4.7 WOMEN'S TESTIMONIES: UNFINISHED BUSINESS

At the beginning of the new millennium, South Africa was ranked internationally as a country with one of the highest numbers of women in Parliament. The country had also taken the lead among the Southern African Development Community (SADC) member nations, in articulating gender rights as vital human rights.¹⁵⁹

Taking into account the support for women's rights in the new government, it was surprising to witness the silence of women's voices speaking at the victim hearings against the violations of human rights they had particularly experienced.

¹⁵⁷ Tutu, pp. 76, 219.

¹⁵⁸ Allan and Allan, pp. 472-473.

¹⁵⁹ L.S. Graybill, "The contribution of the Truth and Reconciliation Commission toward the promotion of women's rights in South Africa" in *Women's Studies International Forum* 24(1), 2001, p. 1.

Goldblatt and Meintjes felt that the TRC's narrow interpretation of 'gross violations of human rights' meant that women who bore the brunt of oppression through forced removals, pass arrests and other acts of systematic 'apartheid' violence, had not been identified as victims.¹⁶⁰

Laws regarding pass arrests, forced removals and unemployment when associated with a male member of the resistance, disproportionately affected women. Yet none of this, nor the economic effects of apartheid which also affected women, were considered gross violations of human rights. Women who especially suffered from the structural violence of apartheid did not fall under the narrow definition of the TRC mandate for suffering gross violation of human rights. When arrested, these women, of which 12 percent formed detainees of the state of emergency in 1986-1987, suffered torture and other human rights abuses. Specifically women suffered from gender-specific abuses such as rapes, sexual assaults and torture techniques such as flooding their fallopian tubes with water to make them unable to conceive.¹⁶¹

Although approximately equal proportions of men and women made statements, for the most part, women described the suffering of men, whereas men testified about their own experiences of violations of human rights. Seventy-nine percent of women testified to violations committed against men, whereas only 8 percent of men's testimonies concerned violations against women. Thus, women seldom gave public testimony about the violations they had suffered. Only 14 percent of women's testimonies concerned their own experiences of violations. As a

¹⁶⁰ South African Historical Archive, "Gender and the Truth and Reconciliation Commission. A submission to the Truth and Reconciliation Commission, May 1996" in *The Beth Goldblatt and Sheila Meintjes Papers*, AL3119f, pp. 16-19; B. Hamber, "How should we remember? Issues to consider when establishing commissions and structures for dealing with the past", <<http://www.incore.ulst.ac.uk/research/projects/thepast/hamber.html>>, 2004.

¹⁶¹ P.J. Campbell, "The Truth and Reconciliation Commission (TRC): Human rights and state transitions – the South African model", <<http://www.africa.ufl.edu/asq/v4/v4i3a2.htm>>, 2000; See also Graybill, "The contribution of the Truth and Reconciliation Commission toward the promotion of women's rights ...", p. 3 for more detail on the economic oppression women suffered.

result of these patterns, the media and Commissioners frequently referred to women as 'secondary witnesses'.¹⁶²

This notion was visible within the first week of victim hearings in the Eastern Cape, when the widows of the 'Cradock Four' came to speak about their murdered husbands. These women were also arrested and harassed, yet their own stories were not solicited and did not become the subject they talked about.¹⁶³

The TRC attempted to amend its procedures and refocus its efforts on women in ways that would encourage them to speak. The form used to record statements was amended and refined, which included the following cautionary note: "IMPORTANT: Some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don't forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse".¹⁶⁴

It must be noted that cultural norms in South Africa prohibit women from testifying. Women are normally ashamed to speak of their torture. Goldblatt and Meintjes emphasise that violence against women is not regarded as specifically sensational given its almost commonplace nature in society. According to them, sexual assault is common knowledge in this country and women are afraid to talk about these assaults. Given also the assumption that South Africans have about the sexually abused woman – that she deserves it – many women rather kept silent.¹⁶⁵

Goldblatt and Meintjes have set out some reasons that may have constrained women, preventing them from coming forward and speaking about their violations. Firstly, a woman is relegated to a secondary status within South African society. Her rights as a citizen are rarely protected

¹⁶² Ross, *Bearing witness ...*, p. 17. For more detail on the statistics on women, see Truth and Reconciliation Commission, Vol. 4, pp. 285-287.

¹⁶³ Truth and Reconciliation Commission, Vol. 4, p. 293.

¹⁶⁴ *Ibid.*, p. 283.

¹⁶⁵ B. Goldblatt and S. Meintjes, "Dealing with the aftermath: Sexual violence and the Truth and Reconciliation Commission" in *Agenda* (36), 1997, p. 10; Graybill, "The

and cultural stereotypes reinforce this position. Secondly, because of this status, women seldom consider what they went through to be important enough to testify to. Thirdly, because sex is regarded as a private matter in society, women were reluctant to talk explicitly about their experiences. Furthermore, sexual violence stigmatises the survivor and often leads to further victimisation.¹⁶⁶

Fourthly, the right to privacy is forever violated, as public exposure of private violation could undermine the stature of women who come forward. Giving up their privacy may also involve pressurising women to give up the mechanisms that they have developed to deal with the trauma. Fifthly, women feel that they ought to have been able to prevent their violation by resisting it and are haunted by self-blame. Thus, guilt and shame prevents them from discussing their trauma. Sixthly, reliving the trauma by speaking about it comes with a fear of loss of 'face', pride and respect. Lastly, a seeming restriction was placed on members' testimonies by the liberation movements. These women did not want their experience used politically in the TRC where apartheid was equated morally with the ANC's actions.¹⁶⁷

It cannot be denied that a particularly difficult area to talk about is sexual abuse. The Commission wanted to give all people the opportunity to reveal their stories as a way of restoring the 'human and civil dignity' of victims. However, for many women, relating the story of their sexual abuse would in no way serve this purpose and would rather add to a feeling of a loss of dignity.¹⁶⁸

contribution of the Truth and Reconciliation Commission toward the promotion of women's rights ...", p. 5; *The Star*, 9.8.1996, p. 9.

¹⁶⁶ South African Historical Archive, "Violence, Gender and Human Rights – An examination of South Africa's Truth and Reconciliation Commission" in *The Beth Goldblatt and Sheila Meintjes Papers*, AL3119f, pp. 7-11; Goldblatt and Meintjes, "Dealing with the aftermath: Sexual violence ...", pp. 10-13; South African Historical Archive, "Apartheid's residue – Women's lives, struggles and testimonies: Challenging patriarchal lenses, July/August 2001" in *The Gertrude Fester Collection*, AL3135f, pp. 7-10; *Saturday Star*, 18.7.1998, p. 6.

¹⁶⁷ *Ibid.*

¹⁶⁸ Truth and Reconciliation Commission, Vol. 4, p. 294.

Another enormously sensitive issue was women abused by political opponents who were viewed as colluding with their captors. "If women said they were raped, they were regarded as having sold out to the system in one way or another".¹⁶⁹ On the other hand, women raped by their comrades in MK camps outside the borders of South Africa, do not point any fingers for fear of discrediting the movement, especially because some of the rapists presumably are members of the ANC-dominated government and by speaking out, it may be to the detriment of the person. Clinical psychologist Numfundo Walaza explains: "Some of the rapists hold high political positions today – so if you spoke, you would not only undermine the new Government you fought for, but destroy your own possibilities of a future".¹⁷⁰

Furthermore, many high-ranking women in government who were rape victims during the years covered by the TRC were concerned about how they would be perceived if they came forward with their stories. Walaza explains: "If you knew that a particular Minister had been raped - what goes through your mind when you see her on television?"¹⁷¹

Women were subjected to societal norms that treated them as sexual objects. They experienced violence at the hands of white policemen, at the hands of soldiers of the liberation resistance movement and also at the hands of black men in the townships and homelands.¹⁷²

Abuse of female MK soldiers in MK camps in Zambia, Angola and Tanzania formed part of the ANC's submissions to the TRC.¹⁷³ General

¹⁶⁹ Graybill, "The contribution of the Truth and Reconciliation Commission toward the promotion of women's rights ...", p. 5.

¹⁷⁰ Krog, p. 182; Graybill, *Truth and Reconciliation in South Africa ...*, p. 6.

¹⁷¹ Krog, p. 182; Graybill, *Truth and Reconciliation in South Africa ...*, p. 5; A. Krog, "Locked into loss and silence: Testimonies of gender and violence at the South African Truth Commission" in C.O.N. Moser and F.C. Clark (eds), *Victims, perpetrators or actors? Gender, armed conflict and political violence*, p. 205; Graybill, "The contribution of the Truth and Reconciliation Commission toward the promotion of women's rights ...", p. 5. See also *Sunday Times*, 26.3.2006, p. 21; *Volksblad*, 24.3.2006, p. 7.

¹⁷² Graybill, "The contribution of the Truth and Reconciliation Commission toward the promotion of women's rights ...", p. 3.

¹⁷³ *Ibid.* See also South African Historical Archive, "Gender and the Truth and Reconciliation Commission. A submission ...", p. 34; *The Star*, 23.5.1997, p. 15.

Andrew Masondo, a former political commissar for the ANC in exile, gave the following evidence on the position of women MK members in exile: “In Angola there are at one time twenty-two women in a group of more than 1 000 people ... there was an allegation that ... Commanders were misusing women ... the law of supply and demand must have created some problems”.¹⁷⁴ Masondo, as head of the Angolan camp, was himself accused of using his position to abuse and exploit young women – a charge he vehemently denied.¹⁷⁵

Lita Nombango Mazibuko, was one woman who decided to come forward to convey her story about sexual abuse by MK comrades. She testified that she was detained, raped and tortured by colleagues in exile following an accusation that she was a government spy. She claimed in her testimony that two weeks after she had given a written submission to the TRC, she received a phone call from the then ANC premier of Mpumalanga, Mathews Phosa, who tried to stop her from testifying. Phosa threatened to sue her and she recanted her testimony. It may be debated that this episode had a negative effect on other women who possibly wanted to name their accusers.¹⁷⁶

President Thabo Mbeki acknowledged, while presenting the ANC report to the Commission, that men in the camps had committed “gender-specific offences” against their women comrades. He indicated that the perpetrators had been punished, but did not describe either the punishment or the offence in detail.¹⁷⁷

The TRC legislation did not mention rape, so the Commission regarded rape as ‘severe ill treatment’ regardless of the circumstances under which it occurred. Of the 8 000 statements made on human rights violations, only 300 dealt with sexual assault and of these, only 80 were

¹⁷⁴ Truth and Reconciliation Commission, Vol. 4, p. 307.

¹⁷⁵ Graybill, *Truth and Reconciliation in South Africa ...*, p. 100.

¹⁷⁶ Graybill, “The contribution of the Truth and Reconciliation Commission toward the promotion of women’s rights ...”, p. 6; Goldblatt and Meintjes, “Dealing with the aftermath: Sexual violence ...”, pp. 12-13; *Saturday Star*, 18.7.1998, p. 6; *The Star*, 30.7.1997, p. 3; *The Citizen*, 7.8.1997, p. 5.

made by women. Only 11 of the 80 deal with rape and these occurred mostly in Kwa-Zulu/Natal where the conflict followed the more typical contours of open warfare. The *Final Report* numbered only 140 rape cases.¹⁷⁸

Goldblatt and Meintjes indicate that personal discussions with activists reveal that there were many more rapes. Jessie Duarte, a former activist, spoke at a workshop of the Centre for Applied Legal Studies and confirms: "I think I can speak fairly comfortably about a number of women who were in fact raped in prison cells while in detention or in the van that was taking them to detention".¹⁷⁹ Phyllis Naidoo reported that she came across several young women who had been raped and impregnated by the officers who had detained them.¹⁸⁰

Thenjiwe Mthintso encapsulates what generally happened to a woman, who were either being reduced to sexual objects or their contribution as a woman negated. "Because always, always in anger and frustration men use women's bodies as a terrain of struggle – as a battleground. Behind every woman's encounter with the police lurked the possibility of sexual abuse and rape. Some activists say they sometimes didn't know which was worse – the actual assault or dealing with the constant fear of the confined and isolated space of a cell. When they interrogated you, they usually started by reducing your role as an activist. They weighed you up according to their own concept of womanhood and said that you were in custody because you were not the right kind of woman: you are irresponsible; you are a whore; you are fat and ugly or single and thirty and you are looking for a man. And whatever you stood for was reduced to prostitution, unpaid prostitution; the licence for sexual abuse was created. Then things happened that could not happen to a man. Your

¹⁷⁷ Truth and Reconciliation Commission, Vol. 4, p. 295; *The Star*, 23.5.1997, p. 15.

¹⁷⁸ South African Historical Archive, "Violence, Gender and Human Rights ...", p. 9; Truth and Reconciliation Commission, Vol. 4, p. 296.

¹⁷⁹ South African Historical Archive, "Violence, Gender and Human Rights – An examination of South Africa's Truth and Reconciliation Commission" in *The Beth Goldblatt and Sheila Meintjes Papers*, AL3119f, pp. 9-10; *Saturday Star*, 18.7.1998, p. 6.

sexuality was used to strip away your dignity, to undermine your sense of self".¹⁸¹

The first graphic description of rape was told to the TRC victim hearings at Worcester. Yvonne Khutwane gave testimony of the following experience: "The other thing they asked is how do I feel when I am having intercourse with a man. This was too much for me because they were repeating it time and again, asking the same question. Asking me what do I like with the size of a penis or what do I enjoy most. So the one was putting his hand inside me through the vagina. I was crying because I was afraid, because the soldiers are notorious with rape. This one continued putting his finger right through me – he kept penetrating – and I was asking for forgiveness and I was asking them 'What have I done? I am old enough to be your mother. Why are you treating me like this?'"¹⁸²

Sexuality was therefore used to strip away dignity and to undermine the female activist's sense of self. White policemen targeted Ntombizanele Elsie Zingxondo's breasts: "They closed the door. They unbuttoned my shirt and pulled my breast out of my bra. They emptied one drawer. They forced me to bend over the open drawer so that one of my breasts would hang in the drawer; they then slammed the drawer shut so that my breast was squeezed. They did this several times on each of the breast (sic) up until the white sticky stuff burst out of the nipples of my breast. I cried, but it was of no use, because no one could hear me. After that, they put me back on a chair and ordered me to dress myself again. I did so and they said: 'Pretend that nothing happened'".¹⁸³

¹⁸⁰ Truth and Reconciliation Commission, Vol. 4, p. 296.

¹⁸¹ South African Historical Archive, "Apartheid's residue – Women's lives, struggles and testimonies ...", pp. 11-12. See also South African Historical Archive, "Gender and the Truth and Reconciliation Commission. A submission ...", pp. 20-22; *The Sunday Independent*, 3.8.1997, p. 9.

¹⁸² National Archives and Record Service of South Africa, "Cape Town – Worcester Hearing", *Human Rights Violation Hearings – Video Tapes*, Box 2, Case No. CT/00530, 1996.06.24-26; Krog, "Locked into loss and silence: Testimonies of gender and violence ...", p. 206.

¹⁸³ National Archives and Record Service of South Africa, "Cape Town – Beaufort West Hearing", *Human Rights Violation Hearings – Video Tapes*, Box 2&3, Case No.

The showing of strength by a woman during torture could be a double-edged sword. Ms Thenjiwe Mtintso noted that when “men stood ground against the physical abuse, there was a sense of respect – where the torturers would even say: ‘Hy is ‘n man’ [He is a man]. But when a woman refused to bow down, to be cowed down, then that unleashed the wrath of the torturers, because in their own discourse a woman, a black ‘meid’, a ‘kaffermeid’ [*kaffir* servant girl], had no right to have the strength to withstand their torture”.¹⁸⁴

Women were confronted with human rights abuses under apartheid by patriarchy and sexism, combined with the race and class discrimination. Methods of suppression included imprisonment, detention without trial, solitary confinement, banning, house arrest, harassment and psychological and physical torture. Those in detention experienced a combination of physical and sexual torture. Women who were not actually raped had an ever-constant fear that they would be.¹⁸⁵

Many women were victims of the so-called “necklace”, a gasoline soaked tyre thrown around the neck of an adversary; especially if a woman was perceived as an enemy’s wife or girlfriend. This made her the object of this specifically gruesome form of violence.¹⁸⁶

Groups have also punished women of rival political groups by means of gang rape. During the 1990s especially, groups of armed men often attacked women who were used as objects of conquest in the struggle for control over certain areas, particularly in KwaZulu when competition between the UDF¹⁸⁷ and the Inkatha Freedom Party was intense.¹⁸⁸

CT/00860, 1996.08.12-14; Krog, “Locked into loss and silence: Testimonies of gender and violence ...”, p. 204.

¹⁸⁴ Krog, “Locked into loss and silence: Testimonies of gender and violence ...”, p. 204; South African Historical Archive, “Gender and the Truth and Reconciliation Commission. A submission ...”, pp. 24, 33.

¹⁸⁵ A. van Schalkwyk, “A gendered truth: Women’s testimonies at the TRC and reconciliation” in *Missionalia* 27(2), August 1999, p. 169; *The Sunday Independent*, 3.8.1997, p. 9; *The Star*, 30.7.1997, p. 3.

¹⁸⁶ Graybill, *Truth and Reconciliation in South Africa ...*, p. 100.

¹⁸⁷ UDF: United Democratic Front, a federation of anti-apartheid organisations, formed in the early 1980s.

Among the testimonies of hostility towards prisoners, Ms Ivy Gcina testified at the human rights violation hearing in Port Elizabeth, to the kindness of her warder at North End Prison. She testified: “The same night, I saw a light at night and my cell was opened. She said to me, ‘Ivy, it is me. I am Sergeant Crouse. I have fetched your medicine’. She rubbed me. She made me take my medicine”.¹⁸⁹ A few days later after giving this testimony, Ivy met her ‘Angel of Mercy’ – this kind jailer who had held her hand and tended her wounds after hours of interrogation by security police.¹⁹⁰

The abuses and violations encountered by women did not really surface during the victim hearings. It was only through the three special women’s hearings that were undertaken by the TRC during 1996-1997, that women really came forward to break the silence and give voice to their sufferings. These hearings created the space for women to voice sexual and biological violations that might otherwise have been difficult to discuss in a forum that included men. As the focus of this study is only on the victim hearings as such and not on any of the special hearings conducted by the TRC, details about the testimonies at the special women hearings will not be provided.

Suffice it to mention that during the special women’s hearings, the women spoke about giving birth in prison in front of laughing wardens, being detained while still breast-feeding, being threatened with rape and being given drugged food which warders said might result in a detainee’s foetus being aborted. There were also many stories of how women were degraded when menstruating and how police officers proceeded to apply electric shocks to their nipples and vaginas. Often their roles as mothers were exploited and pregnant women were threatened with miscarriage through beatings. Their nursing babies were also taken from them in

¹⁸⁸ Graybill, *Truth and Reconciliation in South Africa ...*, p. 100.

¹⁸⁹ Truth and Reconciliation Commission, Vol. 4, pp. 314-315.

¹⁹⁰ *Ibid.*, p. 315.

prison, while threats to their children or other family members were used to try to extract information.¹⁹¹

Ironically, rape was one type of violation to which no individual amnesty applicant confessed responsibility. No-one from the former liberation movements or former security forces applied for amnesty for rape or other sexual violations.¹⁹²

Despite women's inability and reluctance to speak openly and directly about their experiences during the period covered by the TRC, Fiona Ross suggests that women did find ways to communicate indirectly. Ross indicates that underlying the stories women shared with the Commission of violations suffered by relatives, these stories were full of descriptions of their own experiences of apartheid and their own political consciousness.¹⁹³

During the TRC hearings, it became clear that women fulfilled a variety of roles during the struggle and suffered the full range of human rights violations. The stories included women of all races, of all ages and a wide spectrum of educational levels.¹⁹⁴

However, the *Final Report* of the TRC declares that in many ways the experiences of women in the political conflicts of the past were not evident. The story of the thousands of women in South Africa who were left behind to fend for themselves and who experienced violations of human rights, is not adequately captured. This is especially true of the stories, which are inadequately documented of the many women who went into exile to join the liberation movements. Violations involving sexual torture were also infrequently reported in the HRV statements to

¹⁹¹ South African Historical Archive, "Gender and the Truth and Reconciliation Commission. A submission ...", pp. 20-22; Goldblatt and Meintjes, "Dealing with the aftermath: Sexual violence ...", p. 8. See also Truth and Reconciliation Commission, Vol. 4, pp. 296-309; Graybill, "The contribution of the Truth and Reconciliation Commission toward the promotion of women's rights ...", pp. 6-7; *The Sunday Independent*, 3.8.1997, p. 9.

¹⁹² Graybill, *Truth and Reconciliation in South Africa ...*, p. 107.

¹⁹³ Van Schalkwyk, p. 173.

¹⁹⁴ Truth and Reconciliation Commission, Vol. 4, pp. 290-291.

the Commission. "We have not been able to do justice to them. This remains unfinished business."¹⁹⁵

Yet, these stories of women can add to the historical understanding and consciousness of the specific nature of apartheid violence against women. It may further provide an opportunity to deepen the awareness of pain, suffering and resistance experienced in South Africa's past. Though it is clear, that although the TRC process ended, there is still a lot of work to be done to bring changes to perspectives on women, to protect them against violence and to ensure that violence against women is combatted.

4.8 PERCEPTIONS OF VICTIMS OF THE HRV COMMITTEE

It should be noted that victims' needs are complex and will change over time, very much in keeping with perplexing human identity and further shaped by the enduring and intricate impact of trauma. Thus, an evaluation of the TRC process will reveal that victims' needs were neither constant, consistent nor static. The needs varied from one victim to another and might well change over time. For some victims the ultimate goal was to gain information about disappeared loved ones, while others craved widespread acknowledgement of their torture. Some sought knowledge about the systematic issues and commands given which gave rise to their abuse, while others wanted direct confrontation or victim-offender mediation interventions with the perpetrators responsible for their suffering. For some, the quest was for community-based or political vindication; for others, their needs were intensely personal and private. Some demanded full justice and rejected the TRC entirely. In other instances, as the TRC did not succeed in investigating and/or uncovering the facts behind some cases, certain victims became hostile and disillusioned with the whole process. Likewise, the demands from some

¹⁹⁵ *Ibid.*, Vol. 7, pp. 8-9.

victims for monetary compensation became more real, as the prospects of material reparation surfaced more prominently.¹⁹⁶

At first, the TRC took on many different faces for the victims. It was viewed predominantly as a space for the truth to emerge; an opportunity where one could talk about the abuse and atrocities of the past and one's contribution to the struggle, as well as an acknowledgement of the pain of the past.¹⁹⁷

According to Hamber, Nageng and O'Malley, the victims who were interviewed by them were mainly positive and supportive about the idea of a TRC. Many victims engaged in the process with the belief that it was going to be personally beneficial; for example, they would obtain information and the truth, and/or be compensated in some way.¹⁹⁸ One victim explained: "I thought that my prayers had finally been answered. I had told myself that I would now finally know the truth about my son and what really happened. ... I just wanted the TRC to give me concrete information as to what happened".¹⁹⁹

Furthermore, the victims had especially positive responses towards having their story recognised and treated with respect. There was also a strong sense of being included in the history of South Africa.²⁰⁰

For Ruth Picker, who did research on victims' perspectives about the HRV hearings, the victims who participated in these public hearings approached the TRC with ambiguous expectations. Participants' feelings towards the TRC may be described as a complex mixture of hope and resignation, satisfaction and disappointment and magnanimity and anger.²⁰¹

¹⁹⁶ G. Simpson, "A brief evaluation of South Africa's Truth and Reconciliation Commission: Some lessons for societies in transition", <<http://www.csvr.org.za/papers/paptrce2.htm>>, *s.a.*

¹⁹⁷ Skinner, p. 100.

¹⁹⁸ Hamber, *et al.*

¹⁹⁹ *Ibid.*

²⁰⁰ Skinner, p. 101.

²⁰¹ Picker.

Consequently, not all victims viewed the TRC with the same enthusiasm after testifying. Some felt 'cheated' by the process and that the experience was a waste of time. A real difficulty was that the majority of victims engaged in the hearings with the hope that the TRC would investigate all the cases brought before them and find a resolution to each. It is evident that this was, on a practical level, impossible. However, on an individual level, some felt let down if his/her case was not investigated and no new information was unearthed. A victim's disappointment was voiced as follows: "I don't think there was any point in me testifying. The TRC promised to help me and I'm still waiting for that help from them and people's perceptions haven't changed about me. As far as I'm concerned I wasted my time. I'm sure I could have spared myself the pain of talking about my life".²⁰²

Furthermore, victims had in addition over-inflated expectations from the TRC which heightened their needs; for example to get a job or to help with housing, etc. These mistaken expectations were voiced by one of the victims: "The TRC raised people's expectations by its existence. Before, we were living our poor lives without any hope that something like the TRC will come to our rescue. When we heard about the TRC we all expected to get something".²⁰³

More moderate expectations and wishes were also expressed during the hearings. These included medical attention, exhumations, further investigations, a tombstone, etc. Some also requested that their possessions, destroyed or taken by the police and vigilantes, be returned to them or to be compensated for them.²⁰⁴

The TRC's victim hearings are criticised by some of the victims for not succeeding in meeting their expectations. It is understandable that people who have suffered severely and who are struggling economically, may have envisioned more in a truth-seeking body. The whole idea of

²⁰² Hamber, *et al.* See also *Saturday Star*, 23.1.1999, p. 5.

²⁰³ Skinner, pp. 102-103.

²⁰⁴ Hamber, *et al.*; Ross, *Bearing witness ...*, p. 15; Skinner, p. 102.

reparations could also have stirred high hopes for an anticipated change of circumstances in the future. However, these criticisms from certain victims are built upon misunderstandings concerning the role of the TRC, as well as on mistakenly high expectations. To the credit of the TRC, any false expectations were never voiced or promoted by the HRV Committee. The HRV hearings were doing what the Act mandated, namely “granting victims an opportunity to relate their own accounts of the violations, and by *recommending* reparation measures in respect of them”.²⁰⁵ Besides, it stands to reason that no agency or truth commission body will ever be able to meet all the expectations of victims who suffered under a previously oppressive regime and who have high hopes following a transitional period of liberation.

4.9 FACING CRITICISM

The TRC has been intensely criticised and accused for its reliance on unsubstantiated statements made by victims, few of them given under oath and without any process of cross-examination. This led to the idea that hearsay, lies and contradictions may have formed part of the TRC records.

During the TRC hearings, the testimonies of witnesses were not treated as arguments or claims in a court of law. Rather, the opposite was the case, where the TRC provided a public space through the victim hearings. In other words, supplying a recognised opportunity for the ‘personal or narrative truth’ as told by individuals sharing their own stories and to have these stories officially acknowledged while providing ‘unique insights into the pain of South Africa’s past’.²⁰⁶ By creating a caring and sympathetic framework with assistants on hand to comfort those in

²⁰⁵ Republic of South Africa, “Promotion of National Unity and Reconciliation Act No. 34” in *Government Gazette* 361(16579), 1995, p. 6.

²⁰⁶ Truth and Reconciliation Commission, Vol. 1, p. 112.

distress, the process was far removed from the adversarial procedures of a court of law.²⁰⁷

Hence, the victims were not subjected to any form of cross-examination, as in a court of law. The Commission emphasised a friendly environment in which victims could convey their narratives without any fear of interrogation. This meant that their testimonies were largely untested by the normal rules of evidence. In other words, the procedure followed where untested evidence was used by the Commission and where witnesses could not be cross-examined, meant that the fundamental rule of natural justice – *audi alterem partem* (both sides must be heard) – were not adhered to.²⁰⁸

People, who were named as perpetrators in the testimonies of the testifiers, were notified by the Commission. They were allowed to make representation to the Commission in defence, but their legal representatives were not permitted to address questions to testifiers. This was in stark contrast to the public hearings of the amnesty applicants, where detailed cross-examinations were part and parcel of the process.²⁰⁹

In the process of making a victim feel safe, it usually meant rejecting the cross-examination and truth-testing techniques normally associated with official fact-finding. In the case of the TRC, it is important to remember that it was not a court of law and therefore did not subject victims' testimonies to cross-examination. It did, however, through corroboration, assess such testimony on the basis of a balance of probability.²¹⁰

²⁰⁷ A. du Toit, "The moral foundations of the South African TRC. Truth as acknowledgement and justice as recognition" in Rotberg and Thompson (eds), pp. 130-131.

²⁰⁸ A. Muller, "Facing our shadow side. Afrikaners must own their complicity" in *Track Two* 6(3&4), December 1997, p. 16.

²⁰⁹ Ross, *Bearing witness ...*, p. 15.

²¹⁰ C. Villa-Vicencio, "On the limitations of academic history: The quest for truth demands both more and less" in W. James and L. van de Vijver (eds), *After the TRC: Reflections on truth and reconciliation in South Africa*, pp. 23-24.

Accordingly, the TRC generally accepted the veracity of the oral testimony given by victims, unless “there were glaring inconsistencies and falsehoods” in it.²¹¹ It is questionable, taking into account the number of statements, whether all the inaccuracies in the victims’ statements were discerned and the flaws detected. Minow emphasises that this situation may lead to disappointments with truth commissions over the reliability and completeness of reported facts and interpretations.²¹²

The HRV Committee continuously wrestled, on the one hand with the competing needs of allowing victims the space to share their stories and on the other hand, with the objectives of verification of information. Unfortunately, this dualistic purpose often resulted in either the fact-finding goal of the Committee being sacrificed for the purpose of being psychologically sensitive to the testifying victim or alternatively, a process in which intense cross-examination by the Commissioners appeared to entirely neutralise the ‘story-telling’ objectives of the Committee.²¹³

Graeme Simpson’s words should be taken into account: “[M]ost of the legal and jurisprudential dilemmas presented by the TRC process are actually rooted in its own almost bipolar roles as both a ‘fact-finding’ and a quasi-judicial enterprise centred on verifiable facts on the one hand, and as a psychologically sensitive victim-centred mechanism for story telling and healing on the other. This ‘tightrope walk’ between competing claims of truth recovery remains in many respects, fundamentally irreconcilable”.²¹⁴

In almost half the cases of reported human rights violations, deponents gave statements about gross violations committed against people other than themselves. As many of the victims of gross human rights violations and of atrocities were deceased and/or the violation being narrated was

²¹¹ Truth and Reconciliation Commission, Vol. 1, p. 144.

²¹² Minow, p. 129.

²¹³ Simpson.

²¹⁴ *Ibid.*; Villa-Vicencio, “On the limitations ...”, p. 23.

frequently a killing, the source of victim testimony was often not the victim him- or herself, but a relative, friend or neighbour. At the TRC, about half of all violations were reported by someone other than the victim, making much of the information only second-hand or hearsay, rather than personal observation.²¹⁵ This might indeed have complicated the testimonies.

The extent to which statements could be corroborated or achieved the status of 'legal evidence' varied greatly.²¹⁶ Against this background, Michael Humphrey concludes that "victims' testimonies were more significant in their revelation of the reality of injuries and violence than in their accuracy".²¹⁷

Although the Commission implied that it had a large, comprehensible and reliable body of statements at its disposal on which to base its findings, it should be noted that the great majority of the victims' statements were not given under oath. The *Final Report* indicates that at an early stage, it was decided to "remove the demand for the statement to be made on oath, since there was a potential for error in the process of its being written down by the statement taker".²¹⁸ Jeffery argues that if it is assumed that ten percent of victims were able to give oral evidence at the public hearings and all took the oath in doing so, it would have resulted in at least 19 000 of the victims' statements that had an "evidentiary status lower than that of an affidavit".²¹⁹

In spite of this, the TRC gave "priority attention" to primary data, which included the victims' statements, in drafting its report.²²⁰ In fact, the victims' statements were regarded as particularly important in informing the work of the HRV Committee, which was responsible for making

²¹⁵ According to Anthea Jeffery, in about 17 500 instances, deponents told the TRC of violations experienced by others and not themselves. See A. Jeffery, *The truth about the truth commission*, p. 9.

²¹⁶ Truth and Reconciliation Commission, Vol. 1, pp. 171-172.

²¹⁷ Humphrey, p. 13.

²¹⁸ Truth and Reconciliation Commission, Vol. 5, p. 10.

²¹⁹ Jeffery, p. 28.

²²⁰ Truth and Reconciliation Commission, Vol. 1, p. 377.

findings on past gross violations of human rights public. Thus, these statements from the victims were fundamental to the TRC in its understanding of the past.²²¹

In corroborating the victims' statements, it was stated that the Commission "required only a relatively low level of corroboration".²²² Even a low level of corroboration was not easy to obtain. The Commission acknowledged the "virtually insurmountable practical difficulties" they faced in "attempting to corroborate each statement".²²³

Furthermore, the victims' public testimonies were heard without any requirement for substantiation and all questioning was kept mildly inquisitive rather than confrontational. The victim-friendly approach of the TRC to all people who appeared before it resulted in non-adversarial questioning of witnesses in HRV hearings.²²⁴

Thus, the possibility of a false or flawed version of the truth that might have emerged was constantly present. Although it is the priority of a truth commission to seek the truth, attention should be given to a person's own grasp of the past. The truth that emerges from the testimonies of what has been witnessed or experienced is therefore not always a historical truth in the true sense of the word. Against this background, Tom Lodge warned of the danger that the TRC might degenerate into an "untruth commission".²²⁵

Elizabeth Stanley indicates further that witnesses relating their experiences were careful about the content of their stories. What they related would impact on their future treatment where their experiences would be categorised in such a way that would identify them as either a

²²¹ Jeffery, pp. 8-9, 27.

²²² Truth and Reconciliation Commission, Vol. 1, p. 339. A high level of corroboration would be a situation where a witness confirmed the identity of the actual person committing the gross violation of human rights; whereas a low level of corroboration would be where the witness confirmed the event but not the identity of the perpetrator. See Truth and Reconciliation Commission, Vol. 1, p. 92.

²²³ Truth and Reconciliation Commission, Vol. 1, p. 144.

²²⁴ Leman-Langlois, pp. 17, 24.

²²⁵ Meredith, p. 22.

‘victim’ or a ‘perpetrator’. As such, focusing on the benefits, many individuals used tactical accounts in relating past events and made a political choice of what to tell and of course, what to leave out. In this sense, truth is made to fit.²²⁶

Piers Pigou argues that although the “quality of information gathered was not always good and the versions presented often could not be tested thoroughly”, is not sufficient to come to the conclusion that these versions are unreliable as the Commission did not “pluck its findings out of thin air”.²²⁷ Pigou continues by stating that although the process was not perfect, the findings were based on “relatively consistent procedures”, using corroborative information, secondary documentation, and similar factual evidence.²²⁸

It is important to keep in mind that it is impossible for any commission which has a short prescribed period of time to fulfil its mandate to report in detail the consequences and extent of all the abuses that took place in the period they have to cover. Due to these constraints, a commission can also seldom investigate every single case brought before it.

In the *Final Report*, the Commission acknowledged that it sought to be both therapeutic in its process and rigorous in its findings, but “sometimes the effort to satisfy one objective made it more difficult to attain the other”.²²⁹ Thus, it seems as if the Commission was sometimes stuck in a dualistic process of fact-finding, as well as providing an environment for victims to feel safe to share their story in their own way, form and language. Nevertheless, taking into account the decisive decision not to act as a court of law with the absence of cross-examination, it seems as if the Commission was more inclined to give victims of abuse the benefit of the doubt concerning the truthfulness of their narrative account.

²²⁶ E. Stanley, “Evaluating the Truth and Reconciliation Commission” in *Journal of Modern African Studies* 39(3), 2001, p. 531.

²²⁷ P. Pigou, “False promises and wasted opportunities? Inside South Africa’s Truth and Reconciliation Commission” in D. Posel and G. Simpson (eds), *Commissioning the past. Understanding South Africa’s Truth and Reconciliation Commission*, p. 46.

4.10 THE FINAL STAGE

The Act indicated, as an objective of the Commission, “compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission”.²³⁰ The TRC fulfilled this objective and published a 3 500 page final report in five volumes. The *Final Report* acknowledged the past in an officially sanctioned way and as an authoritative version of past events.²³¹

On 29 October 1998 the TRC’s report was handed to President Mandela at a public ceremony in Pretoria and published simultaneously. However, the presentation of the five-volume report was a sombre occasion, overshadowed by the ANC’s court case and boycotts by the National Party, Inkatha and the Afrikaner opposition party, the Freedom Front.²³²

In accordance with the laid-down procedures of the Commission, notices were sent to those persons, institutions and organisations that were mentioned adversely in the *Report*, informing them that a particular finding had been made against them. F.W. de Klerk was furious that he had been named as “an accessory to gross human rights violations”, and instituted an interdict from the High Court to prevent publication of a thirty-line passage, forcing the TRC to remove the passage. Similarly, the ANC was outraged that it had been roundly condemned for war crimes. It applied to the Cape High Court on 28 October for an urgent interdict to halt the publication of the *Report*. On the 29 October, the High Court threw out the ANC’s application and refused the interdict. Inkatha and the Freedom Front voiced their continued dissatisfaction with the TRC as

²²⁸ *Ibid.*

²²⁹ Truth and Reconciliation Commission, Vol. 1, p. 144.

²³⁰ Republic of South Africa, “Promotion of National Unity and Reconciliation Act ...”, p. 6.

²³¹ Graybill, *Truth and Reconciliation in South Africa ...*, p. 145.

²³² Meredith, p. 305.

being biased and a 'witch-hunt' and did not want to acknowledge the findings of the *Report* through their non-attendance at the ceremony.²³³

During the ceremony the victims and survivors were given prominent attention by assigning to them the seats in the front rows of the ceremony. For Boraine this was an emotional moment, watching these victims take their seats and his mind was taken back to the public hearings. "I heard again their simple but powerful stories and knew that nothing could take away their restored dignity and the breaking of the silence which had made them prisoners for so long."²³⁴

While giving a speech at the handing over of the *Report*, Desmond Tutu, as chairperson of the TRC, again emphasised the role of the victims in the life of the Truth Commission and the road of healing and reconciliation that should be anticipated by all South Africans. "This is an auspicious day in the history of our land, for which South Africa and indeed the world has (sic) waited with eager expectation. ... We thank the victims and all who came to us with such dignity despite their anguish and trauma. They are the heroes and heroines of our story. We dedicate our work to all of them, and others who did not come. ... Many will be upset by the Report. ... accept this Report as a way, an indispensable way to healing. ... We will have looked the beast in the eye. We will have come to terms with our horrendous past and it will no longer keep us hostage. We will cast off its shackles and, holding hands, together, black and white will stride into the future, the glorious future God holds out before us – we who are the Rainbow people of God – and looking at our past we will commit ourselves: Never again! Nooit weer nie! Ngeke futhi! Ga reno tlola!"²³⁵

The then President of the country, Nelson Mandela, told the handover ceremony that he "accepts the report as it is, with all its imperfections, as

²³³ *Ibid.*, pp. 303-305; Boraine, pp. 302-318; Krog, *Country ...*, pp. 281-282; *Die Burger*, 31.10.1998, p. 8.

²³⁴ Boraine, p. 315.

²³⁵ Historical Papers, "Speech by Archbishop Desmond Tutu at the handing over of the TRC Report, 29 October 1998" in *The Kairos Collection*, AG 2918.

an aid the TRC has given us to help reconcile and build our nation".²³⁶ Krog summarises this moment, reflecting: "It was a very significant moment: The Politician and the Prophet embracing each other while the clouds of political resentment against the Truth Commission process finally closed in irritation and anger behind them".²³⁷

For David Beresford, the *Final Report* was the "most important political testament to emerge from South Africa" and the power of the *Report* lies in it being a "people's testament".²³⁸ He continues by explaining that the personal stories which are central to it "offer a wealth of experience which is almost biblical in range, much of it horrific and difficult to digest, but with passages that speak with a simplicity which has its own majesty".²³⁹ Stephen Ellis, writing in *Critique Internationale*, expressed his view on the *Report* as representing "probably the most far-reaching attempt by an official body to come to terms with the human rights abuses committed by a previous government anywhere in the world since the Nuremberg trials of the late 1940s".²⁴⁰

According to Archbishop Tutu, the Commission could claim, "without fear of being contradicted, that it has contributed more to uncovering the truth about the past than all the court cases in the history of apartheid".²⁴¹ The TRC's *Final Report* also asserts that it had "provided enough of the truth about our past for there to be a consensus about it".²⁴²

However, the *Report* was criticised by many. For the purpose of this study, the focus will only be placed on the victims' criticism. Victims had high expectations of the truth finally coming to the surface. The truth would emerge and for that, they sacrificed the right to pursue prosecution. Nevertheless, the question remains whether the victims,

²³⁶ Historical Papers, "TRC Special Reports no 2" in *The Kairos Collection*, AG 2918.

²³⁷ Krog, *Country ...*, p. 283.

²³⁸ Christie, p. 185.

²³⁹ *Ibid.*

²⁴⁰ South African History Archive, "Learning to live together ...", p. 3.

²⁴¹ Truth and Reconciliation Commission, Vol. 1, p. 2.

after exposing their innermost feelings and sometimes risking re-traumatisation again, were satisfied with 'the truth' that emanated during the activities of the TRC. The fact was that in some cases the identity of perpetrators or informers were not revealed or there were contradictions in the perpetrators' accounts of the violations. Some victims still hold the idea that the perpetrators were lying and/or shifting their responsibility onto others.²⁴³

Patricia Valdez, director of the Commission on Truth in El Salvador captures the right to truth as follows: "Victims do not want a commission merely to record their stories and tell them what they already know. The hope is that the commission will go further, complete the puzzle of the past, assign responsibility and crucially, use the credibility and power of the state to establish a clear difference between the new political system and the old evil order".²⁴⁴

Thus, in establishing a comprehensive record of past abuses, the question remains whether truth did indeed serve the purposes it was supposed and expected to do; was enough truth shed and gained through 'truth' telling? This is not to say that people do not tell the truth; rather, they tell *their* truth. Therefore, must the search continue for a 'single truth', while confronted with only competing versions thereof?

It is a fact that the *Report* focused on the victims' testimonies and statements in coming to a comprehensive account of gross human rights violations. In all of this, however, fractured and selective memory is always problematic when it comes to unravelling the past. As has been noted: "People have a grand memory for forgetting".²⁴⁵ Selective memory during testimonies may add a question mark to what might be considered as the facts and truths of a matter. Thus, the reliability of

²⁴² *Ibid.*, p. 18.

²⁴³ Picker.

²⁴⁴ Hamber, *et al.*

²⁴⁵ Christie, p. 179.

memory in the method of remembrance to produce a 'true' objective truth, becomes controversial.

Against this background, more questions remain to be debated. Can an exercise in remembering the past serve any good? Must memory be kept alive? Is remembering necessary in order not to repeat past atrocities? Can memories help the next generation to be more discerning and wiser about the re-occurrence of atrocities? Will remembering contribute to the dignity of victims if their suffering is noticed? Can memory really play such an important role, while all the time it is, at best, a tricky thing and often incomplete?

The fact is that memory cannot be erased, as was perceived during the public hearings. The purpose of the memories shared was not to destroy, but rather to make use of information from the past in helping to deal with the present. With memory, events of the past may be conveyed and shared. In the next chapter memory as a potential historical source of information will be discussed and evaluated. This should be done to verify and argue the place and reliability of memory in sharing past memories to help shape the future by using historical experiences that may provide guidance for future generations.

4.11 CONCLUSION

The well-publicised public victims' hearings of the Human Rights Violations Committee set the tone and public perception of the TRC from the start. Through the public hearings, the past was reconstructed where people shared their lived experiences of how they remembered them. These victims' hearings became the most familiar face of the TRC throughout the world.

A great contribution was the public space for storytelling and recognition that was provided through the HRV Committee hearings. Storytelling is significant, especially in the context of the African oral tradition, as it

presents a way for people to construct a collective memory of the past. Thus, an opportunity was provided through the TRC to share in humanity in a narrative form.

It is debatable if one can speak in meaningful terms of healing and catharsis and whether it occurs through sharing painful past experiences. To evaluate if the 'human and civil dignity' of victims was restored and whether 'healing' was achieved, is a much more complex and complicated, and too simplistic a question. These concepts involve a variety of different factors and are part of a long-term process that requires time and patience.

The TRC's victims' hearings set out to ensure that people felt they had ample time to share their story and that they had been duly acknowledged. However, in practice this aim, in the fullest sense, was not always achievable. The Commission was bound, due to limited resources and time constraints, to stick to a specific procedure, pattern and predetermined structure.

It is true that the victims experienced the HRV hearings as a mixed blessing. Certain expectations were not met, while others experienced relief and dignity through the TRC process. It must be emphasised that it is almost impossible for any truth commission body to meet all the expectations of all the role players.

It became clear that even with a mandate in place and with the aim of gaining information about all types of abuses and atrocities, it is sometimes more difficult to document certain abuses. The most commonly underreported abuses tend to be those suffered by women, specifically rape. The voices of women are seldom heard in the public narration of collective violence. It is understandable that these issues are extremely sensitive and future truth commissions should take proper steps to protect women in this regard when voicing their atrocities. However, truth with a capital "T" cannot emerge if women are fearful

about showing emotions and/or exploring negative and painful memories. Only a partial truth may emerge if women's voices are silent.

This chapter cannot do justice to all the testimonies that were heard. It can only give some indication of the enormity of the human rights violations suffered by a variety of people. An attempt was made to provide only an idea of the range of atrocities to which people came to testify.

Historically, societies have found it easier to plead ignorance and much harder to openly acknowledge their past and accept responsibility for it. At least the TRC initiated a process during which people acknowledged the past and developed a shared memory by remembering it, which may lead to a transformation in attitudes. What is of significance, is that the TRC has laid the fertile ground for the formation of new relationships and for forgiveness and has unlocked greater possibilities for restoring the human spirit.

Chapter 5

THE TRUTH IN MEMORIES: A CRITICAL ASSESSMENT OF MEMORY AS A POTENTIAL SOURCE OF INFORMATION

5.1 INTRODUCTION

Memory is so vast that no discipline can exercise a pre-emptive claim. The history of the organisation of memory impacts on vital points in the history of philosophy and psychology, of religion and ethics, of art and literature and of scientific method.¹ It is therefore important to note the remarks of Hans-Georg Gadamer when he states that it is time to “rescue the phenomenon of memory from being regarded merely as a psychological faculty and to see it as an essential element of the finite historical being of man”.² Thus, the essential task, especially for historians, is to recognise the interchange and complementary relationship between history and memory.

Memory is still recognised as the ‘raw material of history’ and ‘the living source from which historians can draw’. In this view the historical discipline “nourishes memory in turn, and enters into the great dialectical process of memory and forgetting experienced by individuals and societies.”³ Philippe Ariès corroborates this idea when he remarks

¹ F.A. Yates, *The art of memory*, p. 374.

² P.H. Hutton, *History as an art of memory*, p. 23.

³ P. Ricoeur, *Memory, history, forgetting*, (translated by K. Blamey and D. Pellauer), p. 386.

that “history deals with the horizon between the known and the unknown. It is memory that lures us to this horizon”.⁴

Therefore, historians are concerned with memory as a potential historical source of information. This is done to provide an explication of the reliability of the recollection of events and circumstances compared to the written history, with both presenting the past. Memory is also studied as a historical phenomenon. In this, the principles of selection must be identified, how they vary and change, as well as how memories are shaped and by whom and this embodies the social history of remembering.⁵ In the process “memory prompts our inquiries as historians, just as the search for that which has been forgotten focuses them. The past as it was experienced, not just the past as it has subsequently been used, is a moment of memory we should strive to recover”.⁶

Before the emergence of manuscript literacy, knowledge of the past was largely conveyed orally where the world trusted the authority of the spoken word. Modern print culture has led to a search for the certain and the true, which must include acts of recollection and of repetition.⁷ However, apart from documentary records that may be available and can be scrutinised for the certain and the true, the tragedy for South Africa is that the former Cabinet sanctioned the destruction of a huge body of state records, security files and documentation in an attempt to remove certain evidence. The elimination of ‘memory’ took place in the form of censorship, banning, the confiscation of materials, incarceration and a range of related actions. Any attempt to reconstruct the past should involve the recovery of these memories.⁸

⁴ Hutton, p. 168.

⁵ P. Burke, “History as social memory” in T. Butler (ed.), *Memory. History, culture and the mind*, pp. 99-100.

⁶ Hutton, p. xxv.

⁷ *Ibid.*, pp. xxii, 48.

⁸ Truth and Reconciliation Commission, *Truth and Reconciliation of South Africa Report*, Vol. 1, p. 201; V. Harris, “Contesting remembering and forgetting: The archive of South

Therefore, the past that exists in people's living memory needs to be remembered, especially if it can serve a present need. To reconstruct the past through an act of recollection, the historian should use the depths of memory as a source of meaning. The memories of yesterday may therefore become "today's place markers for historians mapping the many ways in which the past was once imagined".⁹

It is consequently the privilege, as well as the definitive task of the historian to implement historical interpretation in unlocking and reconstructing memories hidden in the recesses of a distant past in which images and ideas are directly connected, resulting in the past coming alive once more. It is true that History is never one story, as no telling may entirely escape the preoccupations of the moment and the difficulty of wrestling with fictions, distortions and legends from the past. Thus, in searching for truth and analysing historical evidence, an understanding of the special nature of memory as a potential source of information is essential. In tune with the unique character of memory, the general view is that historians should approach the subjective, yet social character of memory as a historical source in a sensitive way from the outset. Against this background an awareness of the nature, limitations and usefulness of memory need to be examined in this chapter in order to pursue the aspiration of truthfulness.

5.2 UNDERSTANDING THE CONCEPT AND PROCESS OF MEMORY

Africa's Truth and Reconciliation Commission" in *Innovation* (24), June 2002, pp. 1, 8. For example, evidence gathered by the Goldstone Commission indicated that at least 135 000 security files were destroyed after covert police operations were uncovered in mid 1991. Further evidence also suggested that the destruction of records continued until at least 1996. See also G. Simpson, "A brief evaluation of South Africa's Truth and Reconciliation Commission: Some lessons for societies in transition", <<http://www.csvr.org.za/papers/paptrce2.htm>>, *s.a.*; G. Simpson and P. van Zyl, "South Africa's Truth and Reconciliation Commission", <<http://www.csvr.org.za/papers/papgpspv.htm>>, 1995. For more detail on the TRC's view and handling of the destruction of records, see: Truth and Reconciliation Commission, Vol. 1, pp. 201-243.

⁹ Hutton, p. 10.

Memory is an allegedly simple word. However, the use of a single term for memory may create the impression that it is a single entity, whereas it is certainly not one system, but many. These systems vary in storage duration and capacity from fractions of a second to a long-term memory system that exceeds by far the capacity of any computer. Memory is therefore not a unitary system with static entities but rather, the capacity for storing information consisting of a range of different systems, a vast number of interrelated activities, as well as the functioning of a complex set of neurobiological processes, making memory quite complex but also flexible.¹⁰

Memory is always at work in our minds and pervades every aspect of our mental lives, from the most physical to the cognitive and from the most abstract to the unconscious. It is varying and works in ways of which people are scarcely aware. It is what we personally experience, refine and retain and also what we inherit from preceding generations, and pass on to the next. Memory itself is preoccupied with the past, as well as integrated and engaged with the present – with constantly changing perspectives, perceptions and attitudes – working and reworking the information and data of experience into new opinions, formulas and even new creations. In this way, memory represents the present and the past as connected and consistent with each other, so that our experience of the present is embedded in past experience. In this sense, memory serves a central coordinating role in bridging the past and the present, as well as the future. The link between the past, present and future allows people to maintain a coherent identity, store retrospective information, monitor current input and output and create and store future plans.¹¹

For Edward Casey, everything participates in memory, which means that everything is connected with memory through and through. This provides a global concept to memory – including everything that has ever been seen, heard, said, felt, touched and smelled. According to him

¹⁰ A. Baddeley, *Human memory. Theory and practice*, pp. 4, 8; I.M.L. Hunter, *Memory. Facts and fallacies*, p. 14.

“memory not only registers modes of participation between animate and inanimate things, minds and bodies, selves and others, persons and places; it also contributes its own re-enlivening capacities to the festival of cosmic participation. Its very porousness, its open-endedness and ongoingness; its ability to bond deeply across the remoteness of time and space; its own virtual dimension – all of these help to make memory a powerful participatory force in the world, or more exactly: *as* the world. Just as everything participates in memory, so memory participates in everything: every last thing. In so doing, it draws the world together, remembering it and endowing it with connectiveness and a significance it would otherwise lack – or rather, without which it would not be what it is or as it is”.¹²

Memories are systems for storing information and should basically do three things; namely, take in essential information, store it and retrieve it at a given time. As such, it is an active, selective process that stores only some aspects of our life experiences and discards other records. These aspects are selected according to various hierarchies of the senses, in which the person's values also play a role. Thus, the memories that preserve what is relevant to the individual at the time the particular experiences take place are actually interpretations of the experiences and not an all-embracing passive record of our lives.¹³ The characteristics of selectivity and interpretation are tied to all messages. Every person who speaks chooses information and topics, organises them and colours them. The processes of selection, abstraction, and generalisation are necessary to protect the system from overload. This will however, result in the loss of certain information and the creation of

¹¹ J. Fentress and C. Wickham, *Social memory*, pp. 5, 24-25; T. Butler, “Memory: A mixed blessing” in Butler (ed.), pp. 13-14; W.W. Moss, *Oral history program manual*, p. 9; G. Cohen, *Memory in the real world*, p. 219.

¹² E.S. Casey, *Remembering. A phenomenological study* (2nd edition), pp. 312-313.

¹³ A. Baddeley, “The psychology of remembering and forgetting” in Butler (ed.), p. 51; A. Parkin, *Memory. A guide for professionals*, p. 19; M.A. Conway, “Past and present: Recovered memories and false memories” in M.A. Conway (ed.), *Recovered memories and false memories*, p. 150.

a sketch of past events, which is the historical consciousness of the present.¹⁴

Against this background, it is virtually impossible to provide an all-encompassing scientific definition or description of memory. In an article in *Scientific American*, entitled 'The anatomy of memory', M. Mishkin and T. Appenzeller describe the complexity of memory: "Within the small volume of the human brain there is a system of memory, powerful enough to capture the image of a face in a single encounter, ample enough to store the experiences of a lifetime, and so versatile that the memory of a scene can summon associated recollections of sights, sounds, smells, tastes, tactile sensations and emotion ... How does this memory system work? Even defining memory is a struggle; introspection suggests a difference between knowing a face or a poem, and knowing a skill such as typing. Moreover the physical substrate of memory, the 100 billion or so nerve cells in the brain and their matted interconnections, is fantastically intricate".¹⁵

On a religious level, Saint Augustine is in great awe of the power of memory in his *Confessions*: "Great is the force of Memory, excessive great, O my God; a large and boundless chamber! Who ever sounded the depths thereof? A wonderful admiration surprises me, amazement seizes me upon this. And men go abroad to admire the heights of mountains, the mighty billows of the sea, the broad tides of rivers, the expanse of the ocean, and the circuits of the stars, and pass themselves by".¹⁶

No other phenomenon is as central to human existence and human experience. Memory is clearly the enabling capacity of human life, allowing us to be fully human. Without memory human behaviour, human consciousness and human identity would bear no relation to their present forms. It is an unequivocal fact about human existence that we are made of our memories – we are what we remember ourselves to be.

¹⁴ J. Vansina, *Oral tradition as history*, pp. 147, 160, 190-191.

¹⁵ Baddeley, "The psychology of ...", p. 12.

¹⁶ *Ibid.*

From the first memories of self there is never a selfless moment and each successive self is built on its own selective stock of memories. Each successive self may also re-orient itself by changing its hold on old memories and weaving in new ones; it may reinterpret its history in a different form; it may even represent itself to itself in an alternative manner.¹⁷ John Locke explains this further: “For as far as any intelligent being can repeat [i.e., in memory] the idea of any past action with the same consciousness it had of it at first, and with the same consciousness it has of any present action; so far it is the same personal self. For it is by the consciousness it has of its present thoughts and actions, that it is self to itself now, and so will be the same self, as far as the same consciousness can extend to actions past or to come ... the same consciousness uniting these distinct actions into the same person”.¹⁸

Maurice Halbwachs makes a strong argument that all memory is collective, as it cannot be understood without simultaneously understanding the social milieu in which the person resides. People live in and deal with, a world that extends beyond themselves, where memories of events and objects that are social in origin are shared. Consequently, memory occurs in social dynamics, as well as in the contexts of the community and the relationship thereto. It is the social group which determines what is ‘memorable’ and how it will be remembered. This idea of ‘social memory’ means that other people serve as satellite memory stores that the individual may access if need be making memory socially distributed. Thus, people use others as an extension of their own memories and ‘remember’ a good deal that they have not directly experienced themselves. One does remember one’s own personal experiences, but also the things that have happened to other people.¹⁹ “Our memories remain collective, however, and are recalled to

¹⁷ Casey, pp. 290, 292; G.R. Goethals and P.R. Solomon, “Interdisciplinary perspectives on the study of memory” in P.R. Solomon and G.R. Goethals *et al.*, (eds), *Memory: Interdisciplinary approaches*, p. 1.

¹⁸ Casey, p. 290.

¹⁹ Hutton, pp. 6-7, 78-80. See also U. Neisser, *Memory observed. Remembering in natural contexts*, p. 15; D.L. Schacter (ed.), *Memory distortion. How minds, brains, and*

us through others even though only we were participants in the events or saw the things concerned. When we are with other people we use them to corroborate or invalidate, as well as supplement what we somehow know already about an event that in many other details remains obscure. In reality, we are never alone. Other men need not be physically present, since we carry with us and in us a number of distinct persons.”²⁰

Fentress and Wickham elaborate on this, explaining that “when we remember, we represent ourselves to ourselves and to those around us. To the extent that our ‘nature’ – that which we truly are – can be revealed in articulation, we are what we remember ... the way we present ourselves in our memories, the way we define our personal and collective identities through our memories, the way we order and structure our ideas in our memories, and the way we transmit these memories to others ...”²¹

Although memory’s ability was already highly valued and thought through by early societies, as is indicated by their creation of various gods and goddesses²² and although extensive scientific research has been conducted on memory in recent years, there is nevertheless a notion that research work on memory as a whole is still in its infancy. According to Stuart Sutherland, memory “consists of many disparate facts in search of a theory ... the relation between short-term and long-term memory remains obscure. Nor do we know with any certainty what causes forgetting ... Above all, we do not understand how memories are indexed”.²³ Gruneberg and Morris elaborate on this notion, explaining: “In recent years the study of memory has grown enormously. Each year

societies reconstruct the past, pp. 346-347; S. Field, “Memory, the TRC and the significance of oral history in post-apartheid South Africa”. Paper presented at the History Workshop “TRC: Commissioning the past”, University of Witwatersrand, Pretoria, 11-14.6.1999.

²⁰ T.M. Ostrom, “Three catechisms for social memory” in Solomon and Goethals *et al* (eds), p. 213. See also Burke, pp. 98-99.

²¹ Fentress and Wickham, p. 7.

²² Greek mythology gave the world a goddess of memory or remembrance – her name was Mnemosyne.

²³ A. Seldon and J. Pappworth, *By word of mouth. ‘Élite’ oral history*, p. 18.

sees several hundred new articles reporting research on remembering ... It will be evident from this ... that despite a vast amount of empirical evidence, the encapsulation of the memory phenomena within a coherent theoretical framework is as elusive as ever".²⁴

However, what *is* known is that the basic memory processes consist of learning, remembering, forgetting and retaining. Learning is the process of acquiring knowledge or activity, whereas remembering is the process in which the effects of past learning manifest themselves in the present. The fact that people can remember anything at all through memory is attributable to memory remaining connected. To some extent, both the learning itself and the act of remembering are directly observable. The inability to remember or the non-retrieval of information that is processed in a lifetime, namely forgetting, cannot be observed. Forgetting may arise through encoding failure, storage failure or retrieval failure. This seems to be due to some form of interference, although forgotten memories may return due to spontaneous recovery. There is no doubt that forgetting occurs on a massive scale and it is consequently important to understand that forgetting seems to be an integral part of normal intelligence and not part of an imperfect system. Retaining, one of the more intriguing aspects of memory, is the process in the brain by which the effects of learning persist through time.²⁵

This makes memory a reconstructive act in which the act of remembering is triggered by some form of cue. This nature of memory is also reliant on schemata, which can be explained as a model of the world based on past experiences that may be used as a basis for remembering events. In other words, the knowledge that is stored in the memory is organised as a set of schemas or knowledge structures, which represent general knowledge about objects, events, actions or situations that have been acquired from past experiences. Schemata reduce the amount of

²⁴ T. Lummis, *Listening to history. The authenticity of oral evidence*, p. 117.

²⁵ Hunter, pp. 14-15; N.E. Spear and D.C. Riccio, *Memory. Phenomena & principles*, pp. 11, 26; Butler, p. 16; Parkin, pp. 33-38.

information that an individual needs to store away, which is generally considered a good thing. However, it does imply disadvantages, in that it may create distortions in memory which leads to bias in people's recollections. People may omit some details of a story, introduce rationalisations, use their own view of the world to distort what they actually heard or saw and reconstruct the story so as to make more sense in terms of their own knowledge and experience.²⁶

In this, perception plays a crucial role. Human perception and memory function effectively by being selective and constructive. Perception is a decision-making process, which is affected by the totality of a person's abilities, attitudes, motives and beliefs, background and by the environment. Something should first be comprehended in order to learn it. By seeing how information fits together, people learn in categories that enable them to reconstruct the information at a future occurrence. Immediately after an event, for a matter of minutes, one can remember a great deal more than later on. Then the selection process organises the memory and establishes long-lasting traces. Unfortunately, scientific research has little to convey about the processes by which memory is recalled, but it will include both remembering and forgetting. This implies a choice – a distinction between what will be preserved and what will be suppressed. Therefore, the process of discarding information (the counterpart of selection) continues over time and poses a real problem for the historian.²⁷

Thompson asks in *The voice of the past: Oral history* how far memory is affected by increasing age. From birth to the age of four young children have very little long-term memory at all. Up to the age of eleven a transitional stage follows. After the age of eleven and especially after the age of thirty, there is a progressive decline in the memory. On the other hand, the total memory store is increasing. Memory inevitably declines with age, although it is in an uneven manner. Age has little effect on

²⁶ Parkin, pp. 21-22; Cohen, p. 71. See also A. Searleman and D. Herrmann, *Memory from a broader perspective*, pp. 140-142.

short-term storage, but there is a notable decline of explicit memory. Recognition does not decline very much with age, whereas recall is the most affected. The decline in memory is never drastic before either terminal illness or senility is reached.²⁸

It is obvious that memory will be the strongest in the present continuum, where it can be constantly tested and exercised. As the interval of time following the exposure to an event is extended, it is certain that forgetting of that specific event will increase. The rate of forgetting may differ depending upon which aspect of the event is to be remembered or how it is to be remembered, but a steady decline in memory is the general rule, nonetheless. Apart from this, no conclusive evidence exists that memory strength progressively grows during a period of relative inactivity.²⁹

Furthermore, our knowledge of both the present and the past is made up of recollections and ideas in the present mind. This may be no more accurate than the recollections and ideas upon which they are built. The possibility that we can contradict our memories by new experience or better ideas limits our confidence in our memories.³⁰

What makes memory usable as a source at all is the fact that we can articulate and communicate it. Articulation does not only imply speech, but may also be preserved in rituals where the meaning is not put into words, but is acted out in non-verbal gestures. Although certain memories are indeed more personal and private, this aspect rather constitutes the 'social' part of memory. The aspect of our memory most easily accessible to others is the fact that we can convey information. Memory is further structured by language and images, observing and teaching, by experiences shared with others and by collectively held

²⁷ P. Thompson, *The voice of the past: Oral history*, pp. 129-131; K.V. Petrov, "Memory and oral tradition" in Butler (ed.), p. 78; Neisser, p. 117.

²⁸ Thompson, p. 136; Parkin, pp. 43-57; Searleman and Herrmann, pp. 291-294.

²⁹ Spear and Riccio, p. 52.

³⁰ Fentress and Wickham, p. 24.

ideas.³¹ This ability of the individual makes it possible for the historian to conduct research from the narratives provided through memory.

Memory touches on different interdisciplinary levels and is a broad and complex concept and process. For this reason it is impossible to do an in-depth investigation of all aspects that encompass memory, nor is it the aim of this study. The given discussion will have to suffice to highlight memory for the specific purpose of this study, taking into account that memory entails many more features and processes.

5.3 THE PROBLEMATIC NATURE OF MEMORY AS A POTENTIAL SOURCE OF INFORMATION

History is the 'life of memory', with memory forming the core of oral testimonies. What makes oral history so distinct and sets it apart from other branches of history is its reliance on memory and not on text. Unfortunately, memory can never be absolutely certain, wherein lies its weakness as a source of knowledge of the past. Scepticism of oral testimonies relying on memory dates back to the very first recording of history, when the complaint was made that "different eye-witnesses give different accounts of the same events, speaking out of partiality for one side or the other or else from imperfect memories".³²

Memory is known to be fallible due to such factors as passive decay, interference between traces such that similar memories cannot be distinguished, retrieval forgetting, systematic distortions of memory traces and displacement of existing memories by incoming material. Tim Keegan points out that "individual memory is usually an indispensable source of evidence at the historian's disposal ... but human memory is

³¹ *Ibid.*, pp. 6-7.

³² D.A. Ritchie, *Doing oral history. A practical guide*, p. 20; See also Burke, p. 97.

given to error, misconception, elision, distortion, elaboration and downright fabrication".³³

A key aspect of oral history is the retrieving of memories of the people being interviewed and who are given a chance to convey their story. Undoubtedly, the major criticism of oral testimonies is the unreliability of the interviewee's memory with regard to hard and specific facts and the chronological order thereof. The past is continually reinvented in our living memories, making them highly unreliable as a guide to what actually transpired and their imagery should be interpreted for hidden agendas.³⁴ Using oral testimonies therefore, presents a range of challenges for the researcher, especially regarding how people construct their memories, in order to gain a better understanding of why the information that is acquired is formed in the way it is and how this impacts on the findings.³⁵

Notwithstanding, given oral history's special benefits and attributes, memory is in and of itself simply subjective.³⁶ Thus, even though oral history may be as unreliable or reliable as any other research source, the expressed scepticism on the accuracy of human memory and interrelated with it, the reliability of the oral source, should be considered. Taking into account the fallibility of memory and the criticism levelled against it, the researcher cannot ignore the problematic nature of memory as a reliable historical source.

Although some oral historians may argue that memory is 'an intimate function of the mind' and may therefore, not be an historical source per se, this researcher has a different viewpoint. The researcher's viewpoint is in line with Tim Keegan's argument that memory may be regarded as a 'potential source of evidence at the disposal of the historian'.

³³ G. Minkley and C. Rassool, "Orality, memory, and social history in South Africa" in S. Nuttall and C. Coetzee (eds), *Negotiating the past: The making of memory in South Africa*, p. 91.

³⁴ Hutton, p. 7.

Attention will be given to some of the factors contributing directly and indirectly to a person's recollection of his/her memory and the influence thereof on gaining historical information and evidence.

Chronology is essential to history. The weakness in chronology and lack of precision is one of the greatest limitations of oral testimonies. Time is a continuum, but people periodise it, normally placing events and periods in time by relating them to other occurrences and/or by association with other episodes in the person's life. Therefore, it is rather the pursuing and gathering together of bundles of meaning, relationships and themes, across the linear span of a lifetime. Usually the ordering principle that supersedes time is emotional associations people have with the events and/or the person being discussed/described. In the human perception of history, persons, events and places are normally more important than time as such.³⁷

It is also important to take into account that Westerners and Africans have a different standard chronology. It is more common to the Western understanding and memory of the past to arrange the past according to a date or time period. However, the African perception is that the time is not as important as the events and places in their accounts of what took place in history. Furthermore, the chronological order of events being recalled is usually scrambled. Although the events are described accurately, one incident may be chronologically unrelated to another during the conversation. While the interviewer is focusing on reconstructing the past by means of chronological categorisation, the

³⁵ J. Worthington and P. Denis, *Working draft. Training manual. Oral history project*, p. 3.

³⁶ Fentress and Wickham, p. 7.

³⁷ Vansina, pp. 173-174, 186-190; B. Allen and L. Montell, *From memory to history. Using oral sources in local historical research*, pp. 26-31, 81; Worthington and Denis, p. 18; Thompson, pp. 157-158, 167; A. Portelli, *The death of Luigi Trastulli and other stories. Form and meaning in oral history*, p. 63. See also E. Tonkin, *Narrating our pasts. The social construction of oral history*, pp. 66-75 where she explains 'Narrators and their times'.

interviewee will tend to focus on recalling important events and people who formed part of his/her life.³⁸

During the TRC's victim hearings the Commissioners tended to set a chronological framework by first focusing on general questions and then following with more specific, pointed questions of a specific event as described through the victim's statement. In the process of establishing the historical setting, adequate space was provided for the victim to convey his/her story of gross violation of human rights. Within this framework, the narrator stayed more chronologically focused.

When talking about events that occurred months or years apart, people have a tendency to *telescope historical time* and omit incidents that occurred in the interim. Only the events that have a bearing on the present circumstances will be mentioned, leaving large sections of time not accounted for. At the same time, the actual actors in the historical event may be displaced. The events that occurred become of primary significance and the persons involved secondary.³⁹

Accurate memory is more likely when it meets a *social interest and need* and when it concerns something that is important and exciting to the interviewee. In other words, memory depends on the perception process. Thus, the chances are greater that the interviewee will find it easier to remember aspects of an event that were of interest than to recall aspects considered to be less important. When something is fresh and invigorating, the memory will be most vivid, compared to memories of normal daily routine which may be too commonplace. The result is that the reliability of the interviewee's memory depends partly on whether the question asked interests the person.⁴⁰

³⁸ Vansina, pp. 173-174, 186-190; Allen and Montell, pp. 26-31, 81; Worthington and Denis, p. 18; Thompson, pp. 157-158, 167.

³⁹ Allen and Montell, pp. 35-37; Seldon and Pappworth, pp. 21-22; Thompson, p. 159; Vansina, pp. 174-176.

⁴⁰ Worthington and Denis, p. 4; Ritchie, p. 32; Thompson, pp. 131-132, 157-158.

Memory begins with *perception*. This implies that no two people will tell a story in precisely the same way, since interviewees will speak from their own observations and points of view. Perceptions that are initially flawed will create distorted memories and it seems that lasting memories are produced by more dramatic, direct and emotional situations. Furthermore, not every perceived event is preserved in memory – selection occurs.⁴¹ Seldon and Pappworth explain it as follows: "Some witnesses will imply (perhaps to show they are 'in the know') that they were present when in fact they were not. Even if the informant *was* present and has perfect recall, his recollection may still not be accurate, because he might not be in possession of certain facts without which he cannot properly understand what is taking place, or he might not *physically* be in position to observe all that is taking place and may have missed a crucial occurrence. Even with perfect recall, and possessing *all* the relevant facts and 100% observation, an informant still cannot give an objective picture because subconscious selection processes will always affect the recollection of events".⁴²

'Just where it is heard', in other words the *environment* in which the interview is conducted, may stimulate the ability to remember and how the information will be conveyed. An interview at home will increase the pressure of 'modest' home-centred ideals; an interview in the workplace will introduce the influence of work attitudes and conventions and an interview in a pub is more likely to emphasise 'dare-devilry' and fun. Moreover, connected with the environment will be changes in language. An interview in a pub will often be tainted with swearwords, compared to a recording inside a church.⁴³

Many victims who testified at the public hearings of the TRC found the experience of being able to recount their story in a supportive, affirming, respectful environment as positive. It was a definite aim of the Human

⁴¹ Ritchie, p. 33; D. Henge, *Oral historiography*, p. 11.

⁴² Seldon and Pappworth, p. 125.

⁴³ Thompson, pp. 142-143; Worthington and Denis, p. 4; Allen and Montell, pp. 40-45.

Rights Violation Committee to create an environment in which the testifier would feel as comfortable as possible about sharing experiences, in an attempt to restore the dignity of the storyteller.

Crucial to remembering is the effect of the *context/setting* of evidence. In a group situation, such as a local celebration or a memorial service or in a pub, communal perspectives of memory are expected to exercise much more power than in more private reflections at home. The conducting of the interview in a quiet or busy place may have an effect on the outcome of the interview. In a quiet place there may be more openness without the fear of being overheard, whereas in a busy place the interviewee may be more careful of what he/she says.⁴⁴

While testifying before the TRC the victim was never alone, but surrounded by Commissioners, briefers, family members, translators, the audience, as well as the media, making the setting extremely public. This open, transparent context within which the TRC operated, had a definite influence on the kind of testimony that was delivered by the testifier.

The interviewee's *political and religious ideas* may also affect memory and may influence what aspects of an event will 'stand out' and how he/she will eventually construct the story. This may therefore cause a person to reject certain issues/facts and overemphasise others.⁴⁵

As was previously mentioned, there was a great deal of emphasis inside the HRV Committee on religious aspects such as forgiveness and reconciliation. Desmond Tutu especially, who made forgiveness 'a matter of patriotic duty', may have contributed to testimonies focusing on these aspects within a more religious context. Victims themselves while testifying were routinely using openly Christian terminology and biblical references in describing what happened. The question still remains of whether the outward public display of forgiveness had more to do with the presence of Tutu and even the persona of Mandela than with the real,

⁴⁴ Worthington and Denis, p. 4; Thompson, p. 133.

⁴⁵ Worthington and Denis, p. 4.

genuine attitude of the victim as displayed in the narrative of remembering.

The *presence of other people* while conducting the interview may affect the interviewee's ability to remember and to speak. Exaggeration and boasting may be reduced, but the inclination to conform will also increase significantly. According to Thompson, a group meeting may sometimes be helpful, for example in "bringing out conflicts in tradition about particular figures in a community's past from informants with different standpoints".⁴⁶ Sometimes a husband and wife together, may give a more accurate review of past events, by stimulating each other's memories or correcting inaccurate recollections. Nevertheless, the opposite may also be true in cases where a woman, for example, would be less open to the interviewer about certain aspects than she would have been if her husband were not present.⁴⁷

It cannot be denied that the presence of a wide variety of role players at the TRC hearings, may have contributed to a process wherein the victim focused on the expectations created directly and indirectly about his/her role in telling the story about violations that occurred. It may be disputed that conformity in behaviour and socially approved discourse in such a process may occur. Apart from this, it was evident from the few women who appeared before the victim hearings to tell about sexual abuses, that certain violations would in general, not be shared in the presence of other people and would go unreported.

The interviewee's perception of the interviewer as an '*insider*' or '*outsider*' may also, to a large extent, influence the respondent's ability to convey information. Are you part of his/her race group, community, gender and church? These aspects may influence the interviewee with regard to what he/she considers worth sharing with the interviewer, or what he/she would prefer to withhold in the interest of protecting those who form part of his/her group. The interviewee may regard the insider

⁴⁶ Thompson, p. 140.

⁴⁷ Worthington and Denis, p. 5; Thompson, p. 140.

as part of 'them' where they share a common cultural system based on similar customs, values, attitudes and symbols, as well as significant historical experiences. The insider knows his/her way around, understands the nuances, may be less easily fooled and begins the interview with far more useful contacts. It is also more likely that the interviewee will feel free to use certain social codes, for example the same frame of reference, as well as terms that have a specific meaning and language, which would be lost on an outsider. All this has to be learnt and constructed by the outsider, who may initially not even be familiar with the ethnography, language or geography of the community. However, for the outsider the advantage of being outside the local social network lies in the fact that he/she may more easily remain neutral and objective; can ask more questions for the explanation of aspects that seem obvious and/or taken for granted to an insider and will not avoid exploring unpleasant aspects of a topic, as in the case of the insider who may fear offending the interviewee.⁴⁸

With the appointment of a diverse group of Commissioners, the idea was to make people feel represented and comfortable with the Truth Commission process. Statement takers were also appointed to an area where they could understand the most prominent languages spoken, to make the statement maker feel at ease with regard to language proficiency, culture and gender.

In the African context particularly, the information received from the interviewee may be affected by a *person's loyalty* to his/her specific community. The interviewee may be cautious about frankly conveying information considered to be confidential. Certain information may be

⁴⁸ Thompson, pp. 140-141; Worthington and Denis, p. 5; Seldon and Pappworth, p. 34; Allen and Montell, pp. 11-13. See also A. Kikumura, "Family live histories. A collaborative venture" in R. Perks and A. Thomson (eds), *The oral history reader*, p. 141, explaining that since both – the 'insider' and the 'outsider' – have the possibility of distortions and prejudice, Kikumura agrees with Robert Merton who emphasises the role of the researcher to appraise the unique advantages and limitations of each: "We no longer ask whether it is the Insider or the Outsider who has monopolistic or

omitted for fear that it may hurt the community in some way and/or cause trouble for the interviewee if it were overheard by members of the community.⁴⁹ A Tanzanian in the Nango royal capital at Vagha exclaimed: “Forget that story; if we tell it, our lineage will be destroyed”.⁵⁰

In the South African Truth Commission, both situations occurred. On the one hand, victims wanted to share their story and be heard after the long period of silence. On the other hand, there were people who felt it was part of the struggle and it would be treacherous to share their story of violations, in public.

The way *questions* are phrased and posed may affect the way the interviewee recalls evidence. Because of the fact that the researcher does not always know the nature of the particular things the interviewee may know, finding the right questions to ask is very important.⁵¹ Questioning should not reflect the interviewer’s personal bias. The interviewee may also mould answers according to what he/she thinks the interviewer wants to hear and this may have a direct influence on the information collected. Distortions of memory may be produced in cases where leading questions are posed to an eyewitness and/or victim. The choice of words and the way questions are asked may bias the subject’s subsequent recall. Leading questions or even quite subtle implications may introduce errors in the memory of the event. Therefore, both the interviewer and interviewee should check his/her own credibility. To prevent any misrepresentation, the interviewer should be careful not to guide the interviewee’s memory too much. The interviewer should therefore control the interview by maintaining a balance between the

privileged access to social truth; instead, we begin to consider their distinctive and interactive roles in the process of truth seeking”.

⁴⁹ Worthington and Denis, p. 5; Seldon and Pappworth, p. 20; Thompson, p. 140.

⁵⁰ Thompson, pp. 167-168.

⁵¹ Seldon and Pappworth, p. 34.

people involved and preventing any distortion of information, with the desired outcome being the best possible recollection of memory.⁵²

During the posing of questions, the respondent may also feel awkward when his/her recall of the specifics of an event is vague. Many times the interviewee does not want to reveal his/her ignorance and the person feels constrained to provide an answer. This may lead to a definite reply to a question being asked even though the recollection is vague and may even be inaccurate. In this case, a normal question can lead to false testimony. This type of incident is more likely to occur when questions are put in a suggestive form.⁵³

One may observe a general tendency for *recurrent processes* to be better remembered than single incidents. Each telling of the story becomes a rehearsal for the next telling, embedding it all the more firmly in one's mind. Memory is much less reliable when it concerns events that neither recurred nor were recalled time and again.⁵⁴ Research indicates that people forget more in the first hour about a specific event happening than during any other time. Forgetting continues for nine hours afterwards. In other words, more is forgotten in the first day, than in the subsequent weeks, months and years.⁵⁵ However, Jeffrey and Edwall indicate that rehearsed stories of events may create stumbling blocks. Every telling of a story perfects it and actually moves it further from reality as events are telescoped, rearranged, edited and the chronology tightened.⁵⁶

The recollection of an event does not always correspond with the truth, but with *alterations* perceived from how the events are disclosed *through the media*. Thompson explains this further: "In many events

⁵² Baddeley, "The psychology of ...", p. 53; Cohen, pp. 77, 79-80; Worthington and Denis, pp. 5-6; Seldon and Pappworth, pp. 27-28; Ritchie, p. 34; Hunter, p. 98.

⁵³ Hunter, pp. 100-101. See also Neisser, p. 120.

⁵⁴ Thompson, pp. 158-159; Seldon and Pappworth, p. 26.

⁵⁵ V.R. Yow, *Recording oral history. A practical guide for social scientists*, p. 19.

⁵⁶ D.A. Ritchie, "Foreword" in J. Jeffrey and G. Edwall (eds), *Memory and history. Essays on recalling and interpreting experience*, p. vii.

people did not know at the time what was happening, so that their retrospective accounts will be as much based on what they learnt from the news or from others as on their own participation".⁵⁷ Thus, interviewees may be unable to distinguish pure recollection of past events as they experienced them, from what they saw or heard afterwards.

This aspect is disputable regarding the victim hearings of the TRC, where almost half of the statements of reported human rights violations were given by deponents about gross violations committed against people other than themselves. It is uncertain how much alteration may have influenced these second-hand versions of the event.

Conducting interviews years after an event has occurred might lead to uncertain memories. Time and the passage thereof, reshape memory. Memory grows vaguer and there is a loss of detail. People's memories may take on an additional mature, developed or disillusioned cast with the *passage of time*. However, the opposite may also be true. Distanciation may give people a historical perspective on matters that may have been hard to grasp at the time that they occurred. The passing of time may enable people to make further sense of earlier events in their lives, since these events may now be weighed and may take on new meaning.⁵⁸

The question remains if it is possible to have detailed memories over long time intervals and how we account for the perseverance thereof. The frequency and recentness of activation will determine the intensity of an association. In other words, the more frequently an idea is rehearsed, the easier it is to retrieve it later. Our social milieu provides interpersonal encounters for repeated rehearsal and this will have an impact on the longevity of memories. The recall of memories may be

⁵⁷ Thompson, p. 158.

⁵⁸ Seldon and Pappworth, pp. 31-32; Ritchie, *Doing oral history ...*, pp. 26-27, 34, 39, 233; Vansina, pp. 174-176; D.M. Jones, "Stress and memory" in M.M. Gruneberg and P.E. Morris (eds), *Applied problems in memory*, pp. 203-205; Schacter, pp. 348-349.

required in cases where questions are asked about past experiences and/or where people are asked to defend their decisions, past actions, and attributions.⁵⁹

William Brewer, in reviewing the research literature on forgetting and remembering, concludes that characteristics of events that will lead to well-recalled personal memories include uniqueness, consequentially, unexpectedness and emotion provocation. Single events that affected a life also have a high rate of recall. Events of public significance also may be easily recalled if there was an association with personal action and could affect the individual.⁶⁰ Nevertheless, most events become more neutral with the passage of time and even strong positive or negative emotions are likely to become more neutral. It is a very rare event, often one of great emotional importance that retains high affective levels over time.⁶¹

Memory is *subject to alteration*, since it changes over time. History may be rewritten to include new evidence and to fit different interests and interpretive frameworks. In the same way, individuals may also re-explain and reconsider their past decisions and actions on the basis of insights gained from previous events, which could lend a new significance to past experiences. Even when memory is dormant, it is still subject to change due to the continuous input of new items that should coexist with older material and necessitate its reassessment and restructuring and, in the case of recurring events, its disappearance.⁶² As Christopher Thorne puts it: “No matter how self-critical and objective witnesses may be (and obviously they vary enormously in these respects) they cannot ‘unlearn’ what they’ve come to know subsequently of what came after the moment or period about which they’re being questioned. Their evidence may be first-hand, but it isn’t

⁵⁹ Ostrom, pp. 214-216.

⁶⁰ Yow, p. 20.

⁶¹ M. Linton, “Phoenix and chimera: The changing face of memory” in Jeffrey and Edwall (eds), p. 80.

⁶² Ritchie, *Doing oral history ...*, p. 33; Thompson, p. 129; Vansina, p. 161.

contemporary”.⁶³ In this case, the evidence does not purport the facts, but is rather presented as a personal assessment. Interviewers should take this restructuring process, during which data may be discarded and/or meaning added to other data, into account.

Interviewees may *oversimplify* their role and memory of an event. They may have a tendency to reduce events and to ‘downsize complex emotions into neat packages of verbal testimonies’. It could be that the interviewee does not want to go into the matter in depth and offers only to-the-point answers. Some interviewees may also be exceptionally modest and underplay their role in and contribution to an event and/or organisation. This should be treated with caution by the interviewer.⁶⁴

Oversimplification was evident amongst the women testifiers at the victim hearings. Although women accounted for 54 percent of testifiers, trivial mention was made of their own experiences of human rights violations.

The opposite may also happen. In this case, interviewees might genuinely believe that their role was indispensable and as far as their memories go, they have all kinds of achievements to their credit. Interviewees may “shamelessly put themselves in centre stage, or recall an incident as having happened to *them* forty years ago, when in fact they only heard about it third hand from somebody else.”⁶⁵ Gottschalk explains that this form of ‘egocentrism’ is to be expected, as even a modest observer will tell what he/she heard or did, as those details were the most important things that were said and done. It is therefore impossible for the narrator to tell it any differently, since this is the only way he/she knows it.⁶⁶

It is important to note that *age* plays a role with regard to personal recollections and it is crucial for the historian to be aware of the

⁶³ Seldon and Pappworth, p. 125.

⁶⁴ *Ibid.*, pp. 20-22.

⁶⁵ *Ibid.*, p. 22.

correlation between the age of a person and his/her memory power. Research has shown that the majority of people's ability to remember declines as they grow older and memory becomes less efficient with age. It is generally accepted that after the age of 30 there is a progressive decline in the memory of a person. There are varieties in the way the forgetting process happens, but long-term memories of especially older people, are likely to be less retentive and precise. Things once remembered will be entirely forgotten or be recalled with a cumulative proportion of inaccuracy. The fact that the overwhelming majority of the potential candidates for oral history interviews are older than 30 certainly affects the average candidate's potential ability to recall past events. This reality, however, should not at all discourage researchers from interviewing the elderly, since the total memory store of people older than 30 is considerable. The interviewer needs to be aware of these perils with older informants and in many cases it may be advisable to interview the same person, particularly in the case of the elderly, more than once in order to retrieve all the desired information.⁶⁷

Gender may also play a role in the recalling of the past. According to Paul Thompson, the memories of men and women tend to focus differently. Women find it easier to share remembered feelings than men. The latter talk more readily about work, whereas women will place more emphasis on family life. There is also a difference in how the different sexes use words; women are more likely to report in detail than men. Variations also occur in the patterns of talking and listening, which affect the way in which the sexes talk, as well as the times and places in which it is socially acceptable to speak. For men, talking is often a mark of stature and social responsibility; a legitimate and valued activity, which results often in men speaking for women about things the former know little about. This gender imbalance where men's voices are heard over and above women's in most societies may influence the information gained from the

⁶⁶ L. Gottschalk, *Understanding history. A primer of historical method* (2nd edition), p. 154.

interview.⁶⁸ From a feminist perspective, Kristina Minister argues further that men and women conduct interviews differently. Women engage in a more interactive interview strategy, which opens up and sparks memories, leading to more effective communication and storytelling.⁶⁹

The ability to tell the truth rests in part, upon the *witness's nearness* (in a geographical and chronological sense) to the event. The reliability of a witness's testimony tends to vary in proportion to his/her own remoteness from the scene in time and space and the remoteness from the event in time and space of the witness recording thereof. Geographical and chronological closeness to an event will affect the observation, recollection and recording of the event, resulting in how much will be lost and the accuracy of what is retained.⁷⁰

Through the interview process the oral historian is relying on the interviewee to remember and recall a specific event, especially if the person was an *eyewitness* to the event. Therefore, it is vital for the interviewer to be aware and suspicious of the (un)reliability of an eyewitness. The interviewer should take into account that even if a specific memory seems vivid to a person, it does not mean the memory is accurate. The reconstructive nature of human memory is one reason for the unreliability of eyewitness evidence.

Many variables may have an influence on the accuracy of an eyewitness. The way questions are phrased may change what people think they saw. Recollection of an event does not always correspond with the truth, but with what the interviewee thinks should have happened in a given situation. It also seems that eyewitnesses tend to overestimate the duration of events. If the eyewitness is exposed to new information during the interval between witnessing the event and recalling it, this

⁶⁷ Henge, pp. 112-113; Thompson, p. 136; Lummis, p. 158; Parkin, pp. 52-56.

⁶⁸ Thompson, p. 179; H. Slim *et al.*, (eds), *Listening for a change. Oral testimony and community development*, p. 5.

⁶⁹ A. Thomson, "Fifty years on: An international perspective on oral history" in *The Journal of American History* 85(2), September 1998, p. 584.

⁷⁰ Gottschalk, pp. 150-151.

new information may have an effect on what is recalled later. Original memory may thus be changed, supplemented or modified. If misleading information is subsequently presented, people frequently have difficulty in remembering details. Misinformation comes to 'overwrite' the old memory, effectively eliminating it and preventing accurate recall. This causes people to be vulnerable to misleading information about peripheral information in a sequence of events.⁷¹ All these variables may make the memory for an event that has been witnessed, highly malleable.

Gruneberg and Morris stress the important point that in terms of assessing eyewitness accuracy, it is almost impossible for the subjects to differentiate between factual memories and inferential memories. People are sometimes unable to distinguish in memory between what they have actually perceived and what they have only heard about or imagined. Recall is often less a matter of literal reproduction than of the imaginative construction of fragmentary recall into a coherent whole. Accordingly, a complete accurate testimony is rare with an error-free account seeming to be the exception, even when given by competent people under favourable conditions. Thus, on the question how good witness memory may be, an accuracy level of about 12-13% for identification is found and between 25% for recall of details.⁷²

Robert Buckhout emphasises these aspects by stressing that the ideal observer does not exist and distinguishes a number of factors that inherently limit a person's ability to give a complete, accurate account of events. The first source of unreliability is the insignificance of the events that were observed – at the time and to the witness – which did not motivate the person to adopt completely the selective process of attention. Moreover, the length of the period of observation will also limit the number of features a person can attend to. Fleeting glimpses are

⁷¹ Parkin, pp. 135-142. Parkin describes the unreliability of eyewitnessing in the US judicial system: "a survey in the USA revealed that around 77 000 people are arrested each year on the basis of eyewitness identification. However, it is also claimed that eyewitness evidence accounts for more wrongful convictions than any other single factor in the US judicial system". See also R. Bull and B. Clifford, "Eyewitness memory" in Gruneberg and Morris (eds), pp. 172-176; Henge, p. 111.

⁷² Bull and Clifford, p. 155. See also Hunter, pp. 99, 109; Neisser, p. 119.

common in eyewitness accounts, especially in fast-moving, threatening situations. Contributory to this, less than ideal observation conditions frequently apply to the event being observed. Often distance, poor lighting, fast movement or the presence of a crowd, may interfere with the efficient working of the attention process. In addition, the witness him- or herself is a major source of unreliability and may be observing under stress where his/her well-being or life is threatened, rather taking the necessary steps to ensure his/her survival or safety. A person under extreme stress is a less than normal reliable witness. Furthermore, the observer's physical condition may be a factor in that the person may be too tired, or too old, or too sick to perceive clearly, or he/she may simply lack the necessary faculty.⁷³

Gottschalk expands on this, noting that not all witnesses are equally competent as witnesses. Competence depends, amongst other things, upon the degree of expertise, age, narrative skill and state of mental and physical health. Another important factor in the ability to tell the truth is the degree of attention.⁷⁴ He emphasises that "the common human inability to see things clearly and whole makes even the best of witnesses suspect".⁷⁵

Emotions play an important role in both the retention and retrieval of personal memories. The ability to remember a certain event is enhanced if the individual experiences the same emotional state as during the original event. Those memories consistent with our mood are easier to remember than those that are not.⁷⁶ Emotion is also known to have a disruptive effect upon attention and perception and may cause a distortion of what is stored in the memory. It may also influence certain marginally painful memories to such an extent that they are repressed⁷⁷

⁷³ Neisser, pp. 117-119.

⁷⁴ Gottschalk, pp. 150-153.

⁷⁵ *Ibid.*, p. 153.

⁷⁶ Baddeley, *Human memory ...*, pp. 390-395, 406.

⁷⁷ Repressing may be defined as the unconscious blocking of the recall of those experiences and actions which have either immediate or remote potential for causing

or the memories become so dim that they may be lost entirely. This is especially true in extreme cases of fright or horror.⁷⁸

Given the nature of memory and the expected lapses in memory a person can, furthermore, either be *willing or unwilling to remember* things and talk about them. The ability and willingness of the witness to give a trustworthy testimony is determined by a number of factors in his/her personality and social situation. This could amount to either a conscious avoidance of distasteful facts or unconscious repression. The interviewer may be hesitant to bring to the surface half-forgotten or blocked painful memories such as harassment, discrimination, humiliation, losses and disappointments. The repressed experiences may involve deeply disturbing anxiety and arouse strong emotional reactions of fear, guilt, shame, disgust, sorrow or feelings of inferiority. Without exception the repressed experience always causes unpleasant emotional reactions. Thus, a person will prefer to remember the positive and good aspects in his/her life, but will be less willing to recall the more negative, bad things of life, as these memories are painful and may lead to emotional distress. Consequently - consciously or unconsciously - memories that are positively dangerous or discreditable are most likely to be buried quietly and memories may consciously or subconsciously be rewritten by the individual.⁷⁹ As one survivor of a concentration camp explained: "Yes, we always want it to be told, but inside us we are trying to forget; right inside, right in the deepest parts of the mind, of the heart".⁸⁰

During the TRC hearings, many women could not bring themselves to testify. Thenjiwe Mtintso, the first chairperson of the Commission on

pain. The essence lies in the function of rejecting and keeping something out of the consciousness. The repression may involve the blocking off of any past experience resulting in loss of memory that may be either slight or extensive. Hunter, pp. 110-111, 114.

⁷⁸ Butler, pp. 14, 17; Searleman and Herrmann, pp. 192-194; Thompson, pp. 181-183; Parkin, pp. 27-29.

⁷⁹ Worthington and Denis, p. 4; Thompson, pp. 134, 181-183; Ritchie, *Doing oral history ...*, pp. 34-36, 227; Seldon and Pappworth, p. 20; Hunter, p. 113; Baddeley, *Human memory ...*, pp. 379-382; Gottschalk, p. 148.

⁸⁰ Thompson, p. 168.

Gender Equality, praised the courage of some women testifying, but admitted she could not bring herself to talk publicly about the sexual abuse she had experienced.

In contrast to the preceding explanation, Alan Parkin illustrates the opposite view. According to him, the central core of memory lies in the extent to which a person processes the meaning of what it is he/she is trying to learn. In other words, it is impossible to remember something if one has difficulty in understanding it, no matter how hard the person tries. In this regard, for something to be negative, we clearly must understand it and its negativity that has an impact on us. It is this understanding process of meaning which imparts memorability. Parkin emphasises that this leads to an understanding of why negative things so often stay in our memories.⁸¹

Ulric Neisser expands on this view, explaining that important emotional events may be easily recalled after many years. Events may even increase in importance or emotionality as the person's perspectives on the events are adjusted. Accordingly, Neisser indicates certain features that characterise emotional events that will endure in memory. Firstly, the event must be important and be perceived as strongly emotional at the time it happened. Additionally, the subsequent course of the person's life must make the target event focal in recall. In other words, the event may be seen as a turning point. Lastly, the event must remain relatively unique wherein the image thereof must not be blurred by subsequent occurrences of similar events.⁸²

Post-traumatic stress disorder (PTSD) is a recognised condition that presents in an individual following a traumatic event.⁸³ The effects of

⁸¹ Parkin, p. 20.

⁸² Neisser, pp. 87-90.

⁸³ The American Psychiatry Association indicates that post traumatic stress disorder may be caused by: (a) a direct personal experience of an event involving actual or threatened death, serious injury or other threat to physical integrity; (b) witnessing an event that involves death, injury or threat to the physical integrity of another person; (c) learning about unexpected or violent death, serious harm or threat of

PTSD on memory are somewhat complex and there has been relatively little research on the accuracy of traumatic memories in patients with PTSD. The most predominant feature of PTSD is that the memories of the traumatic experiences may remain indelible for a long period, but may be easily reawakened by all sorts of stimuli and stressors.⁸⁴

This syndrome may include a range of immediate and sometimes delayed emotional responses including fear, nightmares, self-blame, anger, interpersonal relationship difficulties, vivid re-experiencing of the event, anxiety, feelings of helplessness, depression, lack of self-confidence, general distrust in others, social withdrawal and even substance abuse-related difficulties. At differing times after the exposure to a traumatic or violent event, direct victims⁸⁵ may experience all or some of these symptoms. Indirect victims or family members may also experience similar emotional reactions.⁸⁶

The best-documented psychological consequences of human rights violations relate to the effects of torture. It may lead to wide-ranging medical, behavioural and psychological problems, which include post-traumatic stress disorder. Other symptoms include depression, anxiety disorders, antisocial personality disorder and psychotic conditions from which the effects are interconnected and multidimensional, leaving no part of the victim's life untouched. In the *Final Report* of the TRC it is mentioned that in many statements made to the Commission, deponents described symptoms of psychological disturbance. Although many deponents and victims referred to their symptoms and reported problems of memory loss and emotional numbness, it was apparently

death or injury experienced by a family member or close associate. Truth and Reconciliation Commission, Vol. 5, p. 127.

⁸⁴ Schacter, p. 150; Parkin, pp. 101-102.

⁸⁵ Direct survivors include those directly exposed to experiences of violence such as torture victims, witnesses and victims of attempted killings and assault. Indirect victims include the families and relatives whose loved ones have "disappeared", been murdered or victimised. B. Hamber, "Do sleeping dogs lie?: The psychological implications of the Truth and Reconciliation Commission in South Africa", <<http://www.csvr.org.za/papers/papsldog.htm>>, 1995.

“not possible to diagnose actual disorders or problems based on the statements and testimony at hearings”.⁸⁷

Hayner warns that commissions should be prepared for the inconsistencies that may result from collecting information from traumatised witnesses. People who have survived atrocities often convey their stories in a highly emotional, fragmented and contradictory manner which undermines their credibility. Details that may fade over time become even more confused in the mist of psychological trauma and answers may be contradictory or unclear. She indicates further, that the standard American psychiatric reference manual describes one of the common symptoms of PTSD as the inability to recall an important aspect of the trauma.⁸⁸

It goes without saying, that South Africa’s history of repression and general violence could have severe affects on the mental well-being and emotional health of the majority of its citizens. Studies have shown that even non-activists, subjected to lower levels of torture, display significantly more severe symptoms of post-traumatic stress disorder. The less the psychological preparedness for the trauma of torture, the greater the distress is during torture and the more severe the later psychological problems.⁸⁹

According to Parkin, it is a mistake to consider *memories associated with violence* as reliable, whereas the opposite is rather the case. Memory is liable to disruption and it is easily disrupted by extremes of stress. This is especially true when the event or material to be remembered forms part of an escape procedure or an essential correcting action.⁹⁰ Research has shown that one must be cautious about memories formed in threatening

⁸⁶ Hamber; T. de Ridder, “The trauma of testifying. Deponent’s difficult healing process” in *Track Two* 6(3&4), December 1997, p. 31.

⁸⁷ Truth and Reconciliation Commission, Vol. 5, p. 130.

⁸⁸ P.B. Hayner, *Unspeakable truths. Facing the challenge of truth commissions*, pp. 148-149.

⁸⁹ Truth and Reconciliation Commission, Vol. 5, pp. 133-135.

⁹⁰ Parkin, p. 135; Jones, p. 209.

situations. The observer will be less capable of remembering details, less accurate in reading dials, and less accurate in detecting signals when under stress. A great deal of evidence is available that people exhibit selective attention in a threatening situation with the focus on safety rather than on nonessential elements in the environment. Therefore, care must be taken in equating duration of exposure to a threatening event with the probability of an accurate identification of the perpetrator. In these situations, victims may focus all their attention on aspects of the situation relevant to escape rather than on stimuli useful for later identification or recall.⁹¹ Consequently, it seems that there is no evidence that the intensity of an emotional, traumatic experience will guarantee accuracy of recall or be a safeguard against forgetting.

However, in total contradiction to these views and research, Christianson and Engelberg found that traumatic memories tend to be accurate and persistent with respect to the traumatic event itself and the critical, central detailed information about an emotional event. Although memories may be lost through trauma, these memories may be successfully retrieved later on. According to them, people tend to remember in great detail the circumstances at hand when shocking news is received. Although these memories are not immune to deterioration, there is still an impressive consistency and concordance in the person's remembering of the core information.⁹²

Toth and Cicchetti warn that despite a long tradition of scientific interest, in many ways, psychology is at the forefront of understanding the effects of trauma on memory and the extant research on this subject, inconclusive. They emphasise further that "just as we cannot ask simply

⁹¹ Bull and Clifford, p. 153; Neisser, pp. 118-119.

⁹² S-A. Christianson and E. Engelberg, "Remembering and forgetting traumatic experiences: A matter of survival" in Conway (ed.), pp. 230-231. See also the interesting article of Christianson and Hübner, where they present some empirical findings concerning memory for violent real-life events that contradict the negative relationship between stress and memory that many experts on eyewitness testimony believe in. S-A. Christianson and B. Hübner, "Hands up! A study of witnesses' emotional reactions and memories associated with bank robberies" in *Applied Cognitive Psychology* 7, 1993, pp. 365-379.

if memory is affected by trauma, nor can we assume that all trauma affects memory similarly".⁹³

Therefore, it is realistic to imply that there are no simple relationships between degree of emotion and witnesses' memory for detailed information of violent events. It is rarely, if ever possible to know the complete reality of the trauma victim's experience. This makes assessing the accuracy of reported memories for traumatic experiences intensely difficult. Many variables may alter the accuracy of the recall, including leading questions, information provided after the event has occurred, the status of an individual's neurobiological development and individual differences in basic information processing skills at the time of the occurrence of a traumatic event. Besides, the meaning of the traumatic event to the individual should also be considered. Consequently, trauma is not insignificant in the overall functioning of memory and operates differently under conditions of emotional stress versus ordinary everyday happenings. There are unique effects of trauma on memory where the memory for trauma varies just as memory for negative versus positive occurrences or for unique versus routine events does.⁹⁴

The ability to remember an incident may also be considerably harmed by presenting *misleading or interfering information*. This may transform the memory, deleting some elements and replacing them with others. Second-hand information will be more susceptible to outside manipulation and distortion.⁹⁵ The opposite must also be taken into account. Witnesses are not always easily misled. Sometimes the memory for the original event resists distortion. When the subject makes a public statement of what may be recalled before exposure to any type of misleading information, the chances are less likely of the recollection

⁹³ S.L. Toth and D. Cicchetti, "Remembering, forgetting, and the effects of trauma on memory: A developmental psychopathology perspective" in *Development and Psychopathology* 10, 1998, p. 598. See also M.M. Oelofse Private Collection, *Correspondence received from D.A. Louw*, May 2007.

⁹⁴ Toth and Cicchetti, pp. 589-599; Christianson and Hübner, p. 377.

⁹⁵ Baddeley, "The psychology of ...", p. 53; Cohen, pp. 77, 79-80; Ritchie, "Foreword", p. vi.

being altered. Therefore, memory for evidently important information, which is accurately perceived at the time, is not easily distorted.⁹⁶

However, Frederic Bartlett found that *accuracy of report for more complex events* was the exception rather than the rule. Many times people reconstruct their material rather than actually remembering it, resulting in distorted memories. Distortion regarding details of the sequence of the events, with the exact time of day at which the events took place, with the relative spatial positions of people or objects in the scene and with definite numbers of objects, are particularly liable to errors of interpretation. The information tends to be recalled in accordance with what would normally be expected, rather than in accordance with what were in fact, the true events. This occurs especially in the recollection of material after very long intervals of time (long distance remembering). All that seems to be remembered of the original material are isolated details and even then, the details are remembered only if they fit the subjects' preconceptions.⁹⁷

Fentress and Wickham suggest that if the belief were held that memories are accurate transcriptions of real experiences, more confidence would be displayed in them, as are actually the case.⁹⁸ Few human beings have the ability to capture a complex event in such a way that they are able to reproduce it later, in all its complexity – the sounds, sights, smells, etc. Most retrieved information is treated with some uncertainty. This uncertainty may lead people to question the memories of others for purposes of corroboration, refutation and elaboration. People use others to estimate the quality of their own recall – to verify the accuracy of their memory, to detect any errors that have distorted their memory and to supply details that they have lost.⁹⁹

⁹⁶ Cohen, p. 80.

⁹⁷ D.A. Norman, *Memory and attention. An introduction to human information processing*, pp. 136-137. See also Hunter, p. 100.

⁹⁸ Fentress and Wickham, p. 23.

⁹⁹ Ostrom, p. 216; Butler, p. 14.

Hunter warns that the assurance with which testimony is given is found to be no guarantee of accuracy. According to him, less error is found in sworn testimonies than in those unsworn, but inaccuracies still remain. This is especially the case when a considerable lapse of time has occurred since the original event took place. He explains that falsifications may be reduced, but not completely eliminated. The ways in which it may be reduced are through sworn testimonies; obtaining the testimony as soon as possible after the event; confining the testimony to that given in a spontaneous report and in answer to questions which are framed as non-suggestively as possible.¹⁰⁰

Gottschalk points out that in cases where the narrator is a *secondary witness*, certain questions need to be answered. These may include: on whose primary testimony does the secondary witness base his/her statement?; did the secondary witness accurately report the primary testimony as a whole?; if not, in what details did he/she accurately report the primary testimony? Thus, the historian does not discard hearsay evidence. It will be only unacceptable in so far as it cannot be established as accurate report of primary testimony.¹⁰¹

Other *variable factors* that are fundamentally unquantifiable may also influence the interviewee's memory. The interviewee's state of mind, i.e. aspects such as personal anxieties, may give rise to different responses. The duration of the interview and the fact that answers may become more superficial after a certain period, may affect the quality of the interview. The timing of the interview may also be problematic, especially for elderly people, whose mental receptivity and vigour are at their best in the morning.

It may happen that, apart from unreliable memory, oral evidence is *consciously falsified* by wilful untruthfulness or distortion to serve some

¹⁰⁰ Hunter, pp. 101-102.

¹⁰¹ Gottschalk, pp. 165-166.

private end. The interviewer must be aware of the 'conscious doctoring' of oral evidence.¹⁰²

Against this background, the historical narrative may be extremely complex since it is derived from human perception, which may be subjective. Memory entails a process of encoding information, storing information and strategically retrieving information with a variety of influences, including social and historical, at each point. Therefore, memories are interpretations of experiences, preserving what is relevant to an individual at the time of particular experiences that are remembered. Since memory is inevitably and invariably selective, memory is distortion resulting in the fact that memory is incomplete.¹⁰³

Thus, it is clear that memory is a complex phenomenon and not just a biological structure. It cannot be examined by a set of rules or be properly interrogated, thus resulting in an accurate reflection of the past. Even if it could be done, there is reason to question whether the majority of people would be able or willing to describe their experiences fully, in detail. The ability to capture personal experience and individual perception is one of the great strengths of oral narratives. However, it is important to take note that information from these forms of narratives is likely to be within the realms of conviction, belief and opinion, rather than in undisputed evidence.¹⁰⁴ Thus, information gained from the narrator may provide important new factual information, but on the other hand, may be only insights or perspectives into specific experiences.

This does not mean that there are no grounds for arriving at a degree of consensus about the past. As Lummis puts it: "if most memories are prone to simplification and elision this does not make them any less authentic an image than a sketch of a landscape: each may have

¹⁰² Seldon and Pappworth, p. 19; Thompson, p. 149.

¹⁰³ Conway, p. 150.

¹⁰⁴ Lummis, pp. 128-130; Slim *et al.*, (eds), pp. 143-145.

simplified, compressed and abstracted, yet each can convey a recognizable true aspect of the reality”.¹⁰⁵ Nonetheless, the researcher has to be alert so that the layers of memory can be unravelled and be sifted in an effort to reach the truth. It would be wise to adhere to the statement of Endel Tulving: “Memory, like countless other objects of scientific curiosity, can be studied and described at many different levels, from many different perspectives, using many different approaches and methods. There need not to be, and there usually is not, any conflict between these different approaches and different levels. Normally they are complementary”.¹⁰⁶ Donald Ritchie best sums up the approach that historians should follow when dealing with memory, when he states that “be aware of the peculiarities of memory, adept in their methods of dealing with it, conscious of its limitations, and open to its treasures”.¹⁰⁷

This discussion is not intended as the final word on memory, nor does it claim to describe or evaluate memory in one particular way. Rather, the intention is to contribute to the ongoing debate on the processes influencing memory as a potential source of information; how it is shaped and needs to be understood in gaining valuable information.

5.4 APPRAISING REMEMBRANCE AS EMBODIED WITHIN THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA

Value attached to ‘truth’ is a central, constant theme running through the anecdotes of experiences of various countries where attempts have been made (and are still being made) on how to deal with past human rights atrocities. Usually the establishing of truth about what happened in the past is seen as the minimum requirement for any meaningful and legitimate approach towards human rights violations of the past.

¹⁰⁵ Lummis, pp. 128-129.

¹⁰⁶ Christianson and Hübner, p. 377.

¹⁰⁷ Ritchie, *Doing oral history ...*, p. 34.

Therefore truth is regarded as a value which cannot be denied under any circumstances.

Against this background, the questions applicable to the TRC's handling of truth are what this truth body attempted to achieve and what the significance will be for the people of South Africa. The Commission's name emphasises the concepts 'truth' and 'reconciliation'. This laid the basis for the TRC in establishing the truth about what happened in the past and in so doing, it inspired its activities to contribute to reconciliation.¹⁰⁸

The Promotion of National Unity and Reconciliation Act, No. 34 of 1995, set the tone for the TRC to come to firm conclusions on particular incidents and on specific people, concerning what happened to whom, where, when and how and who was involved. However, aside from establishing the facts related to individual, specific cases, the TRC was also mandated to report on broader patterns underlying gross human rights violations and make findings on the causes of these violations; in other words, to approach truth in a more comprehensive manner. Thus, more is expected from telling and establishing the truth than from just determining what happened.¹⁰⁹ "The Act directs the TRC to look back to the past and to look forward to the future: the truth to be established is to contribute to the reparation of the damage inflicted and to the prevention of the recurrence of serious abuses in the future ... It should have a retrospective and proactive impact, and it should affect individuals and society as a whole."¹¹⁰

In the TRC's understanding of truth, it did not stop at the factual notion thereof, but was also taking into account *why* truth was supposed to be established and what the Commission hoped to achieve from it. A need for the conceptualisation of truth that goes beyond a legalistic

¹⁰⁸ Historical Papers, "TRC Research Department Reports. Draft discussion report on 'truth'" in *The Kairos Collection*, AG2918.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

interpretation that focuses only on data was highlighted. Here, truth entails both knowledge, as well as acknowledgement in relation to human rights violations where it involves more than the verification of facts. Values such as equality, transparency, free inquiry, participation, fairness, respect, tolerance, reconciliation, reconstruction, reparation and prevention were all taken into consideration as goals to which the TRC should make a contribution. Thus, the Commission understood the concept of truth in a way which would do justice to the importance of facts, but which would also recognise the ethical, social, dialogical and human aspects involved as well. Consequently, the TRC operated on a broader notion of truth, including the social, moral and political, rather than a narrower, legalistic notion.¹¹¹

The TRC process in handling truth was summarised as follows: “A purely legalistic interpretation of the concept would not be sufficient for the TRC, as it would fall short of capturing what is at stake in the TRC (as directed in the mandate) and what is being done in the TRC. Dealing with past human rights violations is more than a legal process; it involves as much social, psychological and moral aspects ... All in all, *truth* in the TRC is not a matter of either/or but one of and/and: it does not mean either objective facts or values, but instead the former *and* the latter. Both comprise different aspects of the work of the Commission which are equally important. The understanding of truth suggests justice to the importance of facts ... and recognises in addition the *humanity* which underlies the effort to bring truth to light in South Africa. This *does* aim at ascertaining the facts, yet it *also* aims at a new type of society, a new form of politics, and a new kind of people – which all embody a particular kind of ethics and should preclude it from ever happening again”.¹¹²

The TRC legislation gave value to the truth-telling process, indicating that it takes place on a factual, as well as normative level. ‘Narrative truth’ came from the sharing of stories, emphasising personal perceptions,

¹¹¹ *Ibid.*

¹¹² *Ibid.*

experiences and emotions. By the acknowledgement of these oral stories, authenticity was given to it.

The right to truth is an undeniable obligation of states towards their citizens. However, the question remains if it is necessary to face the memories of the past to gain a more truthful recount of past events? For those outspoken in favour of a truth commission set-up, the treatment of the past through remembering and forgetting is necessary in the shaping of the present and the future for individuals, as well as entire societies. For Tina Rosenberg “[n]ations, like individuals, need to face up to understand traumatic past events before they can put them aside and move on to a normal life”.¹¹³ Dullah Omar explains that it is important as “we want to put the past behind us but we don’t want to forget, we want to remember”.¹¹⁴ Tutu often told audiences: “Of course we need to close the books on the past, but we can close the books only after they have been properly opened”.¹¹⁵ Bettelheim expands on this, noting: “What cannot be talked about cannot be put to rest, and if it is not, the wounds will continue to fester from generation to generation”.¹¹⁶

To answer the question “Why remember past injustices?” the philosopher Paul Ricoeur explains that we must remember, because “remembering is a moral duty. We owe debt to the victims. And the tiniest way of paying our debt is to tell and retell what happened [to them] ... the horrible needs to be rescued still more from forgetfulness by the means of memory and narration”.¹¹⁷ For Ricoeur, the simple truth is that “by remembering and telling, we ... prevent forgetfulness from

¹¹³ M. Minow, *Between vengeance and forgiveness. Facing history after genocide and mass violence*, p. 118.

¹¹⁴ *Ibid.*, p. 119.

¹¹⁵ P. Meiring, “The *baruti* versus the lawyers: The role of religion in the TRC process” in C. Villa-Vicencio and W. Verwoerd (eds), *Looking back reaching forward. Reflections on the Truth and Reconciliation Commission of South Africa*, p. 127.

¹¹⁶ *Ibid.*

¹¹⁷ W. Verwoerd, “Towards the recognition of our past injustices” in Villa-Vicencio and Verwoerd, p. 163.

killing the victims twice".¹¹⁸ Elie Wiesel moreover, states that "memory is not only a victory over time; it is also a triumph over injustice".¹¹⁹

According to the South African Truth and Reconciliation Commission, South Africans needed to create a common memory that could be recognised and/or acknowledged. A collective memory¹²⁰ or shared memory of some sort is one of the main aspects of how countries seek to attain an institutionalised narrative of the past. Collective memory constitutes the informal, widely accepted perceptions of past events in which the collective identity of a people is mirrored. This identity is strongly influenced by the official definitions, laws and rituals of the state. This provides a common sense of identity in relation to the past and helps to deal with the implications thereof.¹²¹

As Zalaquett explains: "A society cannot reconcile itself on the grounds of a divided memory ... Clearly, key aspects of the historical and ethical past must be put on public record in such a manner that no one in good faith denies the past. Without truth and acknowledgement, reconciliation is not possible".¹²² In other words, understanding the truth about the human rights violations of the past was a necessary precondition to reconciliation. It was argued by the creators of the TRC that reconciliation could be achieved if the truth about these atrocities became publicly known and acknowledged. As Brandon Hamber and Richard Wilson put it: "Thus, a national process of uncovering and remembering the past is said to allow the country to develop a common and shared memory, and in so doing create a sense of unity and reconciliation for its people. By having this shared memory of the past,

¹¹⁸ *Ibid.*, p. 159.

¹¹⁹ *Ibid.*

¹²⁰ Hutton explains collective memory as "an elaborate network of social mores, values, and ideals that marks out the dimensions of our imaginations according to the attitudes of the social groups to which we relate. It is through the interconnections among these shared images that the social frameworks of our collective memory are formed". Hutton, p. 78.

¹²¹ H. Adam and K. Adam, "The politics of memory in divided societies" in W. James and L. van de Vijver (eds), *After the TRC: reflections on truth and reconciliation in South Africa*, pp. 32-33.

and a common identity as a traumatised people, the country can, at least theoretically, move on to a future in which the same mistakes will not be repeated".¹²³

In calling for a 'complete picture' of the past, the law specifically provided a definite objective for the TRC to produce a collective memory for South Africa.¹²⁴ A shared, collective memory, as implemented by the TRC, was to be a process of historical accountability. For Kader Asmal, the seemingly worthless private reminiscences may achieve public currency and manifest worth. This could lead to the creation of a public atmosphere in which the "seemingly unimportant memories and annals of the past achieve a new public importance. New incentives are unleashed so that forgotten or neglected private thoughts and evidence enter the domain of public acknowledgement".¹²⁵ Christie elaborates on this, noting that apart from manifesting worth, memory also has the important task of remembering and locating the missing. In part, truth commissions have the task of "seeing the unseeable, revealing the concealed and finding and remembering the obliterated, finding the missing to display a sign that they were once alive and lived".¹²⁶

In this sense, memory serves a definite purpose. Shared memories of images of the past may legitimate the present social order. This is extremely important as to how a country's citizens come to see events in the past. It has been argued that the control of society's memory largely conditions the hierarchy of power. In this way, images of the past may be used to legitimate political control in the present. Thus, the way in which collective memory is stored and reproduced may have a direct bearing on the legitimisation of approved narratives and the 'official' truth.¹²⁷ Legitimate interpretations of consensual accounts from a verifiable past

¹²² J.L. Gibson, *Overcoming apartheid. Can truth reconcile a divided nation?*, p. 11.

¹²³ *Ibid.*, pp. 6-7.

¹²⁴ *Ibid.*, pp. 7, 11.

¹²⁵ K. Asmal *et al.*, *Reconciliation through truth. A Reckoning of Apartheid's Criminal Governance* (2nd edition), p. 10.

¹²⁶ K. Christie, *The South African Truth Commission*, p. 5.

will result in a past that people can trust. This past is to some extent known and there is, to some extent, agreement about what really happened.

Although pure collective memories may be scribed to by nearly everyone in society, they have certain shortcomings and raise questions about how collective they are and whose memories they are. Ignatieff argues that nations do not have consciences, identities and memories like individuals; thus, they cannot be reconciled to their pasts by replacing myths with facts as individuals can; nor can they be healed by working through traumatic events or memories.¹²⁸ Christie underlines the complications of a collective memory for South Africa by indicating that this country gives new meaning to the notion of 'fractured' memory, where memory in South Africa is rather "splintered, rent apart, torn into a multitude of pieces".¹²⁹ Thus, the emergence of a collective memory/understanding of the past is difficult to ensure.

To restore and bring about a collective understanding and memory, the TRC introduced a method of remembering and a way of developing shared memories from the multitude of memories. The idea of the TRC was to understand the present world better through the use of the narratives of the past. In this, the Commission wanted to engender a common sense of historical understanding to learn from memory in the hope that South Africans could move forward as a rainbow nation into a more peaceful future. The intent is thus to deal with the past and use the memories of the past to change the future. In this sense, memory is not only a source of information about the past but also a source in creating a future.

¹²⁷ *Ibid.*, pp. 6, 8, 43-44.

¹²⁸ C. McEwan, "Building a postcolonial archive? Gender, collective memory and citizenship in post-apartheid South Africa" in *Journal of Southern African Studies* 29(3), September 2003, p. 755.

¹²⁹ Christie, p. 8.

It is debatable and questionable if the TRC did succeed establishing a common memory. It seems rather as if the TRC process led to some 'social' or 'historical' memory that is accepted and shared by the majority in the society. By a series of scientific testing, James L. Gibson came to the conclusion that, at least to some degree, a common understanding of the country's past has emerged through the activities of the TRC. Furthermore, the empirical evidence indicates that most South Africans of every race believe that apartheid was a crime against humanity and suggests that the TRC was successful in getting many to accept its view of the country's apartheid history.¹³⁰

Reaching this more common understanding of the country's past has emerged through, *inter alia*, the opportunity given to victims for remembering and telling their stories, while the general public and the nation as a whole were willing to listen. A broad range of people came to testify before the Human Rights Violation Committee about violations experienced; their pain and anguish. It is clear that the violations of human rights affected many more people than simply the direct victims. Family members, relatives and friends delivered testimonies, which spoke of the ripple effects of gross violations of human rights on families, as well as on communities.

In the process of testifying, Charles Villa-Vicencio explains that the genre of memory should be allowed to flow, giving expression to a variety of emotions. Memory may serve as justice, as well as a healing where victims may work through their anger and hatred as a means of rising above their suffering. This will enable the victim to get on with life with dignity.¹³¹

Thus, it seems as if the act of remembering through storytelling bears fruit. For Piet Meiring, people need one another's stories as they become

¹³⁰ Gibson, pp. 70, 115.

¹³¹ C. Villa-Vicencio, "Restorative justice: Dealing with the past differently" in Villa-Vicencio and Verwoerd (eds), pp. 71-72.

the glasses through which we look at one another's lives, which may include pain and anguish, as well as triumphs.¹³² According to Dori Laub, a child survivor of the Holocaust and a psychoanalyst who treats Holocaust survivors, victims need to tell their stories in order to survive as one has to know one's buried truth in order to be able to live one's life. She continues by explaining that none finds peace in silence, even if it is his/her choice to remain silent. According to her, victims who do not tell their stories, become victims of a distorted memory as "the events become more and more distorted in their silent retention and pervasively invade and contaminate the survivor's daily life. The longer the story remains untold, the more distorted it becomes in the survivor's conception of it, so much so that the survivor doubts the reality of the actual events".¹³³ For Laub, giving witness is not so much in the information being gained, but in the experience itself in living through testimony and of giving testimony. The testimony process leads to a repossession of one's life story and of reclaiming it.¹³⁴ Hamber emphasises this line of argument and declares that 'let(ing) sleeping dogs lie' by repressing pain and trauma will generally result in blocking emotional life, leading to psychologically adverse consequences and even to physical symptoms.¹³⁵

By tapping into people's memories a 'therapeutic conversation' of narratives can take place. Sometimes – not always – talking about the past may have a healing effect. While sharing the narrative, it may also provide an opportunity to deal with unfinished business. For some people, it is too painful to release their memories and to revisit the experiences of the past. According to some of the testifiers, a painful,

¹³² Meiring, p. 127.

¹³³ D. Laub, "Truth and testimony: The process and struggle" in C. Caruth (ed.), *Trauma. Explorations in memory*, p. 64.

¹³⁴ *Ibid.*, pp. 70, 74.

¹³⁵ Hamber.

traumatic appearance before the TRC was many times transformed into a cathartic experience.¹³⁶

Does it mean however, that these memories have led to the truth and can memory play its part in bringing truth to light? Can memory serve as the “ultimate form of justice”? According to Thompson, people have demonstrated very convincingly through courtroom trials and psychological experiments the ways in which memory is unstable.¹³⁷ Fractured memories and selective memory will always be a problem when it comes to understanding the past. What might be considered to be the facts and truths of the matter coming from individual memories, may often be extremely unreliable.

Against this background, truth is an elusive concept that defies rigid definitions. Thus, it cannot be taken for granted that one, non-controversial, certain truth can be established as there are conflicting versions and memories of the past. What one considers to be true, may not seem true to others as it is subject to one’s perceptions and ideas, which are in turn, influenced by the context in which one finds oneself. It seems as if there are always limits in the search for truth and in truth telling. “It is inadequate to describe things as they appear because such descriptive discourse and the activity within which it is inscribed are always determined by prior structures of interpretation. These structures are shaped by historically contingent interests and attitudes. They are determined by specific means–ends orientations and cannot be presumed to be balanced and unbiased. However, truth does not consist of an escape from interpretive perspectives but rather in a critical and reflective attention to the ways in which such interpretations govern our activity.”¹³⁸

¹³⁶ Meiring, p. 128.

¹³⁷ Browder, *et al.*, “Dialogue I” in Jeffrey and Edwall (eds), p. 67.

¹³⁸ J. Dicenso, *Hermeneutics and the disclosure of truth. A study in the work of Heidegger, Gadamer, and Ricoeur*, pp. 150-151.

According to Heribert and Kanya Adam, truth commissions may confirm the factual truth of gross violations of human rights, but they usually fail to establish a common interpretative truth. The moral truth of why something happened and who is responsible for it is always strongly disputed.¹³⁹

For Charles Villa-Vicencio memory is incomplete, although its “very incompleteness is what cries out to be heard”.¹⁴⁰ According to him, it takes time to unpack, understand and do justice to testimony. He confesses that the Commission could not do so adequately in the time available to it and points out that the question needs to be asked whether “the real-real story can ever be fully grasped”.¹⁴¹

The memories that manifest in South Africa are popular memories of a violent past, structured around stories where the narrator’s reality is characterised by open conflict, killings and differences. These stories/testimonies were reflected in the TRC victim hearings, where their ‘unofficial historical memory’ cuts across fixed official categories and patterns. These memories, which were collected in the form of testimonies in various settings, were the basis on which the history would be introduced and reconstructed through the TRC’s *Final Report*.¹⁴²

Nevertheless, from the testimonies, raw memory emerges, where the ability to recall the past is not a consistent ability. This situation results in the problem of whether the average listener can tell which memories are accurate and which are not? It seems that far more research is

¹³⁹ Adam and Adam, p. 44.

¹⁴⁰ C. Villa-Vicencio, “On the limitations of academic history: The quest for truth demands both more and less” in James and Van de Vijver (eds), p. 23.

¹⁴¹ *Ibid.*

¹⁴² L. Buur, “Monumental historical memory. Managing truth in everyday work of the South African Truth and Reconciliation Commission” in D. Posel and G. Simpson (eds), *Commissioning the past. Understanding South Africa’s Truth and Reconciliation Commission*, pp. 75-77.

needed to develop the ability to tell in ourselves, as well as in others, which memories are real and which are not.¹⁴³

Notwithstanding, in the task of remembering, it remains important to remember rightly, as it is a moral act, which builds the foundations for moral culture.¹⁴⁴ Paul Thompson suggests that historians need both to believe and to doubt; to make use of what may be believed and also of what should be doubted. The key is to bring the two together in a new interpretation which fuses both memory and history.¹⁴⁵

In the end, does memory succeed? Important is the fact that it is fundamental to human life and an integral component of it. Perhaps, nothing is more certain than that memory fails, although equally, nothing is more certain than that memory succeeds.¹⁴⁶

5.5 CONCLUSION

Oral history allows ordinary people to express their views through their narratives and hence, take part in the process of creating historical awareness. For this reason, it has an important role to play in the reconstruction of South Africa's past. To make the most of oral sources, historians need to be aware of the challenges and recognise the characteristics of these sources. Researching oral sources thoroughly and managing and using oral resources efficiently increase the chances of controlling the process to minimise problems and inaccuracies.

Given the complex nature of memory and its related processes, it is evident that any historian should be aware of its weaknesses and limitations when dealing with memory as a potential source of

¹⁴³ Lummis, p. 121; E.F. Loftus, "Tricked by memory" in Jeffrey and Edwall (eds), pp. 25, 28-29.

¹⁴⁴ P. Valdez, "The right to truth" in James and Van de Vijver (eds), p. 57.

¹⁴⁵ P. Thompson, "Believe it or not: Rethinking the historical interpretation of memory" in Jeffrey and Edwall (eds), p. 12.

¹⁴⁶ K.E. Fields, "What we cannot remember mistakenly" in Jeffrey and Edwall (eds), pp. 89-90.

information. At the same time, however, it is also indisputable that memory per se is not subjective in all cases, as some historians believe. Memory should be regarded as a totally unique source of evidence gained through oral testimonies that may and should be used to complement written documents.

As historians, we must examine in detail the inconsistencies inherent in alternative interpretations of past events. The past is not dead, but lives on in daily life and people, through their memories, are the embodiment of the facts and processes. Therefore, as historians we must use the information gained from oral narratives to confront memory and its selection process to be able to investigate and expand the histories.

Oral narratives may uncover how memory generates historical understanding in an attempt to make sense of the personal experiences of events in history. Many variables shape memory in the remembering of a narrative of historical events. Thus, there is a need to pierce the silences and reconstruct the stories in relation to a historical context, where individual and collective memory may be debated, revisited and re-interpreted.

Chapter 6

EVALUATION

The objectives of the study were to examine the body of truth exercise South Africa decided upon to investigate gross violations of human rights that occurred in the past and to assess the oral information gained from this process. Against this background, it is necessary to address, highlight and evaluate certain aspects.

Part of the twenty-first century is the process in which divided societies struggle to master a heritage of collective violence and severe gross human rights violations. In dealing with this violent legacy, three options may be selected: either prosecution, a blanket amnesty which results in national amnesia or a process of setting up a truth commission.

Many transitional societies rather make the choice of a truth commission for a variety of reasons. It seems as if it has emerged as a popular tool for dealing with a legacy of human rights abuses in post-conflict situations. Such a truth body may potentially provide a more comprehensive record of a contested past, providing an authoritative account of a specific period and/or of a specific regime, while determining the central causes of the violence and violations. In the end, such a commission of truth may make recommendations to prevent the future repetition of human rights violations. Although the focus is on the human rights violations that occurred, truth commissions in general have very different aims, mandates, perceptions and resources available, as well as approaches to the kind of 'truth' they are searching for. This has a definite influence on a commission's activities and on the end report and findings.

Confronted with processes of how to deal with a past of human rights violations, the desire to know the truth and remember the past, will influence the decisions made. Knowing what really happened and

untangling the web of lies and manipulations may constitute a fundamental role in 'coming to terms' with the past. Here acknowledgement in dealing with past wrongs that may lead to healing, are considered. Justification is made on the grounds that in remembering the past, forgiveness and reconciliation may only then be considered when a nation has confronted the full knowledge of the past.

The argument may be made that the wounds of the past can and even must be confronted, as the past cannot be suppressed or erased. However, the question remains of how much truth or lack thereof, can a society allow and tolerate? The irony is that sometimes wounds do not heal when confronting the past and forgiveness and reconciliation do not always result from knowing the truth. It is furthermore debatable whether the individual or society really experiences the truth as setting them free.

During South Africa's transitional phase, the choice was made for a truth commission as an answer to how to deal with the past by confronting past atrocities. Due to the political environment in which the former government was operating, born out of and shaped by negotiations, political compromises and the balance of power, dealing with the past resulted in a so-called 'third way' between national amnesia and criminal prosecution. This historical compromise between the former National Party (NP) government and the African National Congress (ANC) during the multi-party negotiations resulted in the Truth and Reconciliation Commission of South Africa (TRC). The decision was made to pursue a policy of truth-telling and disclosure rather than one of prosecution and punishment. It would be viewed as a compromise between the politically possible and the morally ideal. A delicate balance between serving justice on the one hand, and the necessity of upholding reconciliation and peace on the other, for the newly elected democratic government.

The demand for prosecution or amnesia in the South African process could never really be regarded as viable. The negotiated compromises,

which resulted in power-sharing and the constitutional provisions of amnesty, were the cornerstones for the decision for a truth commission process.

Setting up a truth commission may also be interpreted as a signal by the newly elected ANC government, to the national and international community that they intended to establish a new political and moral order. To break with a history of impunity and that the former acts of atrocities would be firmly denounced in a commitment to peaceful nation building.

The amnesty process was a necessity as it was part of the political compromise. The quasi-judicial power to grant amnesty to individual perpetrators was the first for any truth commission and was a unique feature. This was seen as an innovative attempt to establish mechanisms of accountability.

It is important to remember that the Commission was not a court of law and thus, did not set out to judge. Thus, in this sense, the victim hearings were not treated as procedures in a court of law and therefore the victim's testimonies were not subjected to cross-examination. A testimony was assessed on the basis of a balance of probability.

With the emphasis on reparation, healing and reconciliation, the TRC implemented a process of restorative justice. This form of justice moves away from retaliation and rejects the exclusive focus on punishment that is normally associated with retributive justice. The critics felt that restorative justice was an abdication of justice and that justice was traded for truth and peace.

No clear answer is possible as to which is the better way to deal with atrocities in the form of either retributive or restorative justice. Each country is different and an approach must be sought that will suit the specific situation. The particular context and the purposes and aims to strive for should be checked and balanced against the advantages and

disadvantages of both forms of justice. However, it seems as if the TRC was more successful at the level of collective restorative and repudiative justice. By choosing restorative justice, the new government presented itself to the world as tackling law and order without too vigorously pursuing the perpetrators and in the process, jeopardising the new fragile democracy.

The Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) empowered and mandated the TRC. It cannot be denied that this Act was a major event in the transition process in the country. The fact that the mandate of the TRC focused exclusively on 'gross violations of human rights' that were committed with a political motive in the period 1960-1994, did not include the whole apartheid history, especially the institutionalised racism of the system. Again, it is understandable that criticism was levelled against this narrow interpretation of the Act. It also influenced 'as complete a picture as possible' of gross violations committed during the period mandated. Nevertheless, it would have been a task too great to accomplish if the Commission had taken into account all forms of violations in the apartheid period.

The study focuses only on one aspect of the TRC, namely the victim hearings of the Human Rights Violations Committee (HRVC). It is therefore unfair to evaluate the TRC process as a whole and it is not the aim of this study to make any such final evaluation. Moreover, it is also too early to make such a final evaluation of the TRC. Nevertheless, it is possible to offer some tentative evaluations to the contributions and accomplishments made by the TRC in the midst of a transitional process in South Africa, with a specific focus on the victim hearings and the role of oral narratives.

Transparency was maintained from the very beginning of the TRC. The open, public and human character of the TRC was remarkable. It started with extensive parliamentary debates on the TRC founding legislation

and the selection of the Commissioners. It was further displayed in the public character of the hearings that included a variety of individuals and role-players, as well as institutions, to keep the public informed through statements and press releases. Involving civil society in a variety of aspects further enhanced the public nature of the TRC. This open, all-inclusive and equal process formed an integral part of the TRC's significance, taking into account the social and human aspects involved in coming to terms with a legacy of atrocities.

The ideal is that a truth commission should be victim-centred. Probably the strongest and most enduring accomplishment of the TRC is the accessible forum that it offered through the victim hearings to ordinary victims of political violence to tell their stories to sympathetic listeners. It was to the benefit of the TRC to provide such an opportunity to ordinary people to convey their stories in a supportive setting which was victim-friendly, as required by the Act.

The 'culture of silence' that is many times associated with political violence and turmoil, changed with the TRC and its emphasis on creating a legitimate space to voice victim's experiences. Structured and facilitated story-telling through the TRC began the process on a societal level to break the silences of the past. The impression was created that the violations these victims went through, were worthy of attention and by listening to their sufferings, they were acknowledged. This in turn, affirmed their dignity.

The TRC gave flesh to the country's constitutional commitment to recognise the injustices of the past. In the process it helped South Africans to put a human face to the suffering, grief and violations of human rights that many had suffered in the past.

By giving a voice to the voiceless, a social contribution is made. Through sharing oral narratives, victims may experience that they are not alone and actually have shared memories which connect them to others. The

victim hearings emphasised this realisation by drawing together many victims from all levels of society.

To the credit of the TRC, victims were handled with the utmost sensitivity and integrity. Besides the fact that the victims were fully informed about what to expect at the hearing, the environment at the hearings was managed in such a way as to avoid any feelings of intimidation. The TRC went out of its way to avoid any form of an intimidating atmosphere that may have recreated memories of past interrogations. Moreover, the TRC also succeeded in treating all victims equally.

Storytelling, which forms an integral part of oral history, is a narrative component that made the hearings of the HRV Committee compelling. Through storytelling, narrative truth may be heard, securing a kind of public recognition, attention and respect for victims. The telling of events and experiences that form part of a victim's own story, is perceived by the victim as a legitimate source of truth. He/she gains confidence in his/her speech as a means of expressing him/herself, from his/her own memories and interpretations of the past. Consequently, this collective story-telling process gave victims an opportunity to engage in recording and making their own histories, which have actually earned their experiences a place in the history records of South Africa.

The TRC victim hearings gave a prominent place to oral narratives. From the lips of the living, a fuller record of their participation in events in the period 1960-1994 was gained by attending to the complex legacy of memory. By tapping into the experiences of ordinary people, evidence was gathered from a new direction, adding to history from the bottom up.

By focusing on the day-to-day reality of lived experiences in the apartheid period, an opportunity was given to enrich people's understanding of events and motives on both a personal and communicative level. By sharing oral narratives on the effects of trauma

and suffering, everyone is confronted with the experiences of pain and grief, through the eyes of other people. In this process, oral history is rewarding. Sharing narratives may lead to a better understanding of events, to the discovery of new perspectives and sometimes, even lead to a process of acceptance. In the end, knowledge is broadened about another world of experience, while on-going discussions on the narratives of the past and the meanings thereof, continue.

It cannot be ignored that the process of a truth commission, with knowledge having been gained, of knowledge confirmed which was sometimes known all the time, the public acknowledgement of truth and suffering is a noble purpose. The official acknowledgement of violations may provide credibility to the victim's sufferings and further enhance or restore dignity.

By giving people from all walks of life an opportunity to participate in a process of truth-telling and then creating a safe, public space to convey their stories and experiences, the TRC set an example of a democratic society where everyone might voice their perceptions and views. Thus, it seems important to allow the truth to be told and heard. In the long-term, through an oral history process of describing personal experiences, knowledge may be conveyed to future generations, while strengthening an understanding of the past.

Accordingly, the memories of people may contribute to knowledge of, and an understanding of, the past. The success of the HRV Committee to gain any information lay with the willingness of victims to share their memories at the victim hearings. The importance of the public in the creation of past events by sharing their memories must be stressed. Without their stories and revelations there would be no truth commissions. Thus, it is important that the narrator's contributing role in gaining a more detailed and even more realistic, critical historical reconstruction of the past, should be realised.

The role of the statement takers should be highlighted. These people are at the forefront of hearing the stories and collecting memories. Apart from gaining information, these people are also confronted with a variety of emotions as the narrator shares his/her story. Just as the interviewer should be prepared at different levels to conduct interviews, these people should undergo the necessary training to equip them with the appropriate skills to realise what an important part they fulfil and the responsibility that goes with it. Future truth commissions should take this into account.

The fact that the Act made provision for the testifier to do so in the language of his/her choice was a significant feature of the TRC. It cannot be denied that the narrator feels more comfortable in his/her mother tongue and is able to express emotions more easily than in a third or fourth language. In this way, more information, with the accompanying emotions may be revealed. The interpretation services used for the public hearings further highlighted the uniqueness of the Commission. Future truth commissions should take note of the advantages of using interpretation services in the case of a multi-lingual society. In the process, an enormous amount of time may also be saved. The interviewer should also be aware of the advantages of conducting an interview with the interviewee in the language the person prefers.

In a truth commission set-up, the testimonies of victims form an integral part thereof. Here, the oral narrative is the primary source of information and although more than twenty thousand people made statements to the TRC, the question remains: "What about the rest of the stories of the people who suffered?"

Not all victims shared their specific experiences of human rights violations through the statement process. Furthermore, 'window cases' were chosen to testify to their violations at the public hearings. Apart from this, more than 8 000 statements were received after the cut-off date. It should be taken into account that the TRC covered only the

period 1960-1994 and was confronted with time limits and resource constraints. Documenting the narratives of all the gross violations of human rights that occurred in the period 1960-1994 and providing an opportunity to recount these stories, was a nigh impossible task given the time constraint of only two years. The conclusion may be made that there are many more victims and still many more stories to be told.

Thus, space to tell our stories as a nation needs to be created and addressed. Although the narratives of victims have been acknowledged, the telling of stories needs to and should continue to be encouraged. In the process, people become actively involved and reclaim some dignity and authority and this may have an empowering effect.

Apart from this, the stories that were shared should constantly be challenged and analysed anew. The obligation to *really* understand what has been said is still needed and hopefully will involve interdisciplinary debate and sometimes conflict regarding contradicting versions and perceptions. This may encourage the creation of an environment in which other measures of transformation and reconciliation within the society, may more likely gain a foothold.

On a more individual level, the telling of the violation could also, although in a limited way, aid psychological restoration. The process may add relief and provide catharsis to the person. Important here is that closure may be achieved in gaining knowledge about what happened to loved ones; especially for those who wanted to know what happened and why it happened.

However, on an individual level, interacting with the TRC and giving public voice to trauma had highly personalised and varying consequences for the victims and their relatives. Truth commissions should note in future that the testifying process is more than likely the first step for the testifier on his/her road to psychological recovery and healing. On many occasions, truth commissions are the public expression of emotions, whereas psychological restoration is a long-term process

that requires an extensive network of support structures. This must also serve as a warning to the interviewer when interviewing the narrator about traumatic events. Follow-up visits need to be part of the project to prevent feelings of melancholy and a re-emergence of the trauma from the interviewee.

It is obvious that the multitude of individual psychological needs of victims may never be addressed in full by a truth commission. However, the TRC process has uncovered a need for extensive mental health-care services to victims of violations in particular and in the country as a whole. Adequate psychological and social support is vital to attend to the amount of trauma that was experienced by many in South Africa; otherwise it will remain bared and unresolved, leading to a detrimental effect in the long-term for the society. The lack of accessibility to these services needs to be addressed to ensure that existing traumatisation is not further aggravated.

In this context, the role of the briefers should be acknowledged. The briefing/debriefing that these people provided, was basically the direct psychological support that was granted by the TRC. Consequently, their assistance to the testifiers became even more important and added a valuable element to the work of the TRC. Future truth commissions which may have limited psychological support services available to testifiers, should at least make provision for the assistance of briefers for the narrators. Interviewers should also be aware that testifiers may need the support of someone when giving an account of traumatic events.

Something that needs to be highlighted is the situation where story after story about gross violations of human rights may induce numbness. Instead of making one feel more disgusted and offended, the opposite occurs, where one feels less. Therefore, desensitisation should be realised and guarded against by commissioners, researchers and interviewers.

Although the TRC has not uncovered the complete picture concerning apartheid and is not offering a comprehensive history of the period, it nonetheless added knowledge to events and instances of the gross violations of human rights that occurred during the apartheid years in the period 1960-1994. Information about the extent and effect of widespread abuses, the atrocities that took place, what forces were responsible and the factors contributing to the violations, were uncovered. A number of questions on disappearances and about prominent political murders were also answered.

In the process, the TRC has amassed a large amount of new historical data and basic facts about apartheid in the period 1960-1994. Information was added to previous historical accounts, while also clarifying and acknowledging long-silenced facts. This played an even more significant role, taking into account the systematic destruction of documents during the protracted phase of negotiated transition. This added to and forms part of, the general historical record of the country that may be used as important source work and a public analysis for the future.

Thus, the oral narratives during the victim hearings have provided information of experiences of human rights violations which might otherwise have been lost. Information was salvaged by tapping the memories of those people who lived through the violations; that some of these lived experiences were nowhere else documented and that some recorded sources were complemented from the information shared. This situation makes these oral narratives extremely valuable and in the process historians' database of evidence and information is expanded.

It should be emphasised that the TRC revelations played a role in producing an understanding of certain events that happened during the period that was covered. However, it cannot be regarded as *the* 'official history' of South Africa on all gross violations of human rights occurring during the period 1960-1994. The TRC only made a contribution by

providing an intimate view on certain aspects and by providing, as far as possible, as complete a picture as possible of events of the past.

It is difficult to express the effect of the TRC; yet, the Commission and its activities did capture the attention of large segments of the South African population, as the process touched them in one way or another. On a societal level, a shift in perceptions and beliefs of the past did occur as past human rights violations and crimes can no longer be denied and the members of this society are challenged about the 'truth' that has been revealed about their past. This 'shared sense of the past' will, in the long term, go through a process of discussion and a confrontation with the facts that have been disclosed.

The TRC may also be seen as a major educational process. These stories form part of a new, official national narrative. It has produced a record of violations of the past which has produced an archive open to public scrutiny.

Nevertheless, it is unfortunate that the TRC's report is not as publicly accessible as the ideal was in the beginning, and as one of the recommendations made by the TRC. The set of seven volumes is priced well beyond the means of many South Africans. Although the full text of the Report was placed on an open website, it was done for only a limited period of time as agreed with the publisher, CTP Book Printers, so as not to decrease sales for the print version. It is agreed that the TRC's records are a national asset which should be protected and made accessible; only then, can a culture of debate be encouraged. Hopefully, the Department of Justice, as well as the Department of Arts, Culture, Science and Technology together with the National Archives and Record Service of South Africa, will be helpful in this regard.

The persona of Nelson Mandela and Desmond Tutu should be acknowledged, as both figures played a major role in the way the Truth Commission was observed, as well as in the process of reconciliation and forgiveness. With Mandela, who embodied the spirit of reconciliation and

articulated a vision for national unity and social transformation, he became the 'icon of reconciliation'. His moral leadership enabled many South Africans of all backgrounds to identify with his stance. Moreover, his support for the TRC and his willingness to accept the findings thereof certainly had a role to play in engaging more people in the truth-seeking process.

Tutu is widely regarded as a man of integrity and honesty and during his leadership within the TRC and specifically the HRV Committee, he made the process very much about human beings. His continual emphasis on forgiveness provided a compelling milieu for moving beyond the atrocities that were exposed. Mandela and Tutu's roles were unequivocally instrumental in assisting people to accept the TRC, its purposes and what it wanted to achieve in the form of a collective memory.

Noteworthy is that the chair, vice-chair, the director of research and several other commissioners of the TRC, all had religious backgrounds. The presence of Archbishop Desmond Tutu gave a definite religious character especially to the victim hearings. It is understandable that the 'imposition of a Christian morality of forgiveness' was offensive to some people. Nevertheless, the important place taken up by religion, is not surprising taking into account that it plays a dominant role in South African society with Christian thought always having had an impact on public discourse in the country.

The Christian understanding and the African philosophy of *ubuntu* are two important concepts in the approach to forgiveness and reconciliation. It cannot be ignored that Christian theology and *ubuntu* with its messages on truth, repentance, forgiveness and reconciliation played a role in the way the victims conveyed their stories and reflected on past human rights violations. In future, it will continue to play a dominant role in the way reconciliation may be achieved in this country.

The media coverage of a commission's activities fulfils an important role in outlining its purposes and activities as a significant phenomenon. The extensive media coverage of the TRC resulted in a process that could not be ignored or treated with indifference in South African discourse. Through the media, the TRC succeeded in engaging the public by penetrating the consciousness of virtually all segments of the South African population with its messages.

The extensive national and international media coverage of the TRC added substantial weight to the transparency aspect of the TRC by making it highly visible and accessible to millions of people across the world. The immense media coverage gave the whole world an opportunity to view the hearings and to be confronted with its proceedings. It also stimulated public debate about human rights violations that occurred in this country. The way the proceedings were handled and conveyed by the media, especially concerning the HRV Committee in its portrayal of forgiveness and its spirit of reconciliation, gave the world a view of the Commission as a model-image of conflict resolution.

However, this also made the Commission strangely vulnerable to the inevitable distortions and perplexities that come with editing testimonies and messages for a specific need or purpose. A delicate balance is needed in using the media to portray what is being exposed by the Commission and the actual core of the message, so as to make it accessible to all. Thus, truth commissions in general should guard against sensationalism in presentation and in impressive footage by the media, in order to attract the attention of the world. By focusing only on the dramatic may lead to misconceptions and distortions.

Apart from this, publicity may prove to be a double-edged sword. The public nature of the media may make the experiences of the deponent become a 'public good'. This results in a separation from the deponent's sphere of control. For example, their stories may be used in publications

without prior approval and their names made available through the electronic media. This exposure may lead to feelings of misuse and vulnerability. Thus, care should be taken that the narrator is fully informed about these aspects when conveying his/her story.

From the oral narratives and the extensive media coverage thereof, the listeners and viewers obtained sensory information. The core of the information is in the medium which carries it, as well as in the information itself. The oral form of conveying the story also includes the emotions, feelings, mood and character of the narrator, as well as the atmosphere. By using the media when conveying oral narratives, insight may be gained into the feelings, personality and thought processes of the narrator. In this regard, the media coverage of the TRC added an essential human understanding of the narrator while sharing his/her story. In this respect, oral narratives have an advantage over the usual written source.

Besides the extensive media coverage, noteworthy was the low number of Whites who were involved in the victim hearings. The root of suspicion and rejection from especially the White, Afrikaans community could be found on different levels. Firstly, criticism was voiced from the White community against the composition of the Commission. It was viewed as unbalanced concerning the representation of 'white Afrikaners', giving them no voice within the Commission. Furthermore, the Commission was established just after the negotiation process, which resulted in the first democratic elections of 1994, with the ANC taking over power. Many Whites felt uncertain about the way forward and did not feel safe about appearing before a commission which may not understand or believe what they had to convey. Although the Coloured and Indian communities in South Africa were involved in the TRC process, it seems as if the greater debate was more focused on the so-called majority of black victims and the majority of white perpetrators. Fear of the possibility of prosecution led to a situation where most Whites chose silence above participation.

Thus, denial is prevalent amongst Whites and there has been no vociferous and moral outcry amongst the majority concerning the atrocities that were committed. This attitude has created the idea that the TRC did not really succeed in changing the predominant views of some of the Whites who supported a process of racial inequality and repression. A genuine introspection amongst Whites with regard to their indifference is essentially lacking and in conjunction, a feeling of collective responsibility among all the population groups for past atrocities is thus absent. This is an aspect that still needs to be subsequently researched.

Nevertheless, it may be argued the TRC has shifted the lines between clear-cut answers. The past and the context in which circumstances occurred is often complex, as certain perspectives and worldviews may colour the motives and decisions of particular groups/individuals. The TRC reminds all of the complexity of perpetration and the social forces that nurture it. It is questionable if the view is still held that those who struggled to preserve apartheid are seen as noble and those trying to overthrow apartheid were evil. All sides in the struggle committed abuses and no-one is without blame. This makes it all the more difficult to draw clear-cut lines in terms of absolute good versus absolute evil.

An interesting aspect is the unrealistic expectations of what a truth commission should achieve. During the TRC process it did occur, especially with the victims, that their needs were not always compatible with what the TRC was mandated to do. At the outset, the TRC was given a mammoth task; therefore, it is not so strange that there would be unanswered questions and issues of the past that are unresolved. Because truth commissions can seldom fulfil unrealistic expectations, it may be expected that there will always be a level of disappointment involved.

To prevent false expectations arising out of a commission's work, clearer information needs to be communicated to the public before, during and

after the life of a truth body. Clarifications, explanations and detailed information need to be conveyed throughout the process to the public who should be clear about the fact that a truth commission is just a process and circumstances cannot change overnight where injustice, corruption and poverty have previously existed. Public awareness of the process may help to prevent misperceptions and misunderstandings that inevitably lead to feelings of bitterness and renewed anger. People should also realise that it is unrealistic to expect a truth commission to be all things to all people.

The ideal of a truth commission process is to lessen the likelihood of human rights violations recurring in the future and to end the pattern of impunity. A democracy is built on respect for the human rights of all concerned; for the basis of democracy not to become destructive and defective, human rights should be upheld collectively and responsibly.

Although the TRC did not have a brief to promote human rights as such, it nevertheless made a contribution to establishing a human rights culture. By focusing on transparent mechanisms within the TRC processes and by making recommendations to prevent any future repetition of the violations of human rights, democratic values were endorsed in an effort to safeguard human rights. This may set in motion the creation of a culture of protection of, and respect for, human rights. It should be emphasised that on this level, a great deal of work still needs to be done in South Africa, especially by putting certain policies into practice. The TRC has opened the debate and the responsibility now lies with the state and civil society to take it further.

An aspect to be aware of by researchers involved in oral narratives, is the fact that memory is selective, open to change and reconstructed over time, but by using the human memory as a historical source, information may be gained. In the process, the struggle against forgetting may be won, ensuring that memory is triumphant. The TRC provided a method of remembrance and a way of learning from past memories through the

victim hearings. Moreover, it was a way of developing collective, shared memories and of creating a new social memory for South Africa.

Thus, oral narratives may cause the researcher to be uncomfortably aware of the elusive quality of memory. The past has happened and cannot change, but the interpretation and understanding of it continues and will never cease changing and also influencing what is remembered. There is always the possibility that new evidence may appear. Thus, in this sense, being confronted with the total complexity of the reality, certainty is bound to escape the researcher. Reconstructing past events in their entirety through memory is not possible, as the information is always fragmentary.

Therefore, the search for truth must continue, with aspirations toward facts and reality. 'Truths' should be derived from analytical evaluations and interpretations of all available sources and evidence, including memory. From this critical review of historical evidence, which includes memories, tentative conclusions may then be presented.

Against this background, truth as such, needs attention. As illustrated in the study, truth is an elusive concept and the interpretation thereof complex. Truth in history always leaves space for different perceptions and interpretations of the larger picture. Concerning 'truth' as reflected in the TRC process, the argument specifically involves truth as promulgated by South Africa's TRC.

The question arises as to whether the TRC has revealed all the truth. Was enough truth gained through truth telling? It is debatable whether a different sort of truth might have been produced under different circumstances by a different form of truth commission. However, the TRC focused precisely on the concept of truth and the distinguishing of four notions of truth highlights an awareness to dispute and complement the approach to truth-finding.

Nevertheless, it is unrealistic to believe that the TRC has revealed all and the whole truth. Limited time and a shortage of resources prevented the TRC's Investigation Unit successfully investigating all the cases brought before it. Apart from this, the former security apparatus also destroyed documents and information, complicating the corroboration process. Furthermore, since the Commission was limited to 'gross violations of human rights', it was not possible to take into account all the abuses that occurred in the mandated period. Not all racial groups participated in the truth-finding exercise to the same extent and not all came forward with accusations or revelations. The fact that nearly half of victim testimonies was not given by the victim him-/herself, but by a relative, complicated the process of searching for the truth. It cannot be ignored that there is a difference between the true victim of the violation and the witness thereof. Besides, the absence to a large extent of the Inkatha Freedom Party and Whites who have, to a large extent, distanced themselves from the 'biased' Commission, made it virtually impossible for the Commission to offer an objective all-inclusive version of the history of the past in the period 1960-1994. It would thus be a risk to provide 'the truth' as constructed from the testimonies and confessions of the public hearings.

It should also be taken into account that the TRC pursued the truth of the past with the wider aim of attaining national unity and reconciliation. A divided society has to move on into a democratic, multiracial future by facilitating forgiveness and reconciliation between populations.

Furthermore, it cannot be really expected of a truth commission, given prominent limitations, to establish an absolute, shared truth. It seems as if truth commissions search rather for a 'macro-truth', assessing the causes, patterns and contexts of violations, than a 'micro-truth' which deals with the specifics of people and events. The fact remains that truth commissions function typically in an environment where there are political and conflicting viewpoints and perspectives of the past. It is thus debatable whether truth commissions may overall 'find' the truth. For the historian to come to an objective knowledge of 'the truth, the whole

truth, and nothing but the truth' will ultimately be intricate and remarkably disputable.

Nevertheless, the TRC did add to the quantity of knowledge of past atrocities by revealing truths not thus far known. As mentioned before, although *the* truth has not been uncovered, *substantial* truth was recovered by providing more information about past atrocities. The TRC demonstrated the transformative potential of truth-telling and in this sense, truth-telling and truth-seeking should continue and become a common endeavour.

The Truth and Reconciliation Commission of South Africa may have contributed to minimising problems for future commissions by learning from this Commission's experience, as well as others that are rapidly accumulating. Though having shortcomings and flaws, the TRC has set a high standard for future commissions. A variety of role-players in countries undergoing transition from repressive regimes to democratic rule may use the South African official truth-seeking body as an example of innovation, as well as what pitfalls to avoid in the quest of how to reckon with the past.

Although the South African experience may inform and influence other countries going through transition, it must be noted that South Africa has a unique set of circumstances, as has any other country. Thus, the TRC-model may be held up as a possible workable model for other countries, even though it is not desirable to impose it as is, on any other society. That being said, the TRC-model will not pass unnoticed and may be used to address the establishment of future truth commissions.

In the end, especially from the victim's point of view, it seems as if the TRC endeavour was important and necessary. With its thorough and far-reaching investigations and inquiries, the TRC is described as the largest survey of human rights violations conducted anywhere in the world.

The TRC was a remarkable human process in making memory real from the telling of stories. Its archive constitutes a valuable memory resource; not only for records of the past that were generated by looking into previous human rights violations, but also as a truth-finding process in a transitional environment.

Though the process was not always perfect, truth has been exposed. Given the different restraints on time and resources under which the TRC operated, the *Final Report* is still a remarkable achievement. The final dissolution of the TRC occurred on 31 March 2002. The *Final Report* fills seven volumes, of which volume seven is a tribute to the victims of apartheid and is intended to acknowledge those who did come forward to tell their stories. The significance also lies in the fact that a Report with recommendations appeared. The *Report* not only provides as complete a picture as possible of the violations of the past, but also contains recommendations of measures to prevent similar violations and abuses in future. In this sense, the TRC has had a retrospective and proactive impact. It is now the responsibility of everyone to ensure that the recommendations made by the TRC be implemented and monitored.

It must be realised that achieving justice with accountability is a long and difficult process. At least truth commissions may make a valuable contribution to justice and democracy, as well as history. In this sense, the TRC was but one component of a transformation strategy in the reconstruction and development of South African society.

The TRC was by no means perfect, for the stakes in dealing with the past and settling accounts are remarkably high and seldom result in an adequately satisfactory conclusion, accepted by all. Ultimately, the success and failure of the TRC may only be meaningfully judged in the context of long-term developments in the country.

Although clear divisions still exist in South African society, a beginning has been made through the TRC in transcending relationships, attitudes and perceptions. The TRC has only begun a process of reconciliation and

placing too much hope on the TRC to achieve the process of reconciliation is inappropriate and misplaced.

Apart from what the TRC achieved by revealing new insights into 'truths', institutional transformation linked to social reform and reconciliation is a long-term process that should continue. The shift of responsibility has moved away from the TRC to the rest of society. In the years to come, progress should be made on the road to restore the human spirit and to pursue a culture of human rights within the bounds of caution and respect.

APPENDIX 1

THE VIOLATION TYPES

The table below shows the HRV categories and the types of violations within each.¹

KILLING	CODE	DEFINITION
Beaten to death	BEATING	Beaten to death by being hit, kicked, punched, specifying description of part of body assaulted, if known (e.g. feet, face, head, genitals, breasts), or object used (e.g. <i>sjambok</i> , ² baton, gun, rifle, stick, rope, whip, plant, beat against wall).
Burnt to death	BURNING	Killed in a fire or burnt to death using petrol, chemicals, fire, scalding, arson. This does <i>not</i> include 'necklacing' or petrol bombing.
Killed by poison, drugs or chemicals	CHEMICALS	Killed by poison, drugs, or household substance, such as bleach or drain cleaner.
Killed by drowning	DROWNING	Drowned in a river, swimming pool, or even in a bucket of water.
Killed by electrocution	ELECTRIC	Killed by an electric shock.
Killing by death sentence	EXECUTE	Hanged or shot as decided by a formal body (court or tribunal) such as the state, homeland state, or political party. It is the consequence of a death sentence.
Killed in an explosion	EXPLOSION	Killed by any manufactured explosive or bomb, but <i>not</i> a petrol bomb (see below). Explosives include dynamite, landmine, limpet mine, car bomb, hand grenade, plastic explosives, detonator, booby-trap, letter bomb, parcel bomb, special device (e.g. walkman).
Killed by exposure	EXPOSURE	Person dies after being subjected to extremes such as heat, cold, weather, exercise, forced labour.
Necklacing	NECKLACING ³	Burnt with petrol and tyre. Necklacing is

¹ Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, Vol. 5, pp. 17-23.

² A *sjambok* is a whip.

³ Necklacing refers to the practice of placing a car tyre around the neck of a victim and setting it alight.

		coded separately from burning, because it featured heavily in the past. It is differentiated from, for example, setting alight with petrol or burning in a house.
Other type killing	OTHER	All other methods of killing, including being buried alive, strangling, tear gas, decapitation, disembowelling.
Petrol bomb	PETROL BOMB	Killed by a burning bottle of petrol. Petrol bombing falls in a category between burning and bombing, so, like necklacing, it is useful to code it separately. Also called Molotov Cocktail.
Shot dead	SHOOTING	Shot and killed by a live bullet, gunshot, birdshot, buckshot, pellets, rubber bullet.
Stabbed by death	STABBING	Killed with a sharp object, such as a knife, panga, ⁴ axe, scissors, spear (including assegai ⁵).
Suspicious suicide or accident	STAGED	Died in a <i>suspicious</i> suicide or fatal accident. Examples are: slipped on soap, jumped out of window, fell down stairs, hanged oneself, car accident, booby-trapped hand grenades or explosives, shot oneself.
Stoned to death	STONING	Killed with bricks, stones or other thrown missile.
Tortured to death	TORTURE	Tortured to death.
Unknown cause of death	UNKNOWN	Person is dead, but there is no further information.
Killing involving vehicle	VEHICLE	Dragged behind, thrown out of, driven over, put in a boot of car, specifying type of vehicle involved (for example car, train, truck, van, <i>bakkie</i> , ⁶ Hippo, Casspir ⁷). <i>Not</i> a car bomb (see bombing).
TORTURE	CODE	DEFINITION
Torture by burning	BURNING	Burnt with cigarettes, or fire, for example.
Torture by beating	BEATING	Tortured by being beaten severely or for a long time (for example, hit, kicked, punched), specifying part of body assaulted (for example, feet, face, head, genitals,

⁴ A *panga* is a large knife with a flat blade (used for cane cutting).

⁵ An *assegai* is a spear, either short for stabbing or long for throwing.

⁶ A *bakkie* is a light truck or van with a cabin and open back.

⁷ Hippos and Casspurs are armoured personnel carriers.

		breasts) and object used in the beating (for example, <i>sjambok</i> , baton, gun, rifle, stick, rope, whip, plank, beat against wall, or if the victim is pregnant or miscarries).
Torture with poison, drugs or chemicals	CHEMICALS	Tortured with poison, drugs, or household substance, such as bleach or drain cleaner.
Torture by deprivation	DEPRIVE	Tortured by withholding essentials, such as food, or medical attention where there is serious injury or need. (See associated violations for general lack of medical care while in custody).
Electric shock torture	ELECTRIC	Electric shocks administered to the body, specifying which body part was shocked (for example, genitals, breasts, fingers, toes, ears, etc.).
Torture by exposure to extremes	EXPOSURE	Tortured by subjecting victim to extremes such as heat, cold, weather, exercise, labour, noise, darkness, light (including flashing lights, blinding by light), blindfolding, confinement to small space, smells, immobilisation.
Psychological or mental torture	MENTAL	Tortured psychologically, mentally or emotionally, for example by simulated execution (includes Russian roulette), solitary confinement, degradation (includes use of excrement, urine, spit), insults, disinformation (for example, telling the person that a loved one is dead), threats, witnessing torture, forced participation in torture, exposure when washing or on toilet, threat of torture.
Torture by bodily mutilation	MUTILATION	Torture involving injuries to the body where parts of the body are partly or wholly cut, severed or broken, specifying body part, for example, genitals, finger nails, ears, hair, etc. It includes amputation of body parts, breaking of bones, pulling out nails, hair or teeth, scalping.
Other type of torture	OTHER	All other methods of torture, including use of animals (for example, snake, tortoise, baboon), use of vehicle.
Unknown type of torture	UNKNOWN	Tortured by an unknown method.
Torture by	POSTURE	Tortured by forcing the body into painful

forced posture		positions, for example, suspension, 'helicopter', ⁸ tied up, handcuffed, stretching of body parts, prolonged standing, standing on bricks, uncomfortable position (includes squatting, 'imaginary chair', ⁹ standing on one leg, pebbles in shoes), forced exercise, forced labour, blindfolding and gagging.
Torture by sexual assault abuse	SEXUAL	Torture using the victim's gender or genitals as a weak point. (See elsewhere for electric or shock, mutilation or beating.) It includes: slamming genitals or breasts in drawer or other device, suspension of weights on genitals, squeezing genitals or breasts, rape by opposite sex, rape by same sex, gang rape, forced sexual acts (e.g. oral sex, simulating intercourse), introduction of objects into vagina or rectum, sexual abuse using animals, threats of rape, touching, nakedness, sexual comments or insults, sexual enticement, deprivation of sanitary facilities for menstruation.
Torture by suffocation	SUFFOCATE	Torture by stopping a victim from breathing, for example by bag, towel, tube (wet or dry) over head, drowning (head, whole body submerged), choking, strangling, stifling, throttling, teargassing, burying alive.
SEVERE ILL TREATMENT	CODE	DEFINITION
Severely beaten	BEATING	Badly or severely beaten, or beaten for a long period. Victim may be hit, kicked, punched, twisted, specifying part of the body (for example, feet, face, head, genitals, breasts), or object used (for example, <i>sjambok</i> , baton, gun/rifle, stick, rope, whip, plank, wall), specifying if the victim is pregnant.
Injured by burning	BURNING	Injured by burning with fire, petrol, chemical, scalding, but not necklacing or petrol bomb (see below), specifying body part if burning is localised.
Injured by	CHEMICALS	Poisoned or injured by poison, drugs,

⁸ The 'helicopter' technique refers to a method of torture where a victim was suspended from the ceiling, with hands and feet shackled to a stick, and spun around.

⁹ The 'imaginary chair' technique refers to a method of torture where a victim was forced to pretend to sit on a chair while being interrogated.

poison, drugs or chemicals		household substance (for example, bleach or drain cleaner).
Injured in explosion	EXPLOSION	Injured by a bomb or explosives, but not petrol bomb. Explosives include dynamite, landmine, limpet mine, car bomb, hand grenade, plastic explosives, detonator, booby-trap, letter bomb, parcel bomb, special device (e.g. booby-trapped walkman).
Psychological or mental ill treatment	MENTAL	Severe psychological, mental or emotional ill treatment, for example by simulated execution (includes Russian roulette), degradation (includes use of excrement, urine, spit), death threats, threat of torture.
Bodily mutilation	MUTILATE	Injured by having parts of body mutilated or damaged, specifying body part, (for example, genitals, fingernails, ears, hair, etc.) Includes amputation of body parts, breaking of bones, pulling out nails, hair or teeth, scalping.
Necklacing	NECKLACING	Injured in an attempted necklacing.
Other type of severe ill treatment	OTHER	All other types of severe ill treatment, describing method, and including strangling, drowning, spreading of disease.
Sexually assaulted or abused	SEXUAL	All forms of attack on a person using their gender or genitals as a weak point, for example rape by opposite sex, rape by same sex, gang rape, forced sexual acts (e.g. oral sex, simulating intercourse), introduction of objects or substances into vagina or rectum, sexual abuse using animals.
Injured in shooting	SHOOTING	Injured by being shot with live bullets, gunshot, birdshot, buckshot, pellets, rubber bullet, specifying body part injured, if known.
Stabbed or hacked with a sharp object	STABBING	Injured with a sharp object, such as a knife, <i>panga</i> , axe, scissors, spear (including <i>assegai</i>).
Teargassed	TEARGAS	Severe injury caused by teargassing in a confined space (for example, tear gas in a prison van or packed hall).
Unknown type	UNKNOWN	Severe ill treatment by methods unclear.
Injured in stoning	STONING	Person is injured by bricks or stones thrown at them.
Suffocated	SUFFOCATE	Injury or ill treatment by stopping someone from breathing, for example by drowning (head, whole body submerged), choking, strangling, stifling, throttling, teargassing, burying alive.

Injury involving vehicle	VEHICLE	Injuries caused by being dragged behind, thrown out of, driven over, put in a boot of a vehicle, specifying the vehicle (for example car, train, truck, van, <i>bakkie</i> , Hippo, Casspir).
ABDUCTION	CODE	DEFINITION
Illegal and forcible abduction	ABDUCTION	Forcibly and illegally taken away (for example, kidnapping), but found again, returned or released. It does <i>not</i> refer to detention or arrest (see associated violations).
Disappearance	DISAPPEAR	Forcibly and illegally taken away and is never seen again. It does <i>not</i> include cases where a person goes into exile and never returns. It <i>does</i> include people who have disappeared for unknown reasons (instead of abduction, they might have run away or been shot and buried). In this case, a finding will be made and the code will be left as it is, or changed to Killing if the person was killed, or found to be out of the mandate of the Commission.
ASSOCIATED VIOLATIONS	CODE	DEFINITION
Beating	BEATING	Person is beaten, but it is not a severe or prolonged beating. It includes once-off mild beating, specifying if in custody or if the victim is pregnant or miscarried.
Financial impropriety	FINANCIAL	Subjection to bribery, extortion, pay-off, ransom, blackmail, ruin of business.
Violation after death	CORPSE	Body of victim violated after death, for example by improper burial, body mutilated or burnt or blown up, funeral restrictions, funeral disruption, anonymous burial, mass grave.
Deprivation	DEPRIVE	Deprivation of facilities or essentials, for example medical attention, food, water, sanitary facilities, privacy, family visits.
Destruction of property	DESTROY	Includes violations such as arson, destruction, vandalism, theft, forced removal, eviction.

Framing	FRAMING	Labelling as an informer, collaborator (<i>impimpi</i> ¹⁰) or criminal, false information is spread about the person, or a smear campaign against the person is started.
Incarceration imprisonment	INCARCERAT	Includes police custody, detention, house arrest, or restrictions, banning, banishment, prison, informal prison.
Intimidation or harassment	INTIMIDATE	Intimidation or harassment by dismissal from work, threats, animals killed, visits, telephone calls, surveillance, boycott enforcement, pointing of firearms (<i>not</i> in custody), threat of violence. It does not include vandalism or arson. These come under Destruction of Property.
Other type of associated violation	OTHER	All other types of associated violations, including released into hostile environment, released into unknown place, left for dead, rough ride, detention of family or loved ones.
Sexual harassment	SEXUAL	Person is sexually harassed. It includes: threats of rape, touching, nakedness, sexual comments or insults, sexual enticement, deprivation of sanitary facilities for menstruation.
Professional misconduct	PROFESS	Subjection to professional misconduct by one of the following: health professionals (including doctors, nurses, orderlies, clinicians, district surgeons, psychiatrists, psychologists and others) who neglect or ignore injuries, collaborate in torture, or conceal the cause of death or injuries; judiciary (magistrates, judges etc.) who ignore torture allegations, for example: police who neglect the case, ignore or tamper with evidence; lawyers who neglect the case, ignore or tamper with evidence, misappropriate funds or fail to hand over damages; businesses which collaborate with perpetrators.
Theft/stealing	THEFT	Money or possessions stolen from victim.
Petrol bombing	PETROL BOMB	Severely injured by a burning bottle of petrol. Also called Molotov Cocktail.
Teargassed	TEARGAS	Victim is teargassed, but not while in custody (see torture).

¹⁰ An *impimpi* is an informer or spy.

APPENDIX 2

HUMAN RIGHTS VIOLATION HEARINGS.¹

DATE OF HEARING (1996)	VENUE
April 15-18	East London
April 22-25	Cape Town
April 29-30	Johannesburg
May 2-3	Johannesburg
May 7-10	Durban
May 21-23	Port Elizabeth
June 10-11	Kimberley
June 18-19	George
June 18-20	Umtata
June 24-26	Worcester
June 26-27	Port Elizabeth
July 2-4	Bloemfontein
July 8-12	Mmabatho
July 17-19	Pietersburg

¹ Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, Vol. 5, pp. 24-25.

DATE OF HEARING (1996)	VENUE
July 22-26	Soweto
July 23-25	Pietermaritzburg
July 22-24	Queenstown
August 5-7	Peninsula (Helder- en Tygerberg)
August 5-8	Sebokeng
August 12-16	Pretoria
August 12-14	Beaufort West
August 12-14	Port Shepstone
August 26-28	Uitenhage
August 29-30	Durban
September 2-5	Nelspruit
September 9-11	Bisho
September 11-12	Newcastle
September 23-26	Klerksdorp
September 23-24	Duncan Village (East London)
October 2-3	Upington
October 3-4	Thohoyandou
October 7	De Aar
October 8	Hanover

DATE OF HEARING (1996)**VENUE**

October 9

Colesberg

October 8-10

Welkom

October 14-16

Paarl

October 21-23

Aliwal North

October 24-25

Durban

October 28-30

Alexandra

November 4-6

Empangeni

November 11-14

Krugersdorp

November 18-19

Bisho (East London)

November 18-21

Pietermaritzburg

November 26-28

Cape Peninsula

November 26-28

Tembisa

December 2-5

Moutse

DATE OF HEARING (1997)**VENUE**

February 4-7

Duduza, Benoni, Katorus

February 10-11

Cradock

March 24-26

Lusikisiki

April 7-9

Grahamstown

DATE OF HEARING (1997)	VENUE
April 8	Messina
April 9	Louis Trichardt
April 10	Tzaneen
April 17-18	Vryheid
April 28-30	Parys
May 6	Zeerust
May 7	Rustenburg
May 8	Mabopane
May 12-14	King William's Town
May 13-14	Durban
May 20-21	Cape Town
May 21	Piet Retief
May 22	Ermelo
May 22	Cape Town (Athlone)
May 23	Balfour
May 27-29	Mooi River
June 3-5	Witbank, Middelburg, Leandra
June 9-13	East London
June 24-26	Ladybrand

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1. Historical Papers, University of the Witwatersrand

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AG2918 4. The Truth and Reconciliation Commission

AG2918 4.1 Establishment of the TRC

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* Comment by Albie Sachs on a first perusal of the Bill setting up a Truth and Reconciliation Commission, 15 July 1994.

* Draft Proposal - ANC Study Group on Justice: Proposed legislative framework pertaining to the Truth and Reconciliation Bill, 7 September 1994.

* Human Rights Commission – Proposal to the Ministry of Justice on the Commission of Truth and Reconciliation.

* Proposals for the establishment of the Commission for Truth and Reconciliation in South Africa. Prepared by the Trauma Centre for Victims of Violence and Torture, 30 June 1994.

* Recommendations from the Church Leaders Consultation, 12 August 1994.

* Memorandum: Research Institute on Christianity in South Africa, Department of Religious Studies, University of Cape Town, 12 August 1994.

* Letter to the Minister of Justice from the Legal Resource Centre, Cape Town, 10 August 1994.

4.1.5 Documents:

* H. Pakendorf. Truth Commission: A perspective.

* Lawyers for Human Rights: Pros and cons of a general amnesty.

* Amnesty International: South Africa – Amnesty Bill offering protection to human rights violators signed into law.

* Human Rights Commission: Statement on amnesty issue.

* ANC: Media statement on the issue of indemnity.

AG2918 4.2 The Commission

4.2.1 Documents:

* Press statement on the Promotion of National Unity and Reconciliation Bill, Minister A.M. Omar, Minister of Justice, 20 October 1994.

* Commissioners and Committee members.

* Question time – Answers.

AG2918 4.5 TRC reports

4.5.1 Final TRC Report:

- * Speech by Archbishop Desmond Tutu at the handing over of the TRC Report, 29 October 1998.
- * TRC Special reports no 1-4.
- * Newspaper editorials on the TRC's Final Report, Part I, II.
- * Reactions by political parties to the TRC report.

4.5.2 TRC Research Department reports:

- * Two draft discussion documents on 'truth'.
- * Draft discussion document: Moral & conceptual foundations.

4.5.3 Statements and meetings:

- * A. Boraine: Justice in Cataclysm: Criminal tribunals in the wake of mass violence.
- * A. Boraine: The TRC and human rights journalism in South Africa.
- * A. Boraine: Can 'truth telling' promote reconciliation?
- * TRC Public Discussion: The just war and reconciliation, 6 May 1997.
- * TRC Public Discussion: Transforming society through reconciliation: Myth or reality?, Cape Town, 12 March 1998.

4.5.4 Articles:

- * W. Verwoerd: Democratisation and the TRC in South Africa.
- * C. Villa-Vicencio: From coexistence to reconciliation. The TRC: A step along the way.
- * C. Villa-Vicencio: Truth and Reconciliation. In tension and unity.

AG2918 4.7 TRC Resources

4.7.1 Analysis of the TRC:

- * I. Liebenberg and R. Williams: The impact of the Truth and Reconciliation Commission on the SANDF.
- * I. Liebenberg: The Truth and Reconciliation Commission in South Africa: Context, future and some imponderables.
- * M. Lapsley: Learning the truth.

2. South African History Archive, University of the Witwatersrand

Human Rights Watch TRC Materials

AL3141f: Recommendations to the Truth and Reconciliation Commission, January 1998.

The Beth Goldblatt and Sheila Meintjes Papers

AL3119f: * Gender and the TRC workshop, 19 March 1996.

* Gender and the TRC: A submission to the Truth and Reconciliation Commission, May 1996.

* Special hearings for women, 15 August 1996.

* Violence, Gender and Human Rights – An examination of South Africa's Truth and Reconciliation Commission.

The Charles Villa-Vicencio Collection

AL3136f: * Learning to live together with bad memories.

* Why perpetrators should not always be prosecuted. Where the International Criminal Court and Truth Commissions meet.

* The reek of cruelty and the quest for healing. Where retributive and restorative justice meet.

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* Getting on with life. A move towards reconciliation.

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3. National Archives and Record Service of South Africa, Pretoria

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- Box 2: East London – Queenstown Hearing, 1996.07.22-24.
- Box 1: Cape Town – Heideveld Hearing, 1996.04.22-25.
- Box 2: Cape Town – Worcester Hearing, 1996.06.24-26.
- Box 2: Cape Town – Tygerberg Hearing, 1996.08.05-07.
- Box 2 & 3: Cape Town – Beaufort West Hearing, 1996.08.12-14.
- Box 3: Cape Town – Paarl Hearing, 1996.10.14-16.
- Box 2 & 3: Johannesburg – Pretoria Hearing, 1996.08.12-16.

Box 3: Johannesburg – Nelspruit Hearing, 1996.09.02-05.

Box 3 & 4: Johannesburg – Thohoyandou (Venda) Hearing, 1996.10.03-04.

Box 5: Johannesburg – Duduza, Benoni, Katorus Hearing, 1997.02.04-07.

Box 1: Durban – Bloemfontein Hearing, 1996.07.02-04.

Box 1 & 2: Durban – Pietermaritzburg Hearing, 1996.07.23-26.

Box 7: Durban - Ladybrand Hearing, 1997.06.24-26.

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Event date: 27.10.1996 – Pebco Three.

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- * Submission to the Truth and Reconciliation Commission by Gen. M.A. de M. Malan.

- * Additional submission with regard to the former SADF.

- * Complaints in respect of Truth and Reconciliation Commission's (TRC) handling of former SADF and its members.

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SUMMARY

Every individual, family and place has a history of its own which may contribute knowledge and understanding to the study of history. Written sources are not always readily available on all themes or periods and/or are at times inadequate. Oral history can provide a type of historical source to gain information, fill gaps and add to a more balanced view of events and occurrences. By using oral history methods the researcher may obtain, from the lips of the living survivors/victims, a fuller record of their participation in events of historical significance by tending to the complex legacy of memory.

The Truth and Reconciliation Commission of South Africa (TRC) shone a profoundly illuminating spotlight on South Africa's past. The Commission's mandate, as contained in the Promotion of National Unity and Reconciliation Act No. 34 of 1995, had to provide the space within which victims could share the story of their trauma with the nation. The Human Rights Violations Committee (HRV Committee) filled this vacuum, providing a more complete picture of the past as it emanated from the larger narratives of victims.

These victim hearings in particular, meant that thousands who experienced human rights violations could convey their story. The public nature of these hearings broke the silence, lifted the veil of secrecy and gave authority to the voices of ordinary people. Through the process of personal recollection, the Commission could provide more answers for more people to gain ultimately a more all-inclusive picture of what constituted the past.

The study highlights the importance of oral history by using the victim hearings of the South African TRC as a case study where ordinary people were given an opportunity to tell their stories. Thus, this research brings another perspective and dimension to the reliability of oral testimonies

made before the TRC. To assess the workable successes of oral evidence, the challenges facing oral history are explored by examining the problematic nature, limitations and usefulness of memory as a potential source of oral evidence. Furthermore, the limitations of memory are taken into account to test the reliability of oral accounts when striving for the creation of a more representative all-inclusive history. Within this context, the significance of the establishment of a Commission on Truth and Reconciliation for South Africa as the formal genesis of another process of confronting the past through official truth-seeking, is emphasised. Against this background, the victim hearings of the TRC where ordinary people could express their views and illuminate a fragment of the past transmitted by word of mouth, are evaluated.

Only if one understands oral history, with its focus on memory and narrative, can one begin to try to fathom the oral narratives made before the TRC's Committee on Human Rights Violations as a broader process of events and an account of human experience that took place in the South African history.

Using the TRC as a model for confronting a tormented and divided history, the study provides deeper insights into and a greater analytical understanding of past human rights violations through oral narratives and the process of coming to terms with it.

KEY TERMS:

- Oral history
- Oral narratives
- Truth commissions
- Truth and Reconciliation Commission of South Africa
- Promotion of National Unity and Reconciliation Act No. 34 of 1995.
- Human Rights Violation Committee

- Gross violations of human rights
- Victims
- Memory
- Processes of remembering
- Truth

OPSOMMING

Elke individu, familie en plek het 'n geskiedenis van hul eie wat 'n bydrae kan lewer tot kennis en begrip van die studie van geskiedenis. Geskrewe bronne oor alle temas of periodes is nie altyd geredelik beskikbaar nie en/of is met tye onvoldoende. Mondelinge geskiedenis kan 'n tipe van historiese bron verskaf om informasie te verkry, gapings te vul en by te dra tot 'n meer gebalanseerde perspektief van gebeure en voorvalle. Deur gebruik te maak van mondelinge geskiedenis metodes, kan die navorser 'n meer volledige rekord verkry van die lippe van die lewende oorlewendes/slagoffers rondom hul deelname in gebeure van historiese belang deur te neig tot die komplekse nalatenskap van geheue.

Die Waarheids-en-Versoeningskommissie van Suid-Afrika (WVK) het 'n diepgaande, insiggewende soeklig geplaas op die verlede van Suid-Afrika. Die Kommissie se mandaat, soos ingesluit in die Bevordering van Nasionale Eenheid en Versoenings Wet Nr. 34 van 1995, moes die ruimte verskaf waarbinne slagoffers hul verhale van trauma kon deel met die nasie. Die Menseregteskendingskomitee het hierdie vakuum gevul om sodoende 'n meer volledige beskrywing van die verlede te verskaf soos dit na vore gekom het uit die groter verhale van die slagoffers.

Hierdie slagoffer verhore spesifiek, het beteken dat duisende wat menseregte skendings ervaar het, hul verhaal kon deel. Die openbare aard van hierdie verhore het die stilte verbreek, die sluier van geheimsinnigheid gelig en gesag verleen aan die stemme van gewone mense. Deur die proses van persoonlike herinneringe, kon die Kommissie meer antwoorde verskaf aan meer mense om ten laaste 'n allesomvattende verhaal te verkry van wat die verlede behels het.

Die studie beklemtoon die belangrikheid van mondelinge geskiedenis deur gebruik te maak van die slagoffer verhore van die Suid-Afrikaanse WVK as 'n gevallestudie waar gewone mense 'n geleentheid gegee is om

hul verhale te deel. Die navorsing bring dus 'n ander perspektief en dimensie tot die betroubaarheid van mondelinge getuienis wat gemaak is voor die WVK. Om die werkbare suksesse van mondelinge bewyse te waardeer, moet die uitdagings wat mondelinge geskiedenis konfronteer ondersoek word deur die problematiese aard, beperkinge en bruikbaarheid van geheue as 'n potensiële bron van mondelinge bewyse te evalueer. Verder moet die beperkinge van geheue in ag geneem word om die betroubaarheid van mondelinge weergawes te toets as daar gestreef word na 'n groter verteenwoordigende en allesomvattende geskiedenis. Binne hierdie konteks word die veelseggendheid van die instelling van 'n Kommissie van Waarheid en Versoening vir Suid-Afrika beklemtoon as die formele begin van nog 'n proses om die verlede te konfronteer deur die offisiële soeke na waarheid. Teen hierdie agtergrond word die slagoffer verhore van die WVK geëvalueer, waar gewone mense hul perspektiewe kon uitdruk en 'n fragment van die verlede mondelings belig.

Slegs as 'n persoon mondelinge geskiedenis verstaan, met die fokus daarvan op geheue en verhale, kan mens begin om te probeer om die mondelinge verhale, soos vertel voor die WVK se Komitee vir Menseregteskendings, te deurgrond as 'n wyer proses van gebeure en 'n verslag van menslike ervaring wat plaasgevind het in die Suid-Afrikaanse geskiedenis.

Deur gebruik te maak van die WVK as 'n model vir die konfrontering van 'n gefolterde en verdeelde geskiedenis, verskaf die studie 'n dieper insig in en groter analitiese begrip vir menseregte skendings van die verlede deur middel van mondelinge vertellings, asook die proses hoe om dit te hanteer en te verwerk.

SLEUTELTERME:

- Mondelinge geskiedenis

- Mondelinge verhale
- Waarheidskommissies
- Waarheids-en-Versoeningskommissie van Suid-Afrika
- Bevordering van Nasionale Eenheid en Versoenings Wet Nr. 34 van 1995.
- Menseregteskendingskomitee
- Growwe skendings van menseregte
- Slagoffers
- Geheue
- Prosesse van onthou
- Waarheid