

# **Reconciliation through Amnesty? Amnesty Applicants' Views of the South African Truth and Reconciliation Commission**

by

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## **Introduction**

The South African amnesty process sought to hold individual perpetrators<sup>1</sup> accountable through a public process in which they were required to make full disclosures of their criminal actions. Although the mechanism was not designed as part of the broader truth seeking and reconciliation processes of the TRC, it was presented as an opportunity to facilitate reconciliation between the perpetrators and survivors of such human rights violations.

The TRC aimed both at inter-personal reconciliation between former offenders and survivors,<sup>2</sup> as well as national unity between former political opponents. However, the amnesty applicants were not required to make a formal apology or show sincere feelings of remorse in order to be granted amnesty. This remains one of the most controversial aspects of the South African amnesty process, particularly in relation to how survivors experienced the process. Instead, reconciliation was sought through the perpetrators' (and survivors') own truth-telling of the incidents of gross human rights violations, which, in effect, made possible the public and official moral condemnation of such crimes.

The TRC's amnesty process was a unique innovation, breaking with the international pattern of blanket amnesty and presenting a limited and conditional amnesty in relation to human rights violations. While the constitutional negotiations had secured the guarantee of

an amnesty for political crimes, the legislators had devised the truth-for-amnesty provision in order to secure some form of accountability, and to feed into the broader reconciliation goals of the TRC. In the words of the constitution, it was intended to cultivate the need for "understanding but not for vengeance, [the] need for reparation but not for retaliation, [the] need for ubuntu but not for victimisation".<sup>3</sup> The Promotion of National Unity and Reconciliation Act of 1995 set out the specific requirements for the procedure under which amnesty was to be granted. The three essential criteria for amnesty were: 1) amnesty applicants had to submit individual applications, 2) the acts for which they applied had to have had a political objective, and 3) they were required to give full disclosure of the relevant facts of the incidents for which they applied.

The amnesty hearings were held in public halls accessible to the general public and publicized on television.<sup>4</sup> The transparency of the process allowed survivors a chance to challenge the applications through questioning the applicants' versions of events with the help of lawyers. An Investigative Unit also provided limited research into the cases prior to the hearing, which could be used by the Committee members and lawyers representing survivors to cross-examine the applicants to ensure that their stories were truthful.<sup>5</sup>

The Amnesty Committee faced a difficult task. With limited resources and many cases before them, they were unable to apply a formal system of precedent, and were often dependent on legal representatives of applicants and survivors to ensure that the case was adequately presented and investigated. Balancing the constitutional imperative of amnesty with the moral duty to acknowledge the dignity of survivors therefore necessitated a careful handling of the amnesty criteria and process. The perspective provided by the amnesty applicants in this paper seeks to shed some light on how well the Amnesty Committee negotiated this compromise and in particular how this process affected the applicants.

While much has been written about the TRC's amnesty process, this study seeks to address a serious gap in the research. Through an empirical evaluation of the perpetrators' own experiences of the amnesty process, this study addresses the need for a better understanding of how the amnesty process worked in practice, how it managed to draw perpetrators into applying for amnesty, how they felt about the process, how their lives were affected by the amnesty process, and whether and to what extent a public, conditional amnesty process served as a vehicle for achieving reconciliation between former perpetrators and survivors of gross human rights abuse and the reintegration of perpetrators into society. In order to complement this insider perspective of the amnesty process, this study also draws from interviews with former TRC staff and lawyers who were involved in every step of the amnesty process; from assisting applicants with their applications to representing them during the hearings.<sup>6</sup>

The aim of this report is both to inform further intervention with ex-combatants in South Africa,<sup>7</sup> and to provide some insights that may guide other international efforts to engage perpetrators of human rights abuses in conditional amnesties, truth seeking, restorative justice and reconciliation processes.

## **Research Methodology**

The study was conducted through face-to-face interviews with 27 amnesty applicants

(eleven in Western Cape, eight in Eastern Cape and nine in Gauteng), four former TRC staff and six lawyers representing amnesty applicants in the hearings. Their participation was voluntary and each participant was briefed about the research project and amnesty applicants were ensured confidentiality prior to the interview. Access to interviewees was secured due to the long-standing reputation and history of the Centre for the Study of Violence and Reconciliation (CSVR) in working sensitively with ex-combatants.

The participants were recruited through a snowball sampling process. Numerous entry points were utilized in order to ensure a wide participation, such as the public transcripts of TRC amnesty hearings as well as key individuals and organizations working with ex-combatants.

The interviews were structured using an open-ended questionnaire designed for the three different categories of participants: (1) amnesty applicants, (2) TRC staff and (3) lawyers. CSVR researchers conducted the interviews between January and June 2003.

The questionnaire covered the following themes through which the study sought to explore the participants' experiences, thoughts and feelings concerning the amnesty process:

- Background of the participants' involvement in political organizations
- Interaction with the TRC and survivors
- Truth
- Justice
- Reconciliation
- Healing

The respondents spoke in the language that they felt most comfortable with in the interviews. The languages that were used included English, IsiZulu, isiXhosa and Sesotho. The interviews were recorded on tape and later transcribed and translated into English.

The amnesty applicants in this study were all members of the liberation movements. Attempts were made to also interview white former apartheid security force members for the study, but those contacted were reluctant to be interviewed.<sup>8</sup>

Fourteen of the 27 respondents interviewed claimed<sup>9</sup> affiliation to the African National Congress (ANC), five to the United Democratic Front (UDF)<sup>10</sup> and eight to the Pan-Africanist Congress (PAC). These included soldiers under military structures of each organization: five former MK members (Umkhonto we Sizwe of the ANC), three former SDU members (Self-Defence Units of the ANC) and eight former APLA members (Azanian People's Liberation Army of the PAC).

Fifteen of the 27 amnesty applicants in this study were granted amnesty, while five were granted amnesty for some offences and denied amnesty for other offences. Six were completely denied amnesty and one respondent claims that he never received a final decision of his amnesty application (he had not been imprisoned while seeking amnesty).

Nine of the 14 ANC members were granted amnesty, while three were denied amnesty, one was granted for some offences while denied amnesty for others and one claims that he does

not know the result of his application. Three of the five UDF members' applications were granted amnesty for some offences and denied for others. One UDF member received amnesty on all accounts and one UDF member was denied amnesty on all accounts. Five of the eight PAC members were granted amnesty while two were denied. One PAC member was granted amnesty for some offences and denied amnesty for others.

**Table 1: Party affiliations and amnesty application outcome (Ernest, 2004)**

Political party	Granted for all	Denied for all	Granted and denied	Unsure of result	Total
ANC	9	3	1	1	14
PAC	5	2	1		8
UDF	1	1	3		5
Total	15	6	5	1	27

The study does not purport to provide a statistically representative reflection of amnesty applicants' experience. It only covered certain geographic areas and applicants from certain liberation groups. We made a particular effort to look at applicants who were not high profile individuals or involved in high profile cases, as these small number of cases drew disproportionate TRC and public attention. High profile cases experienced a different form of intervention with high-powered lawyers, more serious TRC investigations, and more intense public awareness. These cases provided the popular face of the amnesty process but were not an accurate reflection of what in fact happened to most cases.

The group of 27 applicants who were interviewed for the study reflects a large sub-section of the applicants. An analysis of all the amnesty applications conducted by the CSVR indicates that amnesty applicants from non-state political parties constituted 68% of the total number, of which the ANC and the IFP represented the most common party affiliations. The state security forces and others constituted 32%. (Ibid)

**Table 2: Party affiliation and total amnesty applications to the TRC (Ernest, 2004)**

Political affiliation	Amnesty Applications to the TRC
ANC	53%
IFP	6%
Other liberation movements	9%
State security forces	23%
Others	9%
Total	100%

The amnesty applicants in this study had been directly involved in gross human rights abuses. The most common offence for which the respondents had applied for amnesty was

murder followed by armed robbery and bombings. None of the respondents were prominent political actors or high-level military commanders. Most of these respondents' amnesty cases therefore received very little media attention. For many of these respondents, it was the first time since the hearing that they spoke about their experiences and expressed their thoughts and feelings about the process to someone who was not one of their family, friends or colleagues.

All of the respondents interviewed were male. All were black Africans, except one who is "coloured." The average age was 35 years. The majority of the respondents was or had been jailed before and/or during the amnesty hearing. Almost all had at some stage been imprisoned or detained for interrogation or torture, and a few had been imprisoned for many years (serving from 25 years to lifetime imprisonment). Some had been sentenced to capital punishment, which was commuted after the new government was inaugurated in 1994. Some had completed their sentence before the hearing took place. Four respondents, whose applications had not been successful (or they had been granted amnesty for some of their actions and refused for others for which they remained imprisoned), were still serving their sentence at the time of the interview.

Most of these amnesty applicants had been victims of legal injustices, structural gross human rights violations (against blacks under apartheid), and interrogation and torture by the South African police and/or security forces. They also had experienced their family members and close friends victimized (sometimes due to their combatant activities). The victimized aspect of all of these former amnesty applicants' stories adds to the moral and analytical complexity of the reconciliation process both at the individual and national level. Thus, in a very real sense, these applicants are both former perpetrators as well as survivors of gross human rights violations. At the amnesty hearing, however, they appeared only for their role as perpetrators of such crimes.

The majority of those victimized by the amnesty applicants in this study were black. Some cases also involved white victims and some involved both black and white victims. This picture corresponds with the broader amnesty process in which most of the victims were black, even in the case of black applicants (Ernest, 2004: 16).

### **Amnesty Applicants' Background**

Most of the respondents had been involved as soldiers in the military wings of the political organizations of which they were members. The majority of these soldiers had begun their political and military training in local self-defense structures, which recruited them as students from the townships. Thus, these former combatants had often started their political involvement/career as members of local student organizations from which they were eventually recruited and trained as soldiers in the liberation armies. A few of the respondents however had remained members of more formally constituted Self Defence Units, while some were more "loosely involved" in a political organization, as supporter.<sup>11</sup>

The details of the incidents and the experiences of violations for which the respondents had applied for amnesty remained a psychologically sensitive topic for most of the applicants. In many of the participants' cases they involve killings. While they were not asked to describe the incident, a few volunteered some of the details of these experiences:

It was during the apartheid era and we had identified certain individuals as stumbling blocks. Once you had been identified as such we would either kill you or burn your house. I was directly involved in the shootings and killings. There was an incident that happened at a local coal yard where we killed five people. Life was terrible ... I was married but I couldn't stay with my wife. I witnessed so many people being killed and I also killed people ... I'm not sure if I'm still mentally okay. (I, Gauteng)<sup>12</sup>

We entered while the owner was getting out of the farm. That made us happy because we did not want him anyway but what was in his property. We captured the security and tied him up outside. We asked for water from the one inside the house. She [the servant] did not open the door and we broke in and went straight to the bedrooms in search of weapons and we found bullets. ... She started screaming and I shot at her. I saw that the lady was still alive and thought that she would report us and I shot and killed her and the security outside started calling for help. I was not aiming at shooting at him, I was just trying to scare him and thought he was a distance from me and I just shot at him aimlessly but unfortunately it got him." (R, Western Cape)

The respondents who chose to and were able to talk about their violations presented these violations in the context of the political and socio-economic circumstances under which they were living. Conveyed in these contexts, their crimes were described as a result of a determination and willingness to sacrifice their lives for the improvement of their families' and their communities' well-being, as well as the liberation of all blacks in South Africa who were oppressed under the apartheid regime. Thus, the reasons for getting involved in committing gross human rights violations conveyed both a personal determination as well as a socio-political awareness of the structural injustice against blacks in South Africa. Some of the explanations reflect more a personal history of suffering in their local community that drove them to action, while others were inspired by broader ideological commitments.

I got involved in underground activities ... I had people working with me who were killed. What actually happened was that we were in a combat against the Boers and my comrades got killed. Basically I didn't like the conditions in which people were living in Pietermaritzburg. Anyone who belonged to either the ANC or the UDF was arrested. That was a bad thing and I decided that I would rather die for my country than live in those conditions. (F, Gauteng)

My reasons for joining political party were the conditions under which we were living here in South Africa. We were oppressed and I wanted freedom and the ideology of this party [the PAC] suited my view. During the apartheid regime blacks were not regarded as human beings, but as sub-humans. Because of the struggle we are now recognized as human beings too. (M, Western Cape)

A clear and uniform response from the majority of the respondents on the question of what made them join a political organization was the conditions under which blacks were forced to live. The aspects of these conditions which were most emphasized were the socio-economic living conditions. Sometimes these were described as general conditions, but for

some amnesty applicants, they constituted a very personal experience of oppression.

The respondents in this study exemplify the inter-linked connection between economic, social and personal despair, as well as political ideology and social injustice as motivations for committing gross human rights violations. While their personal circumstances were a key factor for many, the goal of liberating the nation was what drove them to participating in the liberation war.

### **Amnesty applicants' Interaction with the TRC and Survivors**

The respondents expressed three main motivations for applying for amnesty: to be released from jail (twelve), to tell the truth about the incidents for which they had applied amnesty (eight) and to reconcile with their victims (seven). These three motivations were often interlinked.

No one wants to be in prison regardless of what he or she has done. Secondly ... I wanted to be forgiven. (R, Western Cape)

Firstly we needed reconciliation, but the most important thing was for me to be released from prison. (T, Gauteng)

I wanted to put the record straight because most people had the notion that APLA was only killing whites for the sake of killing whites, so I wanted [to explain] that it was not like that. (E, Eastern Cape)

As most of the respondents applied for amnesty from jail, their prison experience was a recurring theme, both as a motivation for applying for amnesty and, and for others an experience of suffering that had damaged their lives more than amnesty could ever repair. The experience of having gone through a criminal trial where some denied their political affiliation (to protect comrades or be treated more leniently) also colored this experience.

Some respondents had initially been skeptical of the idea of applying and appearing before the TRC as "perpetrator" as most of the respondents identified themselves as liberation fighters who had fought for a just cause. Many felt that the odds of receiving amnesty, gaining understanding and respect for their struggle were against them from the outset. Their mistrust of the legal system was transferred to the work of the TRC:

I was negative towards the idea of the TRC. I thought it would just be a waste of time because there was no guarantee that you would get amnesty. Here I was, in prison for having killed a white person, then I was supposed to go to the TRC and stand in front of a white man and say I am sorry I killed a white man? Then I would be asked something like "why did you do it?" and I would have to explain to a white man that I was fighting against a white man for my land, so I dismissed the idea of going to the TRC. When President Stanley Makgoba [president of the PAC] came to prison and explained more about the TRC and urged us to apply and support the TRC process, my attitude changed and I applied. I wanted [the victim's] parents and the world to understand that it was not my aim to kill [her], but that it was because of the conditions we were

facing here in South Africa that made us retaliate against the apartheid government. That is why we landed up killing. (M, Western Cape)

Few respondents had expected to be personally forgiven, but most of the respondents anticipated that they would not be held *personally responsible* for the atrocities that they had committed. From most of the respondent's point of view, they had simply been playing their part in a broader liberation movement. They therefore viewed the atrocities that they had committed as the result of a *communal determination* (and thus resulting in a *communal responsibility*) to liberate South Africa, a goal to which they had been personally committed. Thus, most of the respondents rejected personal responsibility, but accepted a sense of shared political accountability.

Personally I was very much in doubt because I felt that it was a sell-out situation. We felt that the TRC was compromising the liberation forces that were fighting against the oppression because the Truth Commission had a tendency to equalize the defenders of apartheid with the destroyers of apartheid. My intention [to apply for amnesty] was just to be free because I was in the [liberation] struggle. (N, Eastern Cape)

Most of the respondents expressed a need for understanding from the survivors and the TRC for the context or the circumstances in which they had committed these crimes. The need for "understanding" in a broad sense addressed both a personal need for forgiveness from survivors and/or families of victims, as well as a social need for acceptance as a member of a community (from survivors, the TRC, their home communities, religious communities, political organization, etc.) for the socio-political motives which had led to their involvement in gross human rights violations. These motivations were contrasted to personal motivations.

I wanted to clarify to the deceased's mother that I was only chairman at the meeting and never killed her son. And I also wanted to explain I did not order for people to be killed. (S, Eastern Cape)

I wanted to meet the victims and make sure that my conscience was clear. (I, Gauteng)

Some applicants also expressed that their initial feelings and thoughts about applying for amnesty were frustrated due to a lack of clarity about the requirements that they had to fulfill in order to be eligible for amnesty. This confusion added to their skepticism towards the amnesty process and its purpose.

We were skeptical about the whole thing because we were not clear about what would happen to us if we mentioned offences for which we had not been convicted. There were some things that were not clear to us. For instance, questions about political mandate: who gave the mandate for the offence to be committed, were difficult to answer. We were skeptical of giving out people's names in the applications not knowing what would happen to these people and what would happen to us. We were afraid of incriminate ourselves or to incriminate someone else. (Y, Western Cape)



As most of the respondents were imprisoned at the time when the TRC began operating, their first knowledge of the TRC was usually through official TRC documents distributed in jails or TRC representatives who visited jails to give the prisoners a briefing about the amnesty process. Others learned about the TRC from members of their political organizations, human rights lawyers commissioned by the TRC, friends and media. The majority of the respondents felt confident that eventually developed a good understanding of the TRC prior to the hearing.

Very few respondents knew what to expect of their legal representative and were uncertain about the details of the amnesty process, and many respondents expressed a sense of alienation from the legal proceedings of the hearings. For some, the hearing reminded them of a trial, which left them feeling again like the accused criminal being interrogated. The respondents' need to be understood in terms of their own background frustrated their sense of having to fit into a legal discourse about their activities in the past. Some therefore complained about their legal representatives' lack of knowledge about the struggle.

I was not quite happy about the lawyer allocated for me . . . . It was someone very blank about politics and the struggle so I felt as if I was on my own. (R, Western Cape)

A lawyer . . . assisted me, but he only came a day before the appearance with application forms to reminded us of what we wrote in those forms, that is all. (Q, Western Cape)

## **The Amnesty Hearing**

### **Interaction with the victims during the hearing**

The majority of the respondents wanted to meet the survivors of their crimes and appreciated their presence during the hearing. Moreover, the respondents' need for clearing their conscience and gaining understanding for having committed atrocities was dependent on the survivors' presence more than any other audience. Being able to address the survivors at the hearing was therefore an important aspect of reconciliation for many of the respondents.

In 20 of the 27 respondents' hearings the survivor(s) were present. In the remaining seven hearings, the survivors were not present. Four of these seven applicants said that they would have wished the survivors had been there and that they still wanted to meet the survivors in order to ask for forgiveness and/or to explain that their actions were not personally motivated.

Survivors' presence during the hearing was, on the other hand, naturally a source of anxiety for many respondents who were worried about how the survivors would feel about them once they had told the story of what had happened to their loved ones. Some respondents also felt remorse for their actions and said that in the time that had elapsed since the incident and the hearing had made them think about the impact of their actions on the survivors.

I can never be sure of how she felt. All I can say is that I was afraid even to

approach her. She attended the hearing with her two small children and I was touched when I thought about the pain and suffering I've caused them. I was nervous and sad – it was bad. Having to reveal all the things I did to her husband killed me. My mother had to facilitate our meeting, I couldn't do it myself. I felt so bad. (K, Eastern Cape)

I was emotionally affected when I was explaining what I had done to these people. Watching people crying in front of you, irrespective of their color or creed affected me because I am also a human being. I'm not made of stone, I also ended up crying. ...

The first reaction was that I was shocked at seeing these people after so many years. And then also I also had fear that one of them would attack me at any moment. (C, Western Cape)

Most of the respondents emphasized that they had a need to explain to the survivors that their actions had not been personally motivated but "forced" by the circumstances under which they were living at the time. Although most of the respondents expressed a wish or a need to be *personally forgiven* by their survivors, many respondents did not express a sense of *personal guilt* for the crimes that they had committed. This reiterated and echoed most of the respondents' previous explanation of what had motivated them to commit gross human rights violations in the first place.

I feel ok [about my actions]. I feel that it had to be done. We had to do the bomb blast and in a way they had to be victims. I feel sincere towards the victims and I would like to meet some of the victims one day, just to show them that we didn't choose them as a target but rather the regime and I feel very sorry that some of them got injured or even killed in the bomb blast. (A, Western Cape)

They were holding the wheels of change. I was not actually targeting them but the wagon of apartheid and unfortunately they were driving that wagon and unfortunately they fell with it. I'm not pleased [with my actions] because actually I was targeting no one. All I wanted was for us to live like human beings. I meant not to kill. (Z, Western Cape)

Most of the seven respondents who did not get a chance to meet the survivors said they missed the survivors' presence at the hearing and that their absence stood in the way for a final "closure" to the past. In addition, some of the respondents who had met the survivors at the hearing but were not satisfied with the opportunity to address the survivors directly and/or to raise issues in relation to the incident(s) at the hearing expressed a wish and/or a need to arrange a meeting with them.

I want so desperately to sit down and talk to my victim's families about the whole situation because I was desperate to rebuild that unity and wanted it to be stronger than the initial one because I want it based in Christianity and genuine and loyal reconciliation but unfortunately I don't know where they live now. I would love to meet them again. (R, Western Cape)

Most of the respondents in this study expressed that seeing their victims and/or victims' families at the hearing was an important aspect of the amnesty process which helped them deal psychologically and socially with their traumatic experiences in relation to these incidents. Most of the respondents expressed that their intention at the hearing was to explain to the victims/survivors what happened and that they hoped in return to be understood and accepted for what they had "needed" to do. Some also felt that the purpose of the hearing was to ask forgiveness from the victims and thus hoped to be forgiven.

Seeing the victims of their crimes, often for the first time since the incident, was one of the most challenging aspects of the amnesty process for many respondents. For some it opened up for the possibility of healing psychological wounds when the survivor(s) showed understanding and accepted their pleas for forgiveness. For others, especially when the survivor(s) remained hostile towards them and/or did not agree that the respondent should be granted amnesty, meeting and seeing the survivors was an intimidating and a frightful experience.

Psychologically it affected me. When I thought about the people I had killed, even though it was for a good cause, it was difficult. It was difficult even in jail until they referred me to a psychologist. (T, Gauteng)

This is not an easy process. When I met them [the victims] on that particular day you could see that emotions are high on their side and they were perpetually crying at all times, especially when I was explaining the whole course of action. (C, Western Cape)

Three of the 21 whose survivors were present at the hearing interacted informally with the survivors after the hearing. In these incidents, the respondents explained that there was a genuine wish from both sides to meet privately and that they had been forgiven by their survivors and/or family of the victim(s). The survivors and/or applicants themselves had taken the initiative to arrange these informal meetings. As a result of the meetings the respondents felt that they had reconciled with the survivors.<sup>13</sup>

The TRC did not facilitate informal forums for any of those interviewed in this study to engage directly outside the hearings, nor was this need addressed in the hearings themselves. Instead, the hearings were dominated by a legal discourse. Informal meetings had to be initiated by the amnesty applicants and/or the survivors themselves, which was problematic, particularly for those applicants who were imprisoned at the time of the hearings. Many of the respondents who had not been given an opportunity to directly address the survivors during the hearings therefore expressed a need for further mediation or talks with the survivors. Most of those respondents who had been able to address their victims directly at the hearing also expressed a wish to have further talks with their victims. They often felt that the hearing had just opened or facilitated an initial meeting or contact with victims that, for true reconciliation to take place, there had to be further follow-up.

I'm not completely relieved. I try, but it is not easy. The problem is that the victims' families are people who live close to me. The TRC did an incomplete job. What would happen if those people do something to me? I'm not safe because I don't know what they are thinking about me. The TRC just released

us from prison and then dumped us. (J, Gauteng)

In some cases the lack of survivor involvement at the hearing seems to have created further frustration:

The TRC left a wide gap open. It created anger and animosity between me and my victims by not involving them during the [amnesty] proceedings and by depriving me that chance of meeting with them so as to apologize and give an explanation to my victims. I don't understand why they were not given a chance to confront me so as to satisfy their quests. (O, Western Cape)

Even in cases where the respondents thought that seeing the victims went well, most of these respondents expressed a wish to meet the victims again. There was therefore an overall wish and/or need for further meetings with the victims amongst both respondents whose victims had and had not been present at the hearing.

#### **Treatment by the TRC**

Most of the respondents who had been denied amnesty felt unfairly treated by the Amnesty Committee. Some believed that they were being treated like criminals and prejudged because they had been previously convicted and sentenced to jail. Some felt angry that they had not been understood because they were judged by the actions they committed without taking into account the cause they were fighting for or the conditions under which they were living. Those denied amnesty were therefore disappointed and sad about the way they were treated as perpetrators and not as liberation fighters.

I did not like [the way I was treated by the TRC] at all. They never bothered themselves about the fact that we left our homes and parents, sacrificing our childhood for the country's freedom, that we dedicated our lives to the struggle. They made us feel guilty and dirty for pushing the aims and objectives of the PAC – to free ourselves and the country from the bondages of oppression. In the court of law you are innocent until proven guilty, whereas before the TRC if you have already been proven guilty by the courts they treat you that way: guilty. (M, Western Cape)

It [the hearing] wasn't what I expected. We were told that we will merely be asked to motivate why we did what we did, but to my surprise people were cross-questioned to an extent that some became scared and could not motivate that their cases were politically motivated. Even the panel of judges was white, dominating and intimidating. (K, Eastern Cape)

Many respondents were emotionally moved by the hearing – due to survivors' presence, anxiety around the procedural requirements for amnesty as well as the public exposure. The amnesty hearings forced many respondents to reflect on their own traumatic experiences during the struggle. This produced both negative and positive effects on the respondents.

The hearing uncovered for many respondents deep psychological scars, which made the amnesty process both challenging and painful, especially if they were denied amnesty and felt that they had not been believed or understood, or that they were being portrayed as

"criminals".

It wasn't good ... I even felt that I shouldn't have gone to the TRC. There were judges who tried to make fools out of us. They questioned our testimony as though they were there when those things happened. It pained me. They told us we were lying. ...

I cried ... I saw flashes of pictures of how they used to kill people. It was a traumatic experience. (I, Gauteng)

For others, the hearing helped some to face their own difficult past and to identify their needs in order to move on and prepare to integrate back into society again. Some respondents found that talking about their experiences and what they endured in the struggle relieved them emotionally and gave them the feeling of having contributed to the truth that was often sought by victims or families/beloveds of victims who had been killed or disappeared. In instances where the respondents had been able to address the survivors directly during the hearing or met afterwards and felt understood and forgiven for their actions, the hearing produced a sense of closure.

[Talking about what happened] is the best medicine because the more you keep it inside the more it itches and frustrates you. When you talk about it you relieve yourself emotionally and in other ways. (C, Western Cape)

It did rehabilitate me, for once I had the chance to speak out of my heart, but in some sense it also makes me very hesitant because no one ever informed me what happened after the process. (A, Western Cape)

### **Media coverage**

The respondents' amnesty cases covered in this study were not high-profile cases and thus received little attention from the media. A few did not have a problem with the media's coverage of their cases and thought that the media had covered their case accurately. The respondents who were dissatisfied with the way they were treated by the TRC often felt that the media also portrayed them as criminals.

If you are black you are always mistreated. There was nothing said about me because I was regarded a criminal. The media only reported that the ANC criminal has been denied amnesty for the murder and robbery he committed. I was not a human being but a criminal whereas white criminals of apartheid were treated as human beings. (V, Eastern Cape)

### **Truth**

Many interviewees felt that the amnesty process did not provide an appropriate space for uncovering the truth about the past. Half of the respondents stated that they had to be very careful about what they disclosed in the public hearings. These respondents indicated that they had wanted to tell more but that they were constrained by the time in which they were allowed to speak, the questions posed to them and the objectives of the hearing.

Due to the formal and legalistic nature of the hearings many felt that they had to concentrate on formulating their actions in terms of a political motive in order to meet the legal requirement for amnesty. Under a less formal process some respondents would have wanted to inform the Amnesty Committee and survivors in more detail about the incidents and related facts.

You had to be sure that your case had been politically motivated. You had to be careful. The TRC only concentrated on the issues at hand and ignored the bigger picture. I was kidnapped by state employees. When I tried to raise that before the TRC I was told it wasn't important. (J, Gauteng)

Amnesty applicants were very aware of the legal conditionality of the amnesty, and clearly tailored their stories accordingly. While not indicating that they were untruthful, it is clear that much of the complexity and detail of their stories was lost in their attempts to present their accounts in terms of the legal requirements and formal confines of the amnesty process.

The majority of the respondents believed that their statement had been taken as the truth by the Amnesty Committee and the survivor(s).<sup>14</sup> Five of the respondents did not think or doubted that their story was believed to be true. These five were among those eleven respondents who had been refused amnesty on all or some accounts.

#### **Being heard, believed and understood**

A major concern for many respondents was the lawyers' and the TRC's understanding of the liberation struggle. Many felt that the TRC in general, and the Amnesty Committee members in particular, were not familiar with the nature of the struggle, the structures of the different parties, their strategies and objectives.<sup>15</sup>

The six respondents who were refused amnesty argued that more investigations should have been conducted. They argued for the need for a more serious attempt to reconstruct what happened, more research on the way the political organization functioned, factual evidence, and correlating what had been said and found in the court case in which they were tried and sentenced with the new facts that came out in the amnesty hearing.

The lack of understanding and failure to develop a clearer understanding of the circumstances of the struggle was perceived as a process with clear racially biased implications:

The TRC was biased. White people were freed without any scars. They had top lawyers and the procedures were made to suit them. For example, some of the questions asked were unfair to us. Our struggle was not as organized as their work force. We didn't have documents proving who we were working for or who commanded us to shoot or burn someone. Hence, we are still in jail even today. (K, Eastern Cape)

## **Justice**

Upon entering into the amnesty process, the amnesty applicants' understanding of the details of the amnesty process, its requirements and the procedures before and during the hearing was mainly conditional on the quality of their legal representation. There was a clear imbalance in the legal representation afforded different groups of applicants, which caused applicants to question the fairness of the process.

Whereas members of the former liberation struggle were offered legal representation through the TRC's minimal budget or their own organizational resources, former members of the apartheid state were afforded high-quality legal representation covered by the state due to their employment contracts with the state.

If you were a policeman or woman under Apartheid you could go and get the best lawyer in the country and the government would pay. The [TRC] tariff was for lawyers representing the victims because the victims were not former state employees. So the legal representation [afforded by the TRC] would [pay] something like two hundred Rand a day or something like that and that was not worth the while for [any private legal practitioner].<sup>16</sup>

Most of the respondents had filled out their application forms without any legal assistance. As most of the respondents were imprisoned at the time of their application and preparation for the hearing, their communication with lawyers, when it occurred, often happened via prison personnel. Most of the respondents' experiences of the legal assistance that they received indicate that they had very little communication with the lawyer/representative before, during and after the hearing and that they were not comprehensively informed about the legal proceedings that pervaded the hearings.

Before the amnesty process - during application there was no legal assistance but during the amnesty process itself there was someone representing us legally. We did not really know where he came from. We never had any communication with him as our lawyer. (Y, Western Cape)

A day before my appearance before the TRC, a lawyer came and told me I was appearing the following day and that questions would be asked that were going to be tricky. No advice was given. He told me that he will see me there. (Z, Western Cape)

## **Bias/racism**

Two thirds of the respondents were not satisfied by the hearing due to perceived bias or lack of impartiality by the Amnesty Committee. Surprisingly, half of these respondents did receive amnesty, which suggests that the impartiality issue was not just a response to a negative outcome.

The complaints of bias were either based on the contrasting treatment received by (usually) white former apartheid state employees, or in instances where the victim was white, the respondent felt that he was unreservedly portrayed as the

perpetrator (and that his victimization under the apartheid regime was not taken into account).

Some respondents expressed a sense of alienation from the panel of Amnesty Committee members due to their composition consisting of mostly white professionals.<sup>17</sup> A few respondents complained that some Committee members had previously appeared on the prosecutor's side in the court when they were initially sentenced in court. It was thus difficult to separate these "agents of the previous government" from their new roles as Amnesty Committee members who were to assess their application to get out of jail.

The Amnesty Committee was discriminating [against] black people. Whereas black people told everything, white people didn't and yet they were released [from jail]. (X, Eastern Cape)

The composition of the TRC was totally unacceptable. Most of the judges and advocates there were the very same people who tried us in court, therefore the applicants were weary and nervous as he or she wondered how they would be able to change their perceptions about them since most of the time their attitude would be the same as in court. (K, Eastern Cape)

Only three of the 27 respondents answered that the process overall had been fair. The majority of the respondents believed that the amnesty process was generally not fair and that not everyone, in particular political leaders, were called to account about their actions.

People were just fulfilling their mandate because there were certain guidelines that these guys were following. Then there were people who never even bothered to go to the TRC, as for instance the security personnel and their intelligence unit. Many people died as a result of the police but nothing has been done even today, eight years down the line, to bring those [responsible] to the fore. There are a number of deaths that are not accounted for and a number of injuries that are not accounted for. Looking at that and looking at it now you begin to see that there is no justice. (G, Gauteng)

## **Reconciliation**

The majority of the respondents are concerned about bridging the gap between themselves and survivors and between former apartheid employees and liberation fighters. For some, the TRC process was a strong ray of hope for reconciliation individually and nationally while for others it simply fueled their feelings of enmity and antagonism.

Among many of the respondents there remains a strong sense of bitterness about the injustice they suffered during apartheid for which they feel former apartheid employees have not come clean or acknowledged the injustices. The operation of the TRC seems to have exacerbated some of these frustrations.

There remains a sense of alienation among some respondents from whites in South Africa, especially among those who thought that the amnesty process had been racially biased against blacks and who did not receive amnesty. These respondents had consequently not



changed their view of their actions against whites.

With most of the activities against victims I don't have a way of saying I'm feeling bad. Those are the activities that make me feel proud that I accomplished: the protection of the African people. The people who are not prepared to reconcile are the oppressors. Reconciliation to me means that the African people are given back their land and made owners of their homeland. (N, Eastern Cape)

For those with a more positive experience of reconciliation, dynamics has shifted either in terms of personal relations or in terms of their understanding of their erstwhile enemies. Some respondents expressed that they now understood that the apartheid state employees similarly were forced to act the way that they had acted. The process seems to have provided a broader insight into the motivation and dynamics fueling the conflict.

Violence doesn't solve anything. No one deserves to die. It doesn't matter what or who the person represents. In the case of my victim he was doing his job. I realize now that he also was forced by circumstances to do what he did. The police also didn't like what they did, but it was their job and their superiors were treating them nastily if they seemed to object to orders. Now I understand what I didn't understand or think about then. (K, Eastern Cape)

A few respondents talked very emotionally about more personal experiences of interpersonal forgiveness and reconciliation with their victims.

The TRC has helped me a lot by giving me the opportunity to meet with [the victim's] parents. I feel so happy now that [her] parents no longer see me as killer. I am understood as someone who fought for his country ... (M, Western Cape)

The family [of the victim] responded very well. They came to me and we shook each other's hands and we were taken out into a different room where we both cried bitterly. ... [A]fter the hearing they stood up and we hugged each other ... (C, Western Cape)

I feel sad, because even though she forgave us, the fact that we killed someone she loved, the father of her children, their breadwinner, is bad. She forgave us so that she could move on, but the vacuum we caused can never be filled. (K, Eastern Cape)

#### **Reflection on the morality of their action**

The respondents' sense of morality of their actions was shaped by their sense of injustice and socio-economic despair and suffering under apartheid. Many still feel today that the human rights violations they committed were justified because of the cause of the struggle. The amnesty process also helped applicants to further strengthen their justification of the morality of their actions by classifying them as "politically motivated".

My frame of reference will always be the phrase that politics command the gun.

The TRC satisfied itself that my act was a political act in that it was furthering the aims of a political organization like the PAC and therefore there was no personal benefit derived. Therefore my conscience categorizes [my action] as a revolutionary act and that being the case, it means that I do not have nightmares because [I fought for] a just cause. (AA, Gauteng)

Others felt that they had developed beyond a simple political sense of morality:

I'm a new person now. I didn't used to think of the consequences [of my actions]. If something had to be done I'd do it regardless of what the outcome would be. We took people's lives without even thinking about it and that is bad. I would never do the things I did now. Now I think before I act or react. I know how to handle myself. I'm a better person. (K, Eastern Cape)

#### **Relation with their family and community**

Most of the respondents who had been imprisoned and were granted amnesty were welcomed back into their communities, where they were celebrated as liberation fighters. The majority of the respondents also felt supported by their family.

My relationship with the community is very healthy. ... There was a warm welcome home party thrown for me ... . The excitement and joy is in the air because they know what I did for them and they don't believe what was said about me. All I can say is that if there is anyone who hates me in the community, that person must have been misguided or worked for the apartheid regime. (O, Western Cape)

However, some respondents experienced a more mixed reaction:

Many in the community were shocked that I had committed two counts of murder. When I came back from the TRC they told me "you are staying with us here and you have killed people!" And I told them yes, I did but I explained the reason for that. Some of them they never knew I went that far in my political actions, some of them shuddered. (C, Western Cape)

A few respondents experienced tension after the hearing if the former victims and/or enemies during the struggle were still living in the same community as the respondent, especially where past hostilities had not been resolved. Some respondents also complained about other perpetrators who had victimized them and/or their own family and who had not appeared at the hearing for these incidents. In these instances the respondents communicated that they felt worried about meeting or seeing their former victims and/or enemies in the street.

My relationship with the community is very healthy, except for those used by the apartheid system and killed my mother. That is why I am desperate that we meet and talk so as to reconcile. (O, Western Cape)

### **Prospect of reconciliation – nationally and individually**

Reconciliation is a burning issue for most of the respondents. They view reconciliation as a process that takes place on the individual, community and national level. Reconciliation means, for most of the respondents, a way for former perpetrators to integrate back into society again and for victims to reclaim their humanity. As black liberation fighters, many respondents viewed themselves as both perpetrators as well as victims. Many strongly feel the need to be re-integrated into society and to re-gain trust among former victims and enemies, as well as to re-claim their humanity as former victims of apartheid.

[Reconciliation] means honesty. It means changing your life, it means taking a new direction all together. Reconciliation means that the two groups which have been apart for decades have come together but not forgetting their past. (C, Western Cape)

Reconciliation is individualistic. You cannot push anyone into reconciliation. You have to feel the need to build it and then take the initiative. Then it needs to be coordinated and people need to join at their free will. Then the discussion can start and be monitored along the way. (M, Western Cape)

To me [reconciliation] means forgiving and moving on with life. People should unite, communicate with one another and not try to think about who did what to who because that will not help us move forward. (H, Eastern Cape)

The majority of the respondents feel positive about reconciliation. Most of the respondents answered that they think reconciliation between former victims and perpetrators and former apartheid supporters and former liberation fighters is possible, but that a lot remains to be done.

Reconciliation is possible. Reconciliation means we can only reconcile if we acknowledge our differences. That will help us to move forward. It's not about color or political affiliation, people need to have commitment to the country and only [then] can we make progress. (P, Gauteng)

Reconciliation is possible. We just need to be genuine about it. South Africans can forgive. Reconciliation simply means that warring parties need to sit down and find a common ground. (I, Gauteng)

According to the applicants, the three most important mechanisms or conditions to make reconciliation possible are: 1) the facilitation of meetings in communities where former victims and perpetrators live together and the facilitation of meetings between black rural people and white people who do not live together; 2) economic empowerment of former liberation fighters in order for them to help themselves to support their families and become integrated into society; 3) all sides are willing to reconcile and to forgive each other and move on.

Many respondents argue that many white South Africans are not prepared to reconcile with and acknowledge black South Africans.

We have a long way ahead. The majority of white South Africans are not eager to reconcile, they are still living in the past. It is only black people who go the extra mile to reconcile, whereas they are the ones who were tortured and abused by whites. I honestly think that it is our children who will enjoy a non racial democratic South Africa, adults don't stand a chance because they still have old hang ups. (K, Eastern Cape)

Racism and past apartheid attitudes and mindsets are therefore a crucial obstacle to reconciliation, according to the majority of the respondents. The geographic divisions created by apartheid also provide a serious challenge to reconciliation efforts.

We are in a society where in the recent past separate development had governed the lives of our people. The African people are living mostly in the rural areas and informal settlements and you don't find these white people there, so it means that somebody will have to move out of their area to go and reconcile with the others. If we were living together we could exercise reconciliation at our social level, now we have to break these barriers that were created by apartheid. (AA, Gauteng)

People on the ground are trying to build reconciliation. There are still a few white people who still believe that they're superior. But there is reconciliation. You can already see it. I think with time things will get better. It simply means that we must bury the hatred and talk about our differences. We must do away with discrimination and live together as one. (J, Gauteng)

Some of the respondents felt more negative than optimistic about the prospects of reconciliation. These respondents expressed a sense of despair about racism and economic inequality that still segregate blacks from whites in the new South Africa. They argued that the mindset of (white) South Africans needs to change and that as long as white South Africans remain in economic power, black South Africans' socio-economic situation will remain the same.

Going to the TRC was an indication that we were prepared to reconcile. The problem is that we found out that reconciliation is only one sided, the white South Africans are not prepared to reconcile. They want to cling to power, they want to cling to that supremacy, they want to cling to everything that they were having during apartheid and they don't want to accept that what was done during apartheid was totally inhuman and wrong. (N, Eastern Cape)

Although everybody is crazy about [reconciliation] worldwide, reconciliation in South Africa means the sunset to the African people. Today you have got unemployment which is double than what it was when we were fighting.

I don't think [reconciliation is possible in South Africa] as long as the people who suffered in white people's hands are still suffering. I don't think the TRC did a thing. It cannot be possible to reconcile if one feels that he or she wasn't treated justly. (S, Eastern Cape)

## **Further Dialogue**

Amnesty applicants are strongly committed to taking the reconciliation process further through dialogue with survivors, their communities and more broadly among South Africans. All of the respondents wish for, or are willing to take part in, (further) meetings if such meetings were requested by survivors, and if they could be properly facilitated.

The government should play a role so that the victims can meet with each other and so that we, the people who carried out the bomb blasts, could get a chance to meet with the victims and ask for forgiveness. It's the only way of reconciling. I think the black people can reconcile better than the other half of the country because they came out of the pain and suffering for all these years. (A, Western Cape)

If the government could make an arrangement that we meet victims and perpetrators, i.e. black and white and aired our hatred, fears and angers for each other we could try to understand each other, plan a way forward as brothers and sisters and forget about our differences in creed, color or race. I hope that this hatred for each other could come to an end, because in reality there is still that hatred for each other, whether we acknowledge it or not. (O, Western Cape)

The TRC created a platform, but there was no follow-up. We need to do away with the negative mindset. Everyone must be mentally prepared for the kind of reconciliation that we need. We need to educate communities about various things. People should be taught about common responsibility and also about ways of addressing our problems. We should all be involved in structures aimed at bringing about peace and reconciliation in our communities. Maybe those structures can take the form of the street communities that are aimed at combating crime. In that way people develop a culture of ubuntu [humanity]. (I, Gauteng)

There was a particular desire for some form of facilitated dialogue in instances where survivors and perpetrators live together in the same community.

Anyone knows that no one can be happy when they see the person who killed their husband or child etc. so of course they had to have felt pain. That is why I said right from the start that we need more than one session so that they [the victims] can eventually get to a stage where they understand that what happened had to happen because of the apartheid treatment that was metered out to the black people. (W, Western Cape)

## **Psychological and Economic Rehabilitation**

Most of the respondents (22) are unemployed and as men are expected to be breadwinners. Employment is the most important way in which they feel that they can effectively re-integrate into society. However, long-term prison life and growing up as combatants in the liberation struggle has left many with few appropriate skills for the job market. Thus, unemployment is an experience that leaves them feeling alienated from society and displaced in the new South Africa, which they had fought to liberate.

Rehabilitation cannot be a theoretical thing. When you rehabilitate a person it must also be done practically. Rehabilitation is based on economics. One cannot rehabilitate a person and send the person back to the very same squatter situation. If you try to rehabilitate this person and leave the person in the same economic situation the person will remain unstable. (C, Western Cape)

I feel terrible. Now is the time for the fruits of our struggle but I am not benefiting. It's getting harder and harder by the days. There is no one offering me a thing, no job, no money. People I used to work with in the struggle are enjoying the fruits of the democracy we fought for and have forgotten about me. They don't care if I survive or die. It was better in prison than here outside. In prison I had an excuse that I can do nothing for myself behind bars, but now I am out but still cannot do a thing because I'm unskilled and illiterate and no one cares. My wife and kids are suffering and I feel so impotent. (Z, Western Cape)

Economic hardship and inequality has become a basis for new resentment and alienation from political leadership.

I can't go back to my normal life because when you fight for freedom you expect to be free and now, as I am speaking to you, I do not see myself as a free person. I do not feel that way, it's just a question of not wanting to be rebellious. I just pretend to go along with the current situation. There is no real change in South Africa – just compare the apartheid houses and the houses that are being built for our people today. You can see that people were taken for a ride, they were used by the Parliamentarians so that their own families could move and that they can move away from the people and stay in the posh suburbs while they have built shacks for our people as if they were building cages for pigs. (W, Western Cape)

Many of the interviewees indicated that they have problems of a psychological nature, and a few talked specifically about a need for counseling.

I need [counseling] very badly. Not just in terms of the TRC but in terms of prison. We were never integrated correctly back into the society. (C, Western Cape)

### **A Role for Perpetrators in Reconciliation?**

This research indicates a complex mix of challenges and opportunities faced for any attempt to build reconciliation through engaging perpetrators of human rights abuses. While there is a general acceptance of the principle that perpetrators should be held accountable for abuses, the mechanisms to implement this are hopelessly underdeveloped. Formal trials face huge obstacles, and little progress has been made in developing restorative justice mechanisms that can effectively deal with both the ethical and political constraints of a transitional context.

The TRC's amnesty process was an innovative attempt to bridge this gap. The results

reported here are very promising in terms of the potential for engaging perpetrators (and ex-combatants more generally) in a process of accountability and dialogue as their needs for understanding, reintegration and healing do dovetail with broader survivor, community and national needs for truth, acknowledgement of harm, building a new moral community, and repairing the social fabric.

The amnesty process was however clearly a very small step or simple foundation for a larger process. It was also seriously flawed in a number of ways. A few lessons regarding how such a process could be more effectively developed to facilitate reconciliation are suggested below:

1. Motivations for committing gross human rights violations are generally a complex mix of personal and political considerations. Attempts to separate personal from political motives are likely to create a false understanding of events, and reduces space for serious personal reflection and open dialogue. In a conflict that is inter-communal and which lacks clear military lines of accountability, the dynamics of the conflict are likely to make a mockery of attempts to define "pure" political motives. Space needs to be created particularly to address personal feelings of victimization that fueled the conflict and which resulted from past prosecutorial processes. If not addressed, these feelings are likely to be carried over into new resentments in the post transition dispensation.
2. Guilt and responsibility need to be understood in terms of a complex mix of personal and political motives and authority. In situations where lower level combatants are held accountable (while more senior leaders are not), a further sense of victimization and scapegoating is likely to undermine the process of moral reflection and acceptance of responsibility. Amnesty applicants in this study showed a difficult inner struggle between personal transformation through empathy with the survivors and a stoic retreat into political justification. Perpetrators carefully scrutinize the process of accountability in terms of possible bias and unfairness. In a context where the legal process has traditionally been biased, this skepticism can easily be reinforced, which directly fuels resentment about the lack of transformation of social institutions and the continued legacy of discriminatory practices.
3. Direct dialogue between perpetrators and survivors has the potential of facilitating personal transformation. Space for such dialogue is however very restricted in a formal setting such as that of the Amnesty Committee. The mere presence of victims in a formal, legal setting in which the amnesty applicant is cross-examined by lawyers does not address survivors' and offender's need for informal dialogue. The first formal interaction at the hearing may serve as a first step to address the deeper issues that need to be resolved in order for reconciliation to become possible. Linking the process to the facilitation of more informal dialogue is therefore needed.
4. Reintegration of perpetrators requires a process that goes far beyond the simple resolution of their legal status in criminal law. Those who have been imprisoned for crimes face additional challenges that extend beyond the regular reintegration needs of ex-combatants. They face the challenge of adjusting after the experience of imprisonment, dealing with the stigma of criminalization, public attention from an

often hostile press that has labeled them as killers, and the experience of suffering additional abuse or dehumanization in court, prison and through the amnesty process.

5. The potential contribution of perpetrators and former combatants to reconciliation and transformation is almost completely untapped. The level of interest in contributing to inter-personal reconciliation, community healing and national transformation is remarkable. They are strongly motivated to deal with their own sense of responsibility for the pain they caused to survivors. They want to demonstrate their commitment to a peaceful transformed society, both to dispel public fears about their violent past and to continue the struggle for justice for which they had sacrificed a lot in the past.

#### **Notes:**

<sup>1</sup> This paper uses the terms "perpetrator," "amnesty applicant," and "ex-combatant," to describe the category of people who applied for amnesty. The term perpetrator is used specifically for those who applied for amnesty for the commission of a gross human rights violation. While the authors hold strong views about human rights, the use of the word perpetrator is not intended as a derogatory term, and does not imply a judgment of their actions. It should be kept in mind that not all amnesty applicants applied for acts involving human rights violations; some were for "victimless crimes" such as belonging to a banned organization. Almost all of the amnesty applicants in this study can also be described as "ex-combatants" as they were former members of armed liberation movements. Many of the issues covered in this paper, specifically those related to reintegration, also have direct bearing on the challenges facing this broader group.

<sup>2</sup> This paper uses the terms survivor and victim interchangeably. These terms are used to refer both to the direct victim of an abuse, and to the relatives of a deceased victim. Generally we favor the term survivor as it has a more positive connotation and is more commonly used by survivors. Many of the ex-combatants are also themselves survivors of human rights abuses.

<sup>3</sup> Constitution of the Republic of South Africa, Act No. 200 of 1993 in Government Gazette, 1994, p. 180.

<sup>4</sup> These transcripts can be accessed on the government's website:  
<http://www.doj.gov.za/trc/index.html>

<sup>5</sup> Phakathi and Van der Merwe (2005) note that the position of survivors in these hearings was not overtly addressed in the TRC Act. While it stipulated that they had the right to present evidence, it did not give them any specific rights or privileges in relation to the proceedings.

<sup>6</sup> Another paper was developed alongside this study to examine survivors' perceptions of the amnesty process. See Phakathi and Van der Merwe (2005).



<sup>7</sup> The project that produced this paper, CSVr's Amnesty and Accountability Project, has already implemented some follow-up intervention work with ex-combatants particularly in relation to restorative justice intervention (see Ramirez Barat and Van der Merwe, 2005).

<sup>8</sup> This reluctance on the side of former security forces and contrasting willingness among liberation forces probably mainly reflects on CSVr's reputation as an NGO with a strong anti-apartheid history. CSVr has however in other research engaged with former security force staff, and is committed to working with both groups in a constructive manner.

<sup>9</sup> Membership of a liberation movement or its military wing was a key determinant of qualification for amnesty, but official membership was often difficult to prove given the secretive nature of the operation of these structures.

<sup>10</sup> The UDF was widely recognized as an organization with close ties with the ANC during the time in which the ANC was officially banned as a political organization in South Africa.

<sup>11</sup> The formal amnesty requirements made allowance for a wide interpretation of political motive for gross human rights violations: an amnesty applicant had to have either acted "on behalf of, of the support of or on the order of a widely acknowledged political organization (Promotion of National Unity and Reconciliation Act No. 34 of 1995, Sec. (20) (2) (e)).

<sup>12</sup> All interviews with amnesty applicants are cited using a letter assigned to each, followed by the region in which they reside.

<sup>13</sup> Accounts of the same meeting do however often differ depending on whether one asks the perpetrator or the survivor.

<sup>14</sup> This perception seems to be contradicted by the research among survivors who generally appeared skeptical of amnesty applicants accounts, or were unsure about what to believe.

<sup>15</sup> For more on this disjuncture between the role of the amnesty committee and the broader truth-finding goal of the TRC, see Fullard and Rousseau (2005).

<sup>16</sup> Interview with Dumisa Ntsebeza, TRC Head of the Investigative Unit in Cape Town on February 21, 2003.

<sup>17</sup> The composition of the Amnesty Committee varied from case to case, so there was likely to be a variety of experiences of panel compositions and modes of operation.

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