

# Between principle and pragmatism in transitional justice

## South Africa's TRC and peace building

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### Introduction

The growing interest in transitional justice and particularly in truth and reconciliation commissions (TRCs) is linked to the latter's perceived role in the process of peace building. The South African TRC is, for example, credited for having promoted national unity and reconciliation and for creating 'peace' (Möller-Fahrenheit 1996:21; Botman 1996:39). However, fundamental questions still remain and challenge the relationship between the two. This paper aims at conceptualising the role of transitional justice in peace building by focusing on South Africa's TRC. It argues that building sustainable peace in societies that have suffered protracted conflict or human rights abuse calls not only for short-term measures that aim to normalise relations but also for long-term societal transformation to bring about improvements in people's way of life and their basic human needs.

### Transitional justice and peace building: Locating the link

The body of literature on the theory and practice of transitional justice generally and the South African TRC in particular suggests that these mechanisms work to fill the function of peace building (Bloomfield 2006:57). The August 2004 report of the United Nations Secretary-General, *The Rule of Law and Transitional Justice During Conflicts and in Post-Conflict Societies* (United Nations Security Council 2004), reinforces this thinking. The report places transitional justice and particularly reconciliation within the broader matrix of building sustainable peace where societies have suffered protracted conflict and human rights abuses. The recurring theme of the report is that transitional justice, by turning the spotlight of investigation on issues of justice, reparations, truth seeking and institutional reform, contributes to the development of a rich framework within which to position peace-building efforts. At the same time, TRCs, by their maintaining the functions of retributive

and restorative justice, are seen as vital ingredients in the process of peace building.

### The South African Truth and Reconciliation Commission

The South African National Assembly passed the Promotion of National Unity and Reconciliation Act in May 1995. The TRC was mandated to establish as complete a picture as possible of the causes, nature and extent of the gross violations of human rights committed under apartheid from March 1960 to December 1993 (later extended to May 1994) by conducting investigations and holding hearings. The main commission was appointed through a transparent process (Mamdani 2000:176). Its starting point was a selection panel, comprising members of civil society and government, appointed to consider 299 nominations from different stakeholders. After interviews, the panel submitted a shortlist of 25 to the President. He, in turn, appointed 17 commissioners on 29 November 1995. The Amnesty Committee was appointed thereafter and independently of the main commission.

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The South African TRC captured a great deal of international attention, and today many regard it as one of the best transitional justice approaches to have been implemented (Shea 2000). Emerging against a backdrop of protracted conflict and the so-called 'miracle transition', the TRC with its ambitious mandate was afforded extensive media coverage both domestically and internationally. It was one of the largest and best-resourced truth commissions to date. It also had the distinctive feature of pursuing restorative rather than retributive justice.<sup>1</sup> For its proponents, mostly outside South Africa,<sup>2</sup> the TRC came to embody a viable response to dealing with questions of past conflict and past human rights abuse. The South African TRC has, however, also initiated a wide range of debates ranging from its processes to its proclaimed goals. Some have questioned its propensity to grant



conditional amnesty to perpetrators of human rights abuse, and they have accused it of sacrificing criminal justice for political compromise. Contentious issues about the TRC's achievements still remain, and some ask whether reconciliation was a legitimate goal of the TRC process. Broadly, the moral, political and legal questions generated by the TRC remain the subjects of many a debate.

### **The process of the Truth and Reconciliation Commission**

The TRC's mandate was carried out by three main committees: the Amnesty Committee, the Human Rights Violations Committee and the Reparations and Rehabilitation Committee. In addition, an investigative unit working in collaboration with a research department conducted investigative inquiries. The mandate of the TRC was laid down in the act as follows: to establish a complete picture of the causes, nature and extent of the gross violations of human rights committed from 1 March 1960 to 10 May 1994 by the conducting of investigations and hearings; to facilitate the granting of amnesty to persons who make a full disclosure of all the relevant facts relating to acts with a political objective; to establish and make known the fate or whereabouts of victims; to restore the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violence; and, lastly, to recommend reparation measures in respect to these violations. It was stipulated that the commission was to carry out its work by conducting investigations, holding hearings, and compiling a comprehensive report (Republic of South Africa, Office of the President 1995; Burger 1999:280–281). The African National Congress (ANC) leadership and particularly Nelson Mandela saw the TRC as a crucial component of the transition to a full and free democracy in South Africa.

### **The Truth and Reconciliation Commission and the semantic problem**

The South African TRC process employed a number of terms and concepts that remained ambiguous throughout. The question of meaning is significant because it influences one's perception of the TRC. This section amplifies some of these terms and concepts and discusses their implications on discourses of transitional justice and peace building.

#### ***The question of truth***

The question of truth was a very problematic one in the operation of the South African TRC. The commission was beset by a set of philosophical questions in regard

to the aspect of truth. For instance, it faced the difficulty of determining whether or not the constructed nature of personal narrative constituted objective facts. The TRC sought answers to a series of questions in its effort to know what happened, among others why the gross violation of human rights took place and who ordered them. Of central concern was the problem of ascertaining whether or not that which was being said was indeed the truth. According to Volume 1, Chapter 5 of the report, the TRC employed four different kinds of truth (Republic of South Africa: 2003) factual or forensic truth entailing the scientific notion of bringing to light factual, corroborated evidence in obtaining accurate information through reliable, impartial and objective procedures; personal or narrative truth entailing the telling of stories by both victims and perpetrators, giving meaning to the multi-layered experiences of the South African past; social or dialogue truth defined in the TRC report as the truth of experience established through interaction, discussion and debate; and, lastly, healing or restorative truth seen as placing facts and their meaning within the context of human relationships, both amongst citizens and between the state and its citizens. Some argue that the South African TRC realised only partial, subjective and, to some extent, distorted truth. Mamdani asks which truth comes close to establishing what happened given the various forms of truths outlined in the TRC report (South African Press Association 1998). For him, the TRC obscured the truth because it did not consider significant issues such as forced removals, pass laws, racialised poverty and racialised wealth that were at the centre of gross violations of human rights. The consequence was a report that reflected distorted truth (Mamdani 2000:39). The author points out that truth may not emerge as a necessary outcome of a truth commission and that prosecutions are likely to provide a greater measure of truth.

The moral, political and legal questions generated by the TRC remain the subjects of many a debate

In several cases the TRC's accounts were met with opposition. For example, Dr Neil Barnard, the former National Intelligence Service (NIS) chief, contested virtually every finding of the TRC report (Villa-Vicencio & Verwoerd 2000:9). Some members of the ANC leadership, on the one hand, and the National Party (NP) leader FW de Klerk, on the other, sought to prevent the commission from publishing certain findings on the basis that some of the contents of the report were not true. Nonetheless, one could hardly expect a truth commission to establish an absolute truth that is acceptable to all in a short space of time. The TRC certainly was constrained by time and did not cover all parts of the country. There are arguments that rural areas, particularly in the former Bantustans, were neglected in comparison to urban areas. Once again, owing to time constraints, the TRC could not

adequately deal with local histories in the various parts of the country. Therefore, Posel and Simpson (2002:11) maintain that the TRC report and records contain a range of 'fractured, incomplete and selective truths' rather than 'the truth' about South Africa's apartheid past. It is probable that the witnesses who appeared before the TRC gave testimonies that reflected their side of the story. Given the passage of time since some of the incidences, certain testimonies very likely did not reflect actual events owing to lapses of memory or the influence of emotions. With possible reparations and amnesty in mind, victims and perpetrators could have told their stories with varying degrees of honesty. For the most part, the truthfulness of TRC testimonies was not corroborated. Lerche (2000) observes that all sides in a conflict have their own versions of the 'truth' of events. Truth seeking becomes a complex process because it is increasingly difficult to distinguish between specific details about what actually happened and emotional versions and untruths about the past. These concerns about the nature and interpretation of truth in truth commission processes mean that the South African TRC's work and its report have continued to receive mixed and contested assessments.

### ***The question of justice***

The question of justice has dominated discussions, especially those of legal scholars. For many, the proper response to a criminal act is to follow the due process of law, to render verdicts and to punish criminals. Conventionally, justice is understood as that which is meted out by a court of law: if the accused is found guilty of an offence in accordance with appropriate procedures, the court has to determine and mete out punishment proportional to the offence. Some have argued that after its 1994 political transition, South Africa should have pursued criminal justice not only because doing justice has an intrinsic worth but also because the enactment by the courts of the rituals of criminal justice would have educated society in the practices of the rule of law; and the process would thereby have contributed to creating a stable democracy (Dyzenhaus 2000:470–496). Borraine and Villa-Vicencio, however, contest this position maintaining that justice is not about assigning rewards and punishments but rather about seeking to do that which is right given the circumstances.<sup>3</sup> In this case, the South African TRC is seen to have neither sacrificed nor compromised justice. Instead, justice was achieved, not through the punishment required by retributive systems but through the practice of a different model, that of restorative justice. South Africa is therefore said to have moved away from retributive justice to what is regarded as restorative justice which, according to Alex Borraine and Charles Villa-Vicencio, is much wider and richer. Restorative justice essentially

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responds to past conflict and human rights abuse by seeking not only to repair the harm caused by criminal acts but also to restore balance in a community affected by crime or conflict through acts such as reparations, memorialisation and counselling.

In restorative justice, offenders are given a chance to acknowledge the impact of their deeds and victims have the opportunity to have their harm or loss acknowledged and to receive some form of amends through measures such as reparations. The South African TRC avoided criminal prosecutions except in cases where the crime fell outside the conditions for the provision of amnesty. The form of justice pursued was balanced between moral, political and emotional considerations.

Advocates of the TRC approach argue that the fragility of the transitional government in South Africa necessitated a precarious balance between retribution and amnesty lest perpetrators of past crimes united out of fear of punishment and sabotaged the new government's social renewal and reconstruction process. The choice of the South African TRC to focus on victims and efforts to restore their dignity through truth-telling processes and reparations is seen as a feat in redefining justice and accountability. Proponents such as Archbishop Desmond Tutu declare that it sought to repair, not to revenge; it sought reconciliation, not recrimination. In an interview with André Du Toit, Archbishop Tutu said that understanding the relevant philosophical dimensions of justice in a given society calls for a clear understanding of that particular society's context and that South Africa required the restorative form of justice that the commission pursued.<sup>4</sup> Proponents of retributive

justice, however, argue that the South African TRC sacrificed justice for a spurious reconciliation and for political expediency. They condemn the TRC for short-changing mechanisms established by most societies to right wrongs by punishing wrongdoers and for thereby sacrificing justice as a goal for the sake of the country's future. Consequently, the manifest tensions between the poles of retributive and restorative justice affect the assessment of the TRC's achievements, depending on one's position. Those perceiving justice as retribution argue, for instance, that the TRC process failed to promote justice while those supporting justice as a restorative may contend that it succeeded to some extent.

### ***Debates on reconciliation***

The South African TRC declared through a banner at its public sittings that truth was the road that would promote the course of national unity and reconciliation.

The TRC did not, however, from the outset clearly define the kind of reconciliation it sought to promote. The question whether the TRC promoted or delivered reconciliation becomes ambiguous unless one understands what *reconciliation* means. *Reconciliation* has remained a multifaceted and contested term. Some define it simply as *coexistence* (Villa-Vicencio 1998:207); others see it as the need for respect (Gutmann & Thompson 2000:108; Osiel 1997); and yet others understand *reconciliation* to mean mutual forgiveness (Shriver 1995).

Various authors have advanced variations of reconciliation. Kriesberg (1998:184–85) proposes four aspects of reconciliation: truth telling that leads to an understanding of one another's interpretation of events; gaining redress as a means of putting the past to rest; forgiveness on the part of victims; and expectations of peaceful coexistence. Borer (2004) delineates two models of reconciliation from the South African TRC: interpersonal or individual reconciliation, and national unity and reconciliation. According to the author, by pursuing individual/interpersonal reconciliation, the TRC sought to promote the restoration of relationships between the victims and the perpetrators of gross human rights violations. According to this interpretation, reconciliation happens to individuals, usually between two people, but sometimes with oneself. Govier and Verwoerd (2002:185) share this position on individual reconciliation and observe that ideally in this model, a perpetrator comes forward, expresses remorse for his/her actions and apologises for them. The victim accepts this apology and forgives the perpetrator. This model focuses on the need to restore relationship between victims and perpetrators, and in the case of the South African TRC, the assumption is that restoration is promoted through the use of therapeutic language. Examples cited of this type of reconciliation include victims' reporting being literally healed by the process of story telling before the TRC. In an illustrative case one victim came forward and said, 'I feel that what has been making me sick all the time is the fact that I couldn't tell my story. But now it feels like I got my sight back by coming here and telling you the story' (TRC:5.352). However, the extent to which this individual-reconciliation approach can be applied to other victims is contentious. The extent to which Nason Ndandwe, for instance, will recover from the death of his daughter is unclear: He learned through the TRC's hearings how his daughter Phila died alone, 'naked, tortured, holding a plastic bag around her genitals' (Human Rights Violations Committee, 2003:550-569). Furthermore, whether Charity Kondile will simply move on is uncertain: her son Sizwe's body was barbecued (Human Rights Violations Committee, 2003:550-569). Knowing what

### The TRC gave mixed messages to the public about its own understanding of reconciliation

happened could possibly lead to further tragedy. While defining *reconciliation* as acknowledgement and forgiveness is conceivable at a personal level, promoting this form of reconciliation to a societal level is problematical.

The TRC's promotion of National Unity and Reconciliation was intended to lead to the establishment of a democratic nation whose members coexist peacefully. According to Borer (2004), this approach to reconciliation, unlike the individual/personal one, assumes that former enemies are unlikely to agree with each other on all issues. 'The best that can be hoped for therefore is to enhance peaceful coexistence.' For James Gibson (2001:12), one important aspect of national unity and reconciliation is the development of a political culture that is respectful of the human rights of all people. The language of the national unity and reconciliation approach is prevalent in the TRC report, which uses phrases such as the following:

At the heart of a democratic culture is a tolerance of divergent views and understandings of the past, present, and future. ... National unity and reconciliation is a society with its members relaxed, a nation democratically at peace with itself. (Republic of South Africa, 2003: 412)

Whether the TRC achieved or contributed to this form of reconciliation remains contested. Although more interaction exists today than in the apartheid era at various levels in South Africa, apparent structural divisions still remain. In any case, it is contestable whether any positive relations between previously conflicting groups in the country are attributable to the TRC or to other external factors, such as the broad democratisation process.

The TRC gave mixed messages to the public about its own understanding of reconciliation. Archbishop Desmond Tutu, the commission's chairperson, often invoked the individual reconciliation model, emphasising perpetrators' apologising and victims' forgiving them. For instance, in the foreword to the commission's final report, he writes, 'The key concepts of confession, forgiveness and reconciliation are central to the message of this report' (Republic of South Africa, 2003:48). However, the framers of both the Promotion of National Unity and the Reconciliation Act clearly envisaged a form of reconciliation that closely resembled that of the national reconciliation model. The Promotion of National Unity and the Reconciliation Act does not lay out an expectation of individual apologies or acts of forgiveness. The influence of and the symbolism embodied in Archbishop Tutu seem to have (un)intentionally fostered an expectation that

an individual sense of reconciliation could result from the TRC, with accompanying notions of apology and forgiveness. This belief becomes apparent in the TRC report itself. Chapter 9 of Volume 5 emphasises the individual model of reconciliation. The introduction states that the aim of the relevant chapter is to

... underline the vital importance of the multi-layered healing of human relationships in post-apartheid South Africa: relationships of individuals with themselves; relationships between victims; relationships between survivors and perpetrators; relationships within families; between neighbours. (Republic of South Africa, 2003:350–51)

In contrast, however, the framers of the Promotion of National Unity and the Reconciliation Act seem to have had in mind an understanding of the TRC's potential contributions to national unity that relied not on an individual sense of reconciliation but on a national one (national unity and reconciliation). In the course of the actual TRC process, little attempt was made to define *reconciliation* besides stating that the commission sought to promote national unity and reconciliation. Borer (2004) comments that the lack of clarity about reconciliation hampered the commission's work and affected the way it has been judged. In the author's view, the TRC was empowered to contribute primarily to national unity and reconciliation, but the popular expectation was for the TRC to foster interpersonal or individual reconciliation. Consequently, the assumed meaning of *reconciliation* gives rise to different opinions about the TRC's success or failure in promoting reconciliation. Those who link the success of the TRC to the reconciliation process are likely to differ according to their interpretation of the term. Silverman (2004:19), however, observes that there is nothing wrong with multidimensional or multilayered conceptualisations of reconciliation. To him, reconciliation, like most other concepts, is 'multifaceted in its nature and the important thing is to navigate between the multiple understandings of reconciliation in such a way as to maintain conceptual intelligibility.' However, true or perfect reconciliation in whatever dimension or form is certainly an elusive goal that may never be achieved. For Albert Sachs, 'to think of people hugging each other, saying, it is all over, let's march together into the sunset' is a banal notion of reconciliation that entails trivialising the degree of the trauma, the pain and the damage that was done ('The Search for Reconciliation' 2006).

During its process, the TRC did not define these terms clearly and did not indicate whose understanding was significant in assessing the commission's work.

Clearly, whether or not the TRC achieved justice, truth and reconciliation can only be determined if one understands the sense in which these words are being used.

### The victim–perpetrator dichotomy

The definitions of *victim* and *perpetrator* have conventionally appeared to be straightforward. A perpetrator has been seen as a person who commits an act that is held to be beyond legal or moral principle and who can be judged as guilty of that offence or crime (Forster et al: 2005). In terms of the relatively narrow brief of the TRC Amnesty Provisions, a perpetrator is an individual who committed an 'act, omission or offence' that amounts to a gross violation of human rights, in turn defined in the act as killing, abduction, torture or severe ill treatment (Republic of South Africa, Office of the President, 1995).

The term *victim*, however, was defined by the TRC Act of 1995 as a person who '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 a gross violation of human rights'. A victim of human rights abuse was therefore a person who had been subject to 'killing, abduction, torture or severe ill-treatment. The TRC limited the meaning of *severe ill-treatment* to the violation of 'bodily integrity' rights (Mamdani 2002:33–59), thus excluding, for example, the victims of the policies of forced removal, deliberate inferior education, pass laws and other apartheid policies that enforced systematic racial discrimination and oppression.

When one considers the victim–perpetrator dichotomy, many grey areas are evident. The first relates to the question whether victims may also be perpetrators. Alex Boraine (2000) grants that in the final analysis, Winnie Madikizela-Mandela was both a victim and a perpetrator because of the TRC's evidence of her involvement in cases of murder and torture in the course her opposition to the apartheid system. Other examples of individuals whose acts did not fit into the simple collective categorisation of victims and perpetrators are the *askaris*, former liberation movement operatives who were later recruited by the apartheid security forces, who subsequently committed violations against their own people and former comrades. At the wider reaches of the debate, someone like Letlapa Mphahlele could be considered both a victim and a perpetrator. He was an Azanian People's Liberation Army (APLA) commander (1990–1994) and was the overall commander in the St James Church attack on 25 May 1993 in Kenilworth, Cape Town, where APLA operatives opened fire killing

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11 congregants and injuring 58. He objects to what he perceives as the TRC's adoption of a legal equivalence between gross human rights violations committed by liberation movements and those perpetrated by the apartheid government. He argues that the TRC thus criminalises the struggle against apartheid, which he equates to a 'lady hurting an assailant in defence against potential rape'.<sup>5</sup> For Mphahlele, the attacks on innocent civilians were intended to take the 'battle to the doorstep' of the apartheid system so that 'they could feel the pain of burying their loved ones too'. To him, those acts committed in the course of the freedom struggle could not be categorised as perpetrations of human rights abuse. Although Mphahlele was generally critical of the TRC, which he accused of having several flaws, he acknowledged its effort to reveal what actually happened. In principal, while the TRC Act of 1995 implies that the distinction between victims and perpetrators is alive and should be emphasised, in the South African context, and possibly in many other comparable situations, the dichotomy is far more complex and intricate than is generally assumed.

### The question of responsibility

When distinguishing between victims and perpetrators, one encounters the problem of assigning responsibility for past human rights abuses. In South Africa, the issue encompasses abundant ambiguities of collaboration and complicity in human rights abuse in the apartheid era, involving spies, those who crossed over and joined other parties and informers, and bureaucratic functionaries in a long chain of authority (Forster et al 2005). In South Africa, the lawmakers made the laws, the lawyers executed them, and they were assisted by institutions such as the security apparatus, thereby creating a normative structure that legitimised the human rights abuse. Arguably, in some cases individuals, such as those belonging to the security machinery, did not have absolute free will in deciding whether or not to engage in human rights abuse because their roles were carved out by the apartheid ideology and the administrative-executive system that protected and directed them to commit crimes in defence of racialised privileges.

In the TRC process, individuals had difficulty accepting responsibility. Accepting responsibility for past crimes was not in the interest of alleged perpetrators, even if they were protected from prosecutions by an amnesty agreement. Doing so would challenge their standing and potential roles in the new political order, as well as their self-regard. Even in ordinary life, those who have committed crimes tend to be defensive; in the case of South Africa, leaders such as PW Botha and FW De Klerk claimed that they had not even

been aware of the human rights abuses occurring during their rule. In criminal justice systems, one problem with dealing with individuals who have committed crimes under the explicit or implicit orders of governments is that the law focuses strictly on the question of individual responsibility and on particular individual crimes rather than on the structure or nature of the system.

In the case of the TRC, however, the relevant act defined *responsibility* as including those who gave orders or commands, those who created a climate to incite acts and those who failed to prevent acts that constituted gross violations of human rights (Republic of South Africa, Office of the President 1995). The act opened up the possibility of linking command and leadership structures to acts of human rights abuse. However, the question arises where to assign responsibility: to foot soldiers who commit the deeds or to the leaders who authorise both policies and the overall climate for violence? A middle way would perhaps be to assign responsibility across the board. Regrettably, despite the wider definition, the TRC did not sufficiently pin accountability on the proper echelons, not least because of procedural requirements of individual applications for amnesty (Forster et al 2005). If an individual did not admit liability for a particular act of violation, the amnesty application was rejected. In many ways the TRC was heavily shaped by the simple differentiation between *victim* and *perpetrator* associated with unambiguous judgements of right or wrong. This problem permitted only a restricted view of those responsible. The TRC therefore failed to deal adequately with the creators of the doctrines, ideas, plans and policies that led to racial discrimination and conflict. It should,

however, be noted that if South Africa were to prosecute every person who had committed gross violations of human rights during the apartheid era, its courts would have remained busy for decades. Complicated defences about obedience to orders from senior officials would be raised, rendering the process of establishing culpability across the various levels of society complex and difficult.

The quasi-judicial nature of the amnesty process of the TRC focused on facts pertaining to incidents and excluded a deeper examination of psychological dimensions, structural arrangements and political history, thereby contributing to the TRC's failure to explain and account for the motives and perspectives of those responsible for past violations, as laid down in the TRC Act. The TRC generally avoided dealing with the social structures and processes of the apartheid system. Poverty and social deprivation among black communities primarily contributed to the outbreak of

### The quasi-judicial nature of the amnesty process focused on facts pertaining to incidents and excluded a deeper examination

revenge, violence and human rights abuse. The TRC's emphasis on assigning responsibility to the individuals who had committed certain forms of human rights violations meant that only those directly involved in the said crimes bore the burden of responsibility while the wider system that provided incentives and justification did not receive the necessary attention. Therefore, while the TRC made a considerable effort to consolidate a common condemnation of the individual atrocities of apartheid, it did considerably less to expose the evil inherent in the system.

### **The working of the Truth and Reconciliation Commission**

Certain people strongly opposed the establishment of the TRC; they feared that an investigation of the past by the holding of public hearings could stir up hostilities and resentments that would eventually impede rather than promote reconciliation. Others, such as the family of the late Steve Biko, challenged the constitutionality of the amnesty provision because they wanted perpetrators of past human rights violations to be prosecuted. The legal challenge was, however, rejected by the Constitutional Court (Lipton 1998). Concerns were raised that the TRC's narrow and legalistic terms of reference would result in a limited focus on a small group of victims and perpetrators of gross human rights abuses such as torture and murder and would ignore the large group of victims and beneficiaries of the apartheid system. The domination of the TRC by commissioners sympathetic to the ANC caused the party's political rivals, especially those in the NP and the Inkatha Freedom Party (IFP), to fear that the hearings would turn into a witch hunt sanctioning the position of the ANC. The white Right dismissed the TRC process as a political witch hunt (Fullard, M 2004, Theissen, G 1998) that accepted untested allegations and was out to discredit Afrikaners. Both the NP and the IFP had argued that the TRC favoured the ANC, and these suspicions gained ground when a blanket amnesty was offered to the ANC leadership even though amnesty applications were supposed to be done on an individual basis. In an editorial, *The Economist* (1998) argued that evidence of preferential treatment was apparent in the treatment of Botha and Winnie Madikizela-Mandela. It queried why Mangosuthu Buthelezi and the IFP were not forced to come forward, given the connection between the IFP and the apartheid regime in fomenting township violence. Implicit in *The Economist's* editorial was the argument that the TRC was designed to pursue only whites from the former regime.

Nonetheless, South Africa's TRC arguably remains the most prominent truth commission so far. While it was

hoped that the TRC would help the citizens of South Africa to be reconciled, the TRC failed to provide conceptual clarity on its perception of reconciliation, despite its popularising the term. Consequently, people finally referred to the TRC's leading to reconciliation when they were actually using the same term to denote different acts. Although the TRC's task was not officially framed in religious terms, the dominant role of Chairman Archbishop Tutu meant that his theological view of reconciliation often came out strongly. In fact, Archbishop Tutu is said to have compelled imposed his own brand of forgiveness to those not entitled to forgive. Alex Boraine, vice chairperson of the TRC, says he often requested Archbishop Desmond Tutu not to ask individuals who appeared before the TRC to forgive as if in a Christian gathering and said that Tutu would lightly respond, saying the President had appointed him knowing full well that he (Tutu) was an Archbishop.<sup>6</sup> Indeed, the phenomenon of forgiving in the course of the TRC process was largely instigated by the religious.

The TRC's hearings had a significant impact on public opinion, shocking scores of individuals, some of whom had not previously considered or believed that agents of the apartheid system had inflicted extreme violations of human rights, including torture and murder, on many South Africans. Nonetheless, even after the TRC, some still denied that they had known what was happening. This number included former President FW de Klerk, who testified that while his government had authorised unconventional methods against its opponents, these did not include aberrations such as murder and torture and that these acts had been committed because of 'bad judgment, over zealotness and negligence of

individual state agents. Former President PW Botha represented the unrepentant wing by insisting that he had nothing to apologise for and in fact refused to testify before the TRC' (Krog 1998:105–6, 267).

According to the epilogue of the Interim Constitution (Republic of South Africa 1994), the quest for restorative justice in South Africa was fortified by the constitutional commitment to the 'need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation'. Similarly, the TRC declared in its final report that it was a restorative mechanism of accountability that was victim-centred (Republic of South Africa: 2003: 126). Advocates of restorative justice believe that it benefits victims of crime more than the traditional criminal justice system does. Victims are asserted to have greater involvement in a restorative justice, and the process is generally believed to be better for victims psychologically, socially and financially.<sup>7</sup> According

While the TRC made an effort to consolidate a common condemnation of individual atrocities, it did less to expose the evil inherent in the system

to the TRC report, restorative justice seeks to redefine crime by shifting the primary focus of crime from the breaking of laws or offences against a faceless state to a perception of crime as violations against human beings. Restorative justice is based on reparation with the aim of healing and restoring victims, offenders, their families and the larger community. It seeks to encourage victims, offenders and the community to be directly involved in resolving conflict, together with the state. Restorative justice is therefore seen to have supported a criminal justice system that aimed at offender accountability and full participation by both the victims and the offenders with the aim of making good or putting right what was made wrong by the apartheid system.

Law scholars and human rights activists often argue that one has a clear duty to prosecute gross violations of human rights under prevailing international norms. Of essence in a domestic context is the notion that prosecutions facilitate the development of the rule of law through the punishment of impunity. Despite the affirmative obligation on states to investigate and prosecute gross human rights abuse, which exists in international law, South Africa took the route to use discretion in the exercise of this obligation. This study establishes that in some cases in South Africa, a retributive understanding of justice is still as rife as that of restorative justice. In one case, Vusi, a student at the University of the Witwatersrand, told me that he greatly regretted Mandela's forgiving and reconciliatory approach. He said that it was his wish that 'all those behind the apartheid system would be sent to jail to rot'.<sup>8</sup>

The debate whether South Africa could have achieved democracy through negotiation without an amnesty agreement will undoubtedly continue to provoke competing responses. The central paradox of the TRC was that it introduced the language of accountability while at the same time contrasting it with the provision of amnesty, which to some constitutes insulating criminality.

### **Assessing the contribution of the Truth and Reconciliation Commission**

Borer (2004) has observed that most of the literature on the work of truth commissions has been plagued by two problems. The first is the aspiration for empiricism; the second consists of the constant reiterations of the causal claim that truth leads to reconciliation, to the degree that it has now taken on the status of a truism. She states that claims about the South African TRC are often presented as facts when, in reality, insufficient empirical work has been done to substantiate them. To Borer, when a statement such as 'Truth commissions

provide healing for victims' is repeated often enough over time, it takes on the quality of common wisdom, the evidence for which seems too obvious to mention. The problem, she says, is that in the absence of such evidence, people simply do not know if such 'statements of fact' are indeed true. She is supported by Priscilla Hayner (2001:6) who observes:

Unfortunately, many comfortable assumptions have been restated over and again in untested assertions by otherwise astute and careful writers, thinkers, and political leaders. ... Some of the most oft-repeated statements, and those that we perhaps most wish to be true, are due careful scrutiny.

In the course of the South African TRC process, one example of the continuous repetition of the causal claim was the slogan 'Truth the Road to Reconciliation.' It appeared on the banner at most of the truth commission's hearings in South Africa. In practice, it does not necessarily follow that the process of truth telling will lead to reconciliation. In

The central paradox of the TRC was that it introduced the language of accountability while at the same time contrasting it with the provision of amnesty

some cases the truth can be ghastly and unbearable to the point of driving the survivors to seek revenge: Chris Ribeiro, son of the murdered Florence and Fabian Ribeiro, objected to anyone's pushing reconciliation 'down his throat' while Marius Schoon, who lost his wife and daughter in a South African army raid into Botswana, complained about 'the imposition of a Christian morality of forgiveness on the TRC process' (Villa-Vicencio 1997:199–209). It is inaccurate to assume that the process of truth telling alone would lead to reconciliation, as implied by the TRC slogan. In interviews with ex-combatants from Gugulethu in Cape Town and Soweto in Johannesburg,

a constant theme was that total reconciliation will not be realised unless the government addresses questions of social injustice and economic inequality. A number of the interviewees expressed bitterness at the TRC process for allowing perpetrators to go and 'say before it what they want and walk scot-free while their victims continued to languish in poverty'.<sup>9</sup> One ex-combatant from Langa, Cape Town, observed that the facts he presented before the TRC as the truth were, in fact, not the actual truth but rather a version he had given to help his friend serving a prison term to receive amnesty.<sup>10</sup> He argued that while he knew what had happened during the apartheid era was important, the government's addressing the effects and miseries created by the apartheid system was, to him, more valuable. Priscilla Hayner (2001:30) states, 'The goal of reconciliation has been so closely associated with some past truth commissions that many casual observers assume that reconciliation is an integral, or even a primary purpose of creating a truth commission, which



is not always true.' Brandon Hamber (1997) observes that truth alone does not always lead to reconciliation. Some victims, he says, may be satisfied by knowing the facts, particularly in the case of relatives who had disappeared, but for others truth may heighten anger and call for justice rather than lead to feelings of reconciliation. Truth commissions might exacerbate anger and pain. Thus there is a constant threat of a perpetuated cycle of revenge. Therefore, statements such as 'Truth leads to reconciliation' are sometimes presented as facts because people so badly wish them to be true, and these expressions consequently tend to have a wishful-thinking and declaratory quality to them (Borer 2004). In other words, aspirations are often taken for empirical facts.

Little empirical study has been done to ascertain whether truth commissions secure the benefits of healing, catharsis, disclosure of truth and national reconciliation as conventionally assumed. Jonathan Allen (1999:316-317) argues that it is problematic to confuse aspiration with predictions, to justify truth commissions by means of what amounts to 'wishful thinking (or at least, not very thoughtful wishing)'. According to the author, some of the claims concerning the tasks of truth commissions are eventually better understood as moral claims than as empirical statements. In South Africa, individual victims reported experiencing feelings of catharsis. There are also, however, those who indicated feelings of anger and frustration because of the TRC processes. Given this mixed evidence, it may be inappropriate to make general assertions about the facility of truth commissions to obtain the alleged benefits. Real risk is involved in moving too quickly from an individual's process to that of the collective. The catharsis process at the individual level is not necessarily most important at the collective level. The process therefore has multiple dimensions. Assertions about what truth commissions can or cannot achieve are therefore too often unsubstantiated assumptions that need to be qualified with empirical studies.

Assessing the contributions of the South African TRC, particularly its success or lack thereof, presents particular problems. The primary challenge relates to the criteria to be applied in determining the issue of 'success'. Among the TRC's objectives were to promote reconciliation and to help foster a human rights culture and the rule of law. Methods of assessing the level of reconciliation or of fostering a human rights culture and the rule of law in South Africa are problematic. By definition, most of these goals are intangible and difficult to measure. In fact, terms such as *reconciliation* have multiple meanings and judging if the TRC was able to realise the multiple facets of

the reconciliation process is complex. As no baseline studies were done at the beginning of the TRC process to determine the level of achievements such as reconciliation, human rights culture and national unity, attributing any accomplishment in South Africa to the TRC process may be difficult today. Moreover, the TRC operated during a key period of political transition and it is difficult to distinguish between the contribution of the TRC to achieve its set goals and the influence other external factors such as political transition. Various variables operated mutually, and one may argue that the very course of democratisation could have been as important as any other factor in the process of bringing about national unity and reconciliation. The TRC may essentially be seen as one of several measures that were put in place to collectively help the process of social reconstruction in South Africa rather than the only or most crucial factor. Assessing the actual impact of the TRC is bound to remain problematic. It calls for more empirical data about the various causal assumptions often presented by civil societies and leaders in other countries that have expressed interest in the South African TRC approach.<sup>11</sup>

Little empirical study has been done to ascertain whether truth commissions secure benefits of healing, as conventionally assumed

### Ten years later: The unfinished business

Ten years after the establishment of the TRC, a number of uncomfortable issues still remain in South Africa. Accusations and denials of past responsibility continue to dominate public debate and are evident in matters such as the symbolic renaming of geographic locations and graffiti on buildings.<sup>12</sup> The country continues to struggle with the legacy of apartheid and many of the structural inequalities are still in place. Although the overt hostility and human rights violations have subsided, South

Africa cannot be said to be enjoying social cohesion or a shared identity. In a number of conversations with young people from previously disadvantaged groups at the University of the Witwatersrand, annoyance and exasperation with their white counterparts' role in the past oppressive rule became evident.<sup>13</sup> Mamphela Ramphele observes that South Africans should not be surprised at the anger and brutality sweeping the streets when they continue to refuse to acknowledge the socio-economic inequalities in the country (Maclennan 2006). She observes that the drafters of the TRC's terms of reference were timid when they limited its mandate to crimes against humanity defined solely in political terms.

Excluding crimes perpetrated in socio-economic terms in South Africa had been a great mistake, because the majority of the people in the country continue to bleed. Their wounds were unrecognised, and their pain was totally

unacknowledged. These people, who were materially poor, but spiritually rich, had given so much to the TRC process and we can't even say thank you by providing dignified reparations.

Speaking at the conference titled *Truth and Reconciliation Commission Conference: Ten Years* to mark the 10th anniversary of the first sitting of the TRC, Maria Ntuli of Mamelodi, whose son Jeremiah was one of a group of 10 would-be exiles kidnapped and killed by apartheid security police in 1986, called for the TRC to be brought back to life (Maclennan.2006) She begged the former chairperson of the body, Archbishop Desmond Tutu, to 'Please reopen the TRC, because there are still some people outside who haven't been in the TRC. Some of them, even now they do not know what happened to their beloved ones'

Gibson and Gouws (1999:501–517) argue that only those who received amnesty were happy with the TRC. Currently in South Africa, one encounters little dialogue across the racial divide on thorny questions such as the prevalence of racism in many of the South African institutions. A national survey conducted by the Institute for Justice and Reconciliation in 2000 found that one in five whites would rather go back to the apartheid system than live in the new South Africa (Institute for Justice and Reconciliation 2000). Fanie du Toit (2003:11) describes the pattern of interaction amongst South Africans as one of 'daytime integration and nocturnal withdrawal'. Relations across racial lines seem not to have changed fundamentally other than among a small elite of economically empowered individuals from previously disadvantaged groups (Kaiser Family Foundation 2004).

As for the TRC and its work, some South Africans continue to believe that it was not balanced and did not promote reconciliation. Owing largely to the example set by political leaders,<sup>14</sup> sections of the South African population have not felt the need to engage with the TRC process or support its objectives. Many white right-wingers and IFP supporters have continued to regard the TRC as a partisan body that represented the interests of the ANC and whose aim it was to discredit its enemies. Dave Steward, spokesperson of the FW de Klerk Foundation, says many former members of the security forces did not apply for amnesty because they feared they would not receive a fair hearing and would not be afforded the full spectrum of rights they would enjoy in a court of law (Jolly, 1999). FW de Klerk, who had served as President from 1989 to 1994, argues that although the apartheid rule remains morally indefensible, it would

be appropriate for black South Africans to give more recognition to the contribution whites have made to the new South Africa. He observes that 'it required considerable courage ... to overcome their reasonable fears and put their trust in their erstwhile enemies' (Biles 2006b). The TRC is accused of, among others, not investigating violations by members of the liberation movements with the same zeal as those committed by the security forces and of not giving a hearing to the indirect victims of apartheid. Archbishop Desmond Tutu, however, observes that the white community has failed to respond to the enormous generosity of the black community (Biles 2006b).

One major frustration with the South African TRC was the chasm between its mandate to develop detailed recommendations directed at all sectors with respect to major societal reforms that were to be undertaken, together with the recommendations that it developed on reparations, and their non-implementation by the government. Tutu expresses disappointment at the lack of generosity the government has shown toward victims of apartheid era crimes and observes that in retrospect, he thinks the TRC should have refused to operate in the way it did; it should have budgeted for reparations that would have allowed it to make awards with the same immediacy that amnesty was granted to perpetrators ('Tutu Voices Fears over Apartheid Prosecutions' 2006). The reaction of the Mbeki government to the TRC's findings has remained lukewarm, and the body shows little desire to engage meaningfully with the TRC's recommendations. On the issue of reparations, for instance, Mbeki's government has continued to insist that the struggle was not for monetary gain (Centre for the Study of Violence and Reconciliation 2001). In late 2005, the

### The TRC is accused of not investigating violations by members of the liberation movements with the same zeal as those committed by the security forces

National Prosecuting Authority released a policy to guide it on the prosecution of perpetrators who had not been granted amnesty during the TRC process. However, there was concern whether prosecutions would actually be pursued and evidence would be uncovered that would prove beyond reasonable doubt that suspects had committed particular crimes. Archbishop Tutu expressed reservations about the extent to which the prosecutions would be successful given the small amount of evidence that is likely to be adduced. He says

... I have to say, I have my doubts. I mean these guys were very adept at hiding evidence, incriminating evidence. And you've got all of these years that have gone ... [T]here's a lot of documentation that disappeared. I worry that we ... could quite easily set ourselves up where you have cases that go on for a long time, that evoke all kinds of emotion, then the people are

acquitted. ('Tutu Voices Fears over Apartheid Prosecutions' 2006)

For Tutu, failure to realise successful prosecution may cause trauma to victims who would see most of the suspects walking free. The South African government has since pursued one of the cases involving former Security Minister Adriaan Vlok and five associates in connection with an alleged 1989 plot to murder a former church leader. The trial ended in a suspended jail sentence and has been dismissed by some as a charade and a public relations exercise that did nothing to build the faith of ordinary South Africans in the justice system (Khulumani Support Group 2007). Yasmin Sooka, a former TRC member, observes that dealing with the past in South Africa has focused on foot soldiers rather than on important, powerful persons and that politicians have generally suffered no ill consequences (Institute for Justice and Reconciliation 2006). The National Prosecuting Authority deputy director, Torie Pretorius, concurs in part with Tutu and says prosecutions depend on evidence which, in turn, requires good investigators, and South Africa does not have any ('Tutu Voices Fears over Apartheid Prosecutions' 2006).

Despite the disconcerting views about South Africa's TRC, various people interviewed for this study observed that the commission was useful to South Africa. In interviews with individuals in Soweto, at the University of the Witwatersrand in Johannesburg and in Langa and Khayelitsha in Cape Town, black South Africans in particular observed that the work of the TRC was useful but not enough. This position was shared by a certain taxi driver who said that although he appreciated the work of the TRC in revealing the 'bad things' of the past, he was disappointed because perpetrators of apartheid crimes were easily granted amnesty while their victims continued to suffer.<sup>15</sup> Dr Alex Boraine emphasises that one major contribution of the TRC was the public hearings that helped shed light on South Africa's past and on key controversial issues in the country's history.<sup>16</sup> Michael Ignatieff (1996) believes truth commissions do not reveal the complete truth but limit persisting permissible lies about the past. He states that truth commissions can provide a framework for public discourse and memory. Indeed, the TRC set in motion and facilitated a large-scale public debate on how to come to terms with South Africa's violent past. In the process, it brought together many voices that might otherwise not have been heard.

Ten years after the formation of the South African TRC, the commission can be credited for creating public space for debate. Facts such as the details of the 1992 Steyn report that was released in 1997 by the TRC

would not otherwise have been known. It revealed that long before he relinquished power, De Klerk had known about the training of a 'third force', a network of security and ex-security operatives acting with right-wing IFP elements to foment violence. The TRC conducted a special investigation into South Africa's Chemical and Biological Warfare Programme, which revealed that the programme under the leadership of Dr Wouter Basson and with the sponsorship of the military was responsible for numerous individual poisonings with toxins such as anthrax, paraoxon and botulism. The TRC conducted special hearings on South African institutions such as the media, businesses and legal bodies to determine the extent and nature of their complicity with apartheid. The TRC report vindicated apartheid as a crime against humanity and acknowledged that while the ANC and the Pan African Congress (PAC) had launched a just war, they had also been guilty of human rights abuse in the course of the liberation struggle. Parties, including the ANC and the NP, accused the commission of shortcomings by implicating them, but the TRC proponents see that as a strength and a sign of impartiality.

Although the TRC was flawed in many ways, it is the benchmark against which every other truth and reconciliation commission is measured

The TRC process and its report have emerged as an anecdote of moral wrongdoing. Archbishop Desmond Tutu observes that although the TRC was thoroughly flawed in many ways, it is today the benchmark against which every other truth and reconciliation commission in the world is measured ('Tutu Voices Fears over Apartheid Prosecutions' 2006). He adds that the TRC made the world see there are different ways of dealing with post-conflict situations and because of the TRC, other countries now believe that the South African TRC carried some kind of magic wand. Alex Boraine,

however, states that the TRC process will not be complete until all South Africans who benefited from apartheid confront the reality of the past, accept the uncomfortable truth of complicity, give practical expression of remorse and commit themselves to a way of life which accepts and offers the dignity of humanness (cited in Thelen 2002:8).

Broadly, ten years after the establishment of the South African TRC, opinions about its contribution to society remain mixed. The TRC was presented to the public as a necessary compromise for the democratic transition and can be credited with several contributions. It primarily played a significant role in producing new information and knowledge about previously hidden atrocities. The accounts that were presented before the TRC's hearings contributed toward discomfiting perpetrators of past human rights abuses, and this arguably helped to limit their continued influence. Charles Villa-Vicencio observes that because of the

exposure of extreme violations of human rights in the course of the TRC process, the likes of PW Botha decided to lead a quiet life.<sup>17</sup> The TRC vindicated apartheid as a moral wrong.

### **The South African Truth and Reconciliation Commission: Prospects for other countries**

The South African TRC is bound to continue drawing interest and remain a subject of research. Ultimately, though, even if the South African TRC were to play a useful role in aiding the social reconstruction process in other relevant contexts, a truth commission on its own clearly remains an insufficient framework; it needs to be complemented by other interventions that address structural challenges and economic development.

Nonetheless, it is disconcerting that a number of countries showing interest in borrowing the South African TRC model have done little research to establish the commission's actual contribution to the transformation process. The South African TRC may have been unique and anomalous with its provision for conditional amnesty and public hearings, but it sometimes inappropriately skews the views of many in distinctively different contexts in a way that needs to be reconsidered. The South African TRC can undoubtedly provide important lessons for other relevant contexts. Significant areas for improvement include the necessity to establish unique and country-specific frameworks, the need to inspire political will and operational independence, and the requisite to follow up and implement recommendations. A serious concern, however, is the tendency for countries to treat the South African TRC as the standard practice and a paradigm to be directly borrowed with little regard to the achievement or non-achievement of its stated goals and its effect on social transformation. Pre-designed or imported approaches, however well reasoned and packaged, will most likely not work in a different context because of unique and varying needs and circumstances.

### **The Truth and Reconciliation Commission approach as a panacea for peace building**

The South African TRC was caught up in a conflict between principle and pragmatism. It had to balance the need to repair the country's social fabric with questions of retributive criminal proceedings. It ended up accommodating a trade-off between the two. In societies undergoing transition, long-term peace, stability and development may well depend on the degree to which similar contradictions are resolved. Truth commissions are an increasingly common feature of countries undergoing political transition. Their

ascendancy has been premised on the assumption that conflict and human rights abuse leave scars on affected societies in the form of hatred, suspicion, ruined relationships and divided communities. Since the end of physical conflict or repressive rule does not eliminate the sources and effects of previous clashes and human rights abuse, truth commissions are seen as tools that can contribute constructively to the transformation of past conflicts into sustainable peace. In the case of South Africa, many institutions besides the TRC were set up to facilitate the transition. These included bodies such as the Land Claims Court and the Human Rights Commission, which were created to serve a similar purpose of transforming institutions that perpetuated conflict and human rights abuse during the apartheid era. However, the TRC provided a symbolic vision of a new society with new values (Lever & James 2000:198).

Peace building in transitional contexts ultimately calls for a number of complementary processes aimed at dealing with the effects of the past and reconstructing the socio-economic and political structures of society. It is a positive step that truth commissions are being constructed to contribute toward shaping societies emerging from periods of conflict and rights abuses. While one acknowledges their inherent limitations, truth commissions can plausibly be moulded into essential elements of peace building. A holistic approach to peace building means reconciling measures such as truth telling, reparations, criminal prosecutions, reform of state institutions, economic reconstruction and meaningful dialogue between various parties to deal relevantly with the multiple dimensions of a given society's transitional problems.

It is increasingly obvious that the real challenge for most countries emerging from political transition is to build a society that is truly participatory and that fulfils the basic needs of its people. If they are well structured and their recommendations are implemented, truth commissions can act as bridges toward that kind of society. They can constitute points of departure for a process of transformation that seeks to fulfil rather than to frustrate human needs. However, they are not enough in themselves: If structural inequalities continue to prevail, new fissures will be generated and will give rise to alienation and new forms of conflict. In South Africa, far-reaching challenges on structural inequalities have yet to be met. The lines of division that were severely exacerbated by the violent conflict of the past still exist, and new divisions have emerged or have been given a different profile. These divisions, particularly in relation to structural inequalities, can be fundamentally threatening if society does not envisage constructive ways of dealing with them.

A serious concern is the tendency for countries to treat the SA TRC as the standard practice and a paradigm to be directly borrowed

Peace building is not designed to eliminate conflict but merely to develop effective mechanisms by which a state can manage the inevitable rival claims, grievances and competition over socio-economic and political resources. Luc Reyckler (2001:3–5) observes that achieving sustainable peace requires at least two steps: knowing which tools are effective in the circumstances, and knowing how to devise and implement multi-tooled and place-specific strategies. Peace building is a process that is simultaneously dynamic, adaptive and changing. It is not an end state; it is an evolving process that continuously seeks to develop quality relationships to meet basic human needs and provide access to resources and decision making.

In conclusion, the South African TRC should be seen mainly as a useful tool and a building block rather than the end in itself. Ultimately, one needs to realise that any transitional justice measure will be incomplete and inescapably inadequate to promote sustainable peace. Moving beyond past atrocities and rebuilding affected societies are multi-dimensional processes that may take generations and different constitutive elements to realise. They requires both short- and long-term pragmatic political processes, as well as socio-economic developments that help to improve people's lives.

## Notes

- 1 Its primary goal was not to sanction and imprison perpetrators (retributive justice) but rather to reconcile a population, allowing perpetrators confess their faults and victims to forgive (restorative justice).
- 2 In my interaction with various people, especially at seminars and conferences on the African continent, I have found that the South African TRC is regarded highly and is considered the standard practice to be followed. Archbishop Tutu expressed similar views at the Conference on *Transforming Conflicts: Options for Reconciliation and Reconstruction* held from 10 to 14 October 2005 at the Monkey Valley Resort, Cape Town, and organised by the Institute of Justice and Reconciliation. He observed that on the many occasions he visited countries, he found that the South African TRC was regarded as the 'magic wand' that could be used to solve problems of past conflict and human rights abuse.
- 3 Discussion with Dr Alex Boraine, 22 August 2005, and Charles Villa-Vicencio, 15 August 2005, during a Transitional Justice Fellowship Programme, Cape Town, South Africa.
- 4 Discussion with Prof André Du Toit, 12 September 2005, Cape Town, South Africa, during a Transitional Justice Fellowship Programme.
- 5 Discussion on 26 August 2005 with Letlapa Mphahlele, Cape Town, South Africa, during a Transitional Justice Fellowship Programme.
- 6 Discussion with Alex Boraine during the Transitional

Justice Fellowship Programme, Cape Town, South Africa, 22 August 2005.

- 7 For a further explanation and critical analysis of these arguments, see Garkawe, S 1999. *Restorative justice from the perspective of crime victims*. Queensland University of Technology Law Journal, 15:40–56.
- 8 Interview with Vusi, a first-year student at the time at the University of the Witwatersrand, 6 June 2005.
- 9 Most of the ex-combatants interviewed were not in any form of formal employment. When asked about their views on reconciliation, most of them said they believed that reconciliation centred on bridging the divide between blacks and whites in South Africa. Others saw it as a process of repentance and forgiveness. The study could not conduct interviews with white individuals alleged to be perpetrators because they seemed apathetic and reluctant to participate.
- 10 Interview with an ex-combatant, Langa, Cape Town, August 2005.
- 11 A good case is Kenya, where civil society organisations have continuously called for the formation of a truth commission similar to that of South Africa. They believe that the South African TRC realised benefits such as truth and reconciliation, yet the agitators do not base their assumptions on any actual empirical data.
- 12 I once visited the washroom of a local university and found its walls covered in racial graffiti.
- 13 One young man told me that to him, 'taking away' a white person's property without his/her consent cannot be equated to stealing because he will just be 'taking back what was taken away from him'.
- 14 Former South African President PW Botha refused to answer the subpoena of the TRC and rejected a demand that he testify about his role in the perpetration of the human rights violations that constituted apartheid. The man known as *die Krokodil* (the Crocodile) is quoted saying 'I will not appear before the Truth Commission, I don't perform in circuses. I'm not a fool. I made many mistakes, but I ask God on my knees for the light to come. An Afrikaner doesn't go on his knees before people, he does it before God.' Quoted in Jolly, R 1999. *South Africa's Truth and Reconciliation Commission. Modernity and Their Discontents*, 98(2). Botha denied the legitimacy of the TRC's subpoenas on at least three occasions and eventually received a suspended sentence and a fine.
- 15 Interview with an ex-combatant, now a taxi driver in Johannesburg, 29 July 2005.
- 16 Discussion with Dr Alex Boraine, Cape Town, South Africa, 22 August 2005.
- 17 Discussion with Dr Charles Villa-Vicencio, Cape Town, South Africa, 15 August 2005.

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## About this paper

Truth commissions are increasingly regarded as essential instruments for peace building in societies undergoing political transition. While truth commissions can contribute meaningfully toward dealing with a legacy of past conflict and human rights abuse through their processes and recommendations, they remain insufficient instruments for guiding societies toward sustainable peace. The complexity of dealing with questions of past conflict and human rights in South Africa demonstrates the difficulties involved in transforming a society. Given the present social and structural inequalities and concerns in South Africa, the degree to which the South African Truth and Reconciliation Commission (TRC) has effected transformation and consolidated peace cannot yet be ascertained and, at best, the TRC may be described as part of a long and ongoing process.

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