

Restricted Reconciliation:
Limitations of the Truth and Reconciliation Commission
of South Africa

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Abstract

The transition between apartheid and democracy was a confusing and difficult time in South Africa. The Truth and Reconciliation Commission (TRC) was established in hopes of creating a “common history” among all South Africans by calling forth both victims and perpetrators to share their stories and truths. It was believed that by exposing the past, citizens would be reconciled and able to move forward into a brighter future. Although this process did uncover many previously unknown details and crimes, the TRC had a number of flaws that prohibited true reconciliation for South Africans. This thesis uses testimony and Commission reports to prove that the limited mandate of the Commission, the lack of participation by key political players and the inconsistency between the amnesty and reparation program hindered the TRC from achieving true reconciliation for South Africa. My research concludes first by exploring how South Africa has coped with the past after the TRC, followed by suggestions on how to improve a similar type commission in the future.

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Introduction

Racial and cultural tensions have existed throughout the history of every nation; South Africa is certainly no exception. Discrimination against the native South Africans had occurred informally throughout the colonial history of the British and Dutch empires. After South Africa gained independence from England in 1931, the National Party, which was composed mainly of white men of Dutch ancestry, constructed a system to further marginalize the indigenous peoples. This government policy of apartheid permitted the legal segregation and discrimination of black South Africans between 1948 and 1994. Blacks were stripped of their citizenship and forced to migrate into rural areas of the country where they were subjected to inadequate jobs, education, health care and other public services, often resulting in poverty. However, these apartheid policies did not go unopposed. Black resistance toward the government, more specifically the South African Police and Defense Forces (SADF), included movements ranging from peaceful protests and boycotts to violent riots and civil disobedience. The National Party (NP) government was quick to retaliate with arrests and police brutality. This internal struggle between the government and civilians quickly escalated into daily harassment, disappearances, crimes, and murders. Consequently, countless families were torn apart and often left with no explanations for their missing relatives and friends.

After nearly six decades of atrocities committed by and against the conflicting parties, democracy was finally established in 1994 with the election of Nelson Mandela, leader of the political resistance group called the African National Congress (ANC). With the majority of the South African population suffering, physically and/or mentally, from apartheid, this new democratic government was faced with a dark and segregated past. It

was decided that the best way for the country to proceed forward into a brighter, more accepting future was to establish a truth commission.

The Truth and Reconciliation Commission of South Africa (TRC) was established under the Promotion of National Unity and Reconciliation Act of 1995. The goals of the commission were to create a common history and promote reconciliation for all South Africans by asking for testimonies from victims and perpetrators who had been politically involved in or affected by apartheid within the years 1960 and 1990. The TRC was not a judicial court, meaning they could not prosecute for admitted crimes. However, they were allowed to grant amnesty for the full disclosure of facts and details about the involved crimes. The commission was also permitted to recommend reparations to the president in regards to victims who shared their testimonies. It was thought that by allowing the population to come forward to share personal stories the exposed truths could paint a fuller picture of the crimes and effects of apartheid. This proved to be an accurate theory, as almost 22,000 South Africans came forward to tell of their apartheid experiences, which resulted in many exposed truths, lies and concealed events. Despite the success stories, there were also key flaws in the commission that restricted true reconciliation: a limited mandate, a lack of participation by key political leaders, and an inconstancy between the amnesty and reparations conditions. This paper will argue that these limitations were detrimental to the progress of South Africa moving forward as a country with a “common history.” The following research will prove that the previously stated components of the TRC failed to provide true reconciliation for the entire South African population and as a result many are still struggling with the past.

The Truth and Reconciliation Commission sparked controversy from its very beginning. This can be attributed to the mass media coverage that was permitted within the courtroom. Extensive television coverage, in addition to the radio and newspaper reporting, covered every detail of the amnesty hearings and victims' testimonies. As a result, there has been much secondary literature written both criticizing and praising the commission and its findings.

There have been sources that have been most helpful in providing an assessment of the TRC. Lyn Graybill's *Truth and Reconciliation in South Africa: Miracle or Model?* evaluates the amnesty, storytelling and various perspectives of South Africa's truth commission. In the final chapter, Graybill assesses the overall findings and questions whether or not the TRC could be used as a model for other countries transitioning to democracy. This book was informational as it did not take a biased opinion but rather displayed the facts for readers to conclude their own theories about the commission, either "rejecting the TRC as an evil exercise... or seeing it as a miracle somehow unique to South Africa."¹ There are both positive and negative components of the TRC and Graybill masterfully reveals both sides.

A second important work used in this thesis was a compellation of essays entitled, *Truth and Reconciliation in South Africa: Did the TRC Deliver?* edited by Audrey R. Chapman and Hugo van der Merwe. The focus of this book is directed towards the experiences and treatment of the victims of apartheid. According to Chapman, Commission Chairperson Desmond Tutu over-emphasized forgiveness by the victims during the Human Rights Violations testimonies, stressing the need for personal

¹ Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?* (London: Lynne Rienner Publishers, Inc, 2002), xiii.

reconciliation.² However, there was no obligation or requirement for perpetrators to apologize or ask for forgiveness from the victims.³ Chapman also argued that in addition to this pressure, the TRC failed to provide sufficient counseling for victims after testimony was given.⁴ This source was invaluable for assessing the flaws of the commission and the perspectives of apartheid victims.

There are also a number of scholarly journal articles that contribute different perspectives on the Truth and Reconciliation Commission. “Evaluating the Truth and Reconciliation Commission” by Elizabeth Stanley provided a critical assessment of the TRC. Stanley argued that there could be little change in the South African society due to the “limited acknowledgement of the structural and institutional nature of apartheid.”⁵ She then elaborates on the issues of amnesty, placement of accountability, reparations and the current status of South Africa.

James Gibson’s article “Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa” summarizes research that has been done about different types of justice, how victims perceive the TRC, and the “importance of justice expectations for the South African transition.”⁶ According to Gibson, there are four types of justice: distributive, restorative, procedural, and retributive. The justice desired by most victims was distributive, or the providing of compensation and reparations. This was believed to counterbalance the amnesty provision. Restorative justice involved the

² Audrey Chapman, *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Philadelphia: University of Pennsylvania Press, 2008), 256.

³ Chapman, 68.

⁴ Chapman, 127.

⁵ Elizabeth Stanley, “Evaluating the Truth and Reconciliation Commission,” *The Journal of Modern African Studies* 39 (Sept. 2001): 530.

⁶ James L. Gibson, “Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa,” *American Journal of Political Science* 46 (July 2002): 541.

inclusion of an apology and the “restoration” of dignity to the victims. It also refers to the restoration of “evildoers” back into a community rather than punishing them. Procedural justice was achieved by including the victims in the healing process by allowing them to share their stories of pain and suffering. The final justice type, retributive, was the desire of punishment for the violators of crime. Many victims did not want perpetrators to be allowed the opportunity to be granted amnesty, but rather to be condemned for their acts. This article was helpful in understanding the types of justice that the victims were looking to receive, as well as their ideas about the commission and how well it had achieved that justice.

Numerous studies have been conducted in order to find victims perspectives on the procedure of the TRC as well as its outcomes. An organization that has done much research on the results of the Truth and Reconciliation Commission is the Center for the Study of Violence and Reconciliation (CSVr). The CSVr “works to prevent violence in all its forms, heal its effects, and build sustainable peace and reconciliation in South Africa and internationally.”⁷ It holds credibility internationally, thus rendering the information in its reports and studies invaluable. A report entitled, “Victims’ Perspectives about the Human Rights Violations Hearings,” completed in 2005 by Ruth Picker, was conducted collaboratively by the CSRV, the Khulumani Support Group and the KwaZulu Natal Program for Survivors of Violence (PSV). Since it was impossible to hear all of the recorded 21,216 statements by victims of human right violations, only those that were

⁷ Center for Violence and Reconciliation,
http://www.csvr.org.za/index.php?option=com_frontpage&Itemid=2

seen to “represent the broadest political spectrum” were asked to publically testify⁸. The result was a mere 8% of the total cases being publically heard. It was the focus of the Picker’s research to “explore the experience of the victims who testified” at the public hearings of the TRC.⁹ Although the report claims not to be entirely representative of all victims’ experiences, it did give great insight into the feelings of those who publically testified at the commission, as well as their later thoughts on the TRC.¹⁰

Beth Goldblatt and Sheila Meintjes have done many studies on the effects the Truth and Reconciliation Commission has had on women. This paper uses their article “Dealing with the Aftermath: Sexual Violence and the Truth and Reconciliation Commission” to attempt to understand the discrepancies between sexes in the TRC. It was argued that women were seen as “secondary victims rather than as primary agents in a struggle against injustice.”¹¹ Goldblatt and Meintjes explored why women were reluctant to share their personal abuse stories. These reasons included the shame that comes with public testimony on such a topic, the self-blame felt by many, or the political loyalty to their comrades. Reparations are also discussed in the article, particularly how seemingly little the TRC has been able to provide for these women. This research was helpful to this study due to its presentation of women’s views of the TRC and their position within the commission.

To support my arguments, this paper uses the five reports compiled by the Truth and Reconciliation Commission upon its completion. One component of the TRC

⁸ Ruth Picker, *Victims’ Perspectives about the Human Rights Violations Hearings* (South Africa: Center for the Study of Violence and Reconciliation, 2005), 2.

⁹ Picker, 1.

¹⁰ Picker, 4.

¹¹ Beth Goldblatt and Sheila Meintjes, “Dealing with the aftermath: sexual violence and the Truth and Reconciliation Commission,” *Agenda* 36 (1997): 8.

mandate required the commission to “prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal.”¹² These volumes were extremely useful in evaluating the struggles and successes of the commission. The first volume contains the historical context of the TRC, which includes the set up of the commission, its committees, the mandate and regional reports. Gross violations of human rights are described in volumes two and three. The fourth volume details the nature of the society in which these violations have occurred, as well as the “special hearings” of women, youth and military service. Volume five concludes with the overall findings and its recommendations to the president in regards to reparations and reconciliation. Additionally, newspaper articles found in *Mail and Guardian* have been consulted for evidence of public opinion of the TRC.

This paper is structured according to the previously stated arguments: the limited mandate, lack of participation by key political leaders as well as marginalized groups, and discrepancy between the amnesty and reparations provisions. The following research explains why each of these flaws hindered the TRC from achieving true reconciliation for South Africa by using evidence from both the primary and secondary sources stated above. The conclusion is an assessment of the commission, asserting what could have been done differently to ensure a more reconciled state.

¹² *The Truth and Reconciliation Commission of South Africa Report* (South Africa: Truth and Reconciliation Commission, 1998), 1:56.

Apartheid and Its Aftermath

Beginning in 1652, the Dutch were the first Europeans to settle South Africa. It did not take long before the land expansion of the foreigners soon began to push into the living space of the native Xhosa and Zulu peoples. This quickly turned to exploitation and harsh treatment of the South Africans by the Dutch, who were soon joined by Great Britain. By the time South Africa became a British colony in 1806, racial tensions between the natives and Europeans were strong but informal. The discovery of gold and diamonds in the late 18th century led to the further dissatisfaction of the native population, who had been forced to migrate north off their land. The struggle between the natives and British to control these resources caused further racial tensions. The native's push for independence led to the creation of the Union of South Africa in 1909, making it a dominion of the British Empire. This had opposite affects on the native people as it further marginalized their land and rights.

Complete independence from Great Britain was achieved in 1931. The newly installed government was comprised of the South Africa Party and National Party (NP). Both groups were exclusively comprised of white men of European descent whose primary objectives were to reconcile white relations in South Africa. The parties split eight years later and the National Party won control of the country in 1948. The NP sought to strengthen racial separation between whites and blacks in South Africa by imposing a new policy called apartheid. This policy split people into three racial groups: white, black and Indian. Each group received certain rights and limitations set by the NP. Blacks were not allowed to live, work or shop in the same places as white South Africans. They were forced to carry identification passbooks everywhere they went, even

from town to town. Forced migrations of blacks out of cities into the less opportune rural communities tore many families apart due to the rampant poverty that ensued due to lack of available resources.

It did not take long for the oppressed black community to start organizing alliances against the National Party government. Groups such as the Inkatha Freedom Party (IFP), which pledged to represent the native Zulu people, and the African National Congress (ANC), fighting for justice and equality, organized protests and used violence to retaliate against the government and its policies. Civilians were targeted with mass disappearances, torture and murder imposed by government forces, which were primarily composed of black Africans. Members of the IFP, ANC and other resistance groups then carried out similar retribution on the government agencies. Because both sides participated in committing atrocities against one another, both sides were perpetrators as well as victims.

As the 20th century drew to a close, the practice of apartheid began to deteriorate and decay. The international community condemned apartheid as a “crime against humanity,” and the South African economy began to struggle due to overwhelming poverty among its black citizens and international sanctions. Concerned over the rising number of black labor unions, global reproach and the mounting popularity of communism, the National Party leaders began to reduce the policies of apartheid, eventually compromising with the resistance leaders for a transition to democracy.

Nelson Mandela, leader of the ANC, was elected president in 1994 via the first democratic, non-racial elections in South Africa and after apartheid was officially dissolved. What remained was a country that had been ravaged by atrocities, poverty and

hatred. The new government was now faced with this horrendous past and searched for a solution in order to move forward as a whole. The struggle over apartheid had ended with a military stalemate between the NP and ANC. There was no “victor’s justice” with which to place blame, leaving the previous government and resistance groups each pointing fingers at the other.

A tribunal was suggested, establishing a makeshift court system with a limited time period and designed to only hear specific cases, much like the Nuremberg Trials after World War II and the International Criminal Tribunal for Rwanda after the Rwandan Genocide in 1994. However, unlike the Nuremberg Trials there was not a victorious party that could charge the other of horrendous crimes- both sides were guilty in the South African case. The resources required for a tribunal were too costly for the South African government at the time: the cost of employing qualified, international staff on short notice was financially unfeasible. The logistical assets needed for each criminal investigation proved to be an enormous monetary issue. Alternatively, the use of a traditional court system would have been impossible to function, as there was not a defeated party with which to charge in addition to the absence of required documentation and evidence needed to convict criminals. It was irrational to think that every person who had committed a crime during the six decades of apartheid could be convicted and put in jail.

A truth commission appeared to be the most viable option for the South African situation. Those who had committed crimes could come forward with their stories and be offered amnesty for their deeds. Victims who had been tortured or adversely affected during the period of apartheid could come forward to tell their stories and “restore their

dignity”¹³ with promises of various reparations. By calling forth the entire population, regardless of race, it was hoped that truths could be exposed and that this would provide the people of South Africa with a common history and unify them as a nation.

The Truth and Reconciliation Commission

To ensure a peaceful transition to democracy, terms of the new South African constitution had to be settled between the NP and ANC. The National Party government demanded that amnesty be granted to those who had been involved in the apartheid government, while the African National Congress wanted “justice” for the past suffering of the South African people. Negotiations led to the establishment of a truth commission with specific conditions that obviously accommodated the previous government.

The Truth and Reconciliation Commission of South Africa (TRC) was established under the Promotion of National Unity and Reconciliation Act in 1995. The objectives of the commission were to promote national unity and reconciliation by:

Establishing as complete a picture as possible of the crimes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date (1990), including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of violations, by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act.¹⁴

Given a limited time span of two years, the TRC undertook the enormous responsibility of searching for truths and attempting to provide reconciliation for the entire country. It was divided into three committees: Human Rights Violations (HRV), Amnesty (AC), and

¹³ *Truth and Reconciliation Commission of South Africa Report*, 1:28.

¹⁴ *Truth and Reconciliation Commission of South Africa Report*, 1:55.

Reparations and Rehabilitation (R&R). The HRV was charged with hearing statements from victims of human rights abuses and judging whether the violations were the “result of deliberate planning by the state or another other organization, group or individual.”¹⁵ There were 21,296 statements made to the HRV. Statements identified as human rights violations were then referred to the R&R. The Reparation and Rehabilitation Committee worked to “restore victims’ dignity” and to make recommendations to President Mandela in regards to “rehabilitation and healing of survivors, their families and communities at large.”¹⁶ The function of the Amnesty Committee was to “consider applications for amnesty... in accordance with the provisions of the Act.”¹⁷ The Act stated that amnesty would only be granted in return for full-disclosure of crimes committed with a political motive. There were 7,112 amnesty applications submitted to the TRC. Only 849 pardons were granted; others being rejected on the basis that crimes were not considered political or there were not enough facts associated with the disclosure. With Archbishop Desmond Tutu acting as Chairperson, these three commissions worked to expose truths for the future good of all South African citizens.

¹⁵ Department of Justice and Constitutional Development, “Truth and Reconciliation Commission,” <http://www.justice.gov.za/trc/trccom.html>, (accessed October 27, 2010).

¹⁶ Ibid.

¹⁷ Ibid.

Results of the Truth and Reconciliation Commission

1994 South Africa Population Blacks Whites Colored Asian	40,400,000 76.4% 12.6% 8.5% 2.5%
Human Right Violations Statements Number of Women Statements Number of Men Statements Unspecified Number of Victims Reported Men as Victims Women as Victims	21,296 11,271 9,310 715 28,750 56.1% 43.9%
Amnesty Requests Granted Refused	7,112 849 5,392

Source: U.S. Library of Congress and Truth and Reconciliation Commission Report

While the Truth and Reconciliation Commission was successful in uncovering thousands of truths about previously unknown events, it was also flawed in a number of its components. The negotiated mandate caused limitations as far as who was allowed to participate in the commission. By narrowing the involvement to persons who had suffered gross human rights violations committed with a political objective, much of the population that had been subjected to forced migration and impoverished living conditions were excluded from the commission. In regard to the amnesty provision, the TRC had decided to grant individual amnesty to those who could provide full disclosure

of politically motivated crimes, while nearly every other truth commission to date had provided blanket amnesty to its perpetrators.

It was believed that this would expose more truths, resulting in a more complete picture of the apartheid era. While this tactic did bring to light a vast amount of previously unknown knowledge, it placed complete blame on individuals rather than the political groups to which they belonged to and received orders from. There was no condition in the mandate that permitted the court to order known perpetrators to give testimony, it could only be requested. Consequently, many of the key political group leaders refused to participate in the commission.

This demonstration of political insolence proved to the entire country that those in charge wanted little to do with the reconciliation of South Africa. The commission laments in its reports that these silences were detrimental to the overall findings of the TRC. The truth was also limited due to the selected silences of women, as well as the destruction of government records. As for the victims, reparations were merely “recommended” to the President upon the completion of the commission and its reports, and even then any sort of restitution was slow in coming. Although many hearts were healed through the commission it fell far short of true reconciliation.

Limited Mandate

The purpose of the commission was to gather as much information regarding the nature, circumstances and context of the crimes committed between 1960 and 1990. The commission was authorized to hold hearings to gather information by both victims and malefactors of the apartheid era. However, it was restricted to those who were victims of

“gross violations of human rights” and to those who had acted with a “political objective.” The commission narrowly defined the “gross violations of human rights” as:

The violation of human rights through (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past... and which was advised, planned, directed, commanded or ordered, by any person acting with a political motive.¹⁸

The commission further defined “ill treatment” as the “acts or omissions that deliberately and directly inflict severe mental or physical suffering on a victim.”¹⁹ Using these criteria to determine individuals as victims meant the exclusion of a large portion of the population that had been subjected to forced migrations, daily discrimination and segregation, inadequate living styles, and who were emotionally and psychologically impacted by the apartheid policies.

A political motive in this sense was considered: “any member or supporter of a publically known political organization or liberation movement on behalf of or in support of such organization or movement... against the state or any former state or another publicly known political organization or liberation movement.”²⁰ In other words, a political motive had to be carried out by a person who was the member of a known political group, acting on behalf of that group against another known political entity. An individual abused by someone acting without political motivation was not considered to have been a victim of gross human rights violations, no matter how horrible the act.

Apartheid is nationally and internationally acknowledged as a crime against humanity. The commission thoroughly described and recognized this in its final reports.

¹⁸ *TRC Report*, 1: 60.

¹⁹ *TRC Report*, 1: 80.

²⁰ *TRC Report*, 1: 82.

However, the involuntary migrations of black South Africans, the mandatory passbooks and government-induced poverty were not considered political enough for the commission:

While taking these submissions very seriously, the Commission resolved that its mandate was to give attention to human rights violations committed as specific acts, resulting in severe physical and/or mental injury, in the course of the past political conflict. As such, the focus of its work was not on the effects of laws passed by the apartheid government, not on general policies of that government or of other organizations, however morally offensive these may have been.²¹

Because there was no physical harm done to these people forced to migrate and subjected to humiliation, they were excluded from participating in the TRC. The obvious bias towards the National Party can be seen by this act because those people could not share their grievances of the past government.

During the commission, institutions such as businesses, religious groups and other non-government organizations were asked to share their sides of the story. While many of these were beneficiaries of apartheid, they were not to blame for the previous government's policy of apartheid itself. However, the TRC often concentrated on the actions of the individual groups and businesses and their discrimination policies during apartheid, instead of blaming the NP for imposing such a policy. It could be argued that by "emphasizing activities that were previously unlawful, the commission is ironically erasing apartheid's distinctive horror: the legalized and systematic infliction on blacks of severe ill-treatment by a state and its (un) civilized society."²² This displaces the blame from the NP onto the individuals who ran businesses that upheld the government policies.

²¹ *TRC Report*, 5: 64.

²² Ronald Suresh Roberts, "Call big business to account," *Mail and Guardian*, May 1997.

The mandate of the TRC was flawed and obviously biased toward the former NP government. While focused on the political crimes, the commission ignored the non-political abuses that millions of South Africans experienced everyday for decades. By allowing the mandate to be limited, the TRC has limited reconciliation for the future.

Limited Truth

Participation by individuals in the Truth and Reconciliation Commission could be requested but it was not mandatory. Consequently, a handful of key political leaders either chose not participate the exposure of crimes committed under their authority or blatantly claimed ignorance. Frederik Willem de Klerk, president of the National Party and “engineer” of apartheid, publically declared his lack of knowledge about apartheid crimes: “things happened which were not authorized, not intended, or of which we were not aware... I have never condoned gross violations of human rights... and reject any insinuation that it was ever the policy of my party or government.”²³ Former Minister of Law and Order, Adriaan Vlok, also claimed to know nothing about the actions of the foot-soldiers:

There was a chain of command. There’s no way in which someone on the ground would phone me and say ‘look, we’ve done this.’ We at the top took certain decisions. We used certain terminology, not being aware that it would be misinterpreted. It was capable of misinterpretation.²⁴

This selective amnesia of the head policy leader illustrates that the preceding government was not ready to participate and take responsibility for the crimes against their people.

²³ *TRC Report*, 5: 264.

²⁴ Wally Mbhele, “The semantic battles of Adriaan Vlok,” *Mail and Guardian*, May 1997.

The South African Police and Defense Forces (SADF) was a major government group that refused participation in the commission. The SADF was the National Party's main force used to fight against the black resistance groups. The government gave these units authority to arrest "unruly" citizens and as a result disappearances, tortures and murders became common and unnoticed by the NP government. However, they were noticed by the TRC. The actions of this group were called into question by the commission during its investigations. Despite their efforts, there was little to be discovered since the SADF refused to admit participation in any crimes committed. In an attempt to redirect blame, the SADF claimed that:

The former SADF was politically neutral whilst your Commission is highly politicized... You really erred in your assumption, and the expectations you created in public, that the SADF was guilty of gross violations of human rights on a substantial scale.²⁵

Based on testimony and evidence found by the commission, the SADF were in fact responsible for violations on a "massive scale." Out of the 21,296 Human Rights Violations statements, 68% involved police brutality. Individuals were often arrested, assaulted, and tortured without evidence of involvement in accused activities.²⁶ Alfred Raymond Thabo Pieterse was just one of the thousands of cases involving the police.

In June 1978, Mr Alfred Raymond Thabo Pieterse of Young Christian Workers was detained by the Security Branch in Bloemfontein and taken to Adami House where he was questioned about the activities of his organizations and was tortured. He was later taken to a police station in Vredefort where he was again tortured. In December of the same year, Pieterse was detained again in Bloemfontein and tortured by means of electric shocks (Case KZN/PJM/032/FS).²⁷

²⁵TRC Report, 5: 198.

²⁶TRC Report, 3: 335.

²⁷TRC Report, 3: 341.

It was not only men of organizations that were targeted for violence. Innocent women and children were also direct victims of police attacks. Ben Kadafie Enkela was five years old when he was shot and injured by police in the yard of his home in Koffiefontein as the police were shooting at youth activists (Case KZN/JWR/078/FS).²⁸ The Commission received a number of statements regarding student protests. One case in particular was of the police shooting at Viljoenskroom, reported by Mr Moorosi Samuel Tsotsotso:

Students gathered for a march that started at the Thabang High School and headed for the Mhlabateng Primary School in the township... Students gathered peacefully and were ordered to disperse within five minutes. Before the time was up, a constable fired a shot into the air, causing the marchers to panic. The police then opened fire on the crowd, killing five youths and injuring many others. Mr. Tsotsotso sustained serious gunshot injuries in the incident (KZN/MAM/007/FS). The Commission received two reports of deaths sustained in this incident and two other reports of gunshot injuries.²⁹

It is obvious by the amount of statements and the vivid detail recorded that the South Africa Police and Defense forces played a substantial part in apartheid violence. Chairperson Tutu remarked that their statement of denial “reflected the enormous- perhaps unbridgeable- chasm between the perspectives of those who wielded power in the apartheid era and those who suffered at their hands.”³⁰ The contributions made by this group did little to help uncover past crimes and truths, a substantial hindrance toward the goal of reconciliation.

Portions of the white NP government were not the only groups that opposed involvement in the TRC. The Inkatha Freedom Party, pledging to represent the Zulu people and to fight to overthrow the apartheid government, used violence to retaliate

²⁸*TRC Report*, 3: 376.

²⁹*TRC Report*, 3: 376.

³⁰*TRC Report*, 5: 198.

against the white community as well as the black government forces. The unwillingness to contribute in the search for truth can be seen by the efforts this group made against the commission as the “high-ranking office bearers of the IFP visited the party’s members in prison to persuade them not to apply for amnesty, for fear that their applications would reveal collusion by senior IFP leaders in gross violations of human rights.”³¹ They feared that the exposure of crimes they had been involved in would ruin their reputation. However, it was more likely that they would have been pardoned for their past.

The silences of women in general had a very grave influence on the commission. There were a large number of women who gave testimonies at the hearings, but more often than not they kept silent about their own abuses, mainly just relaying the tragedies of their male relatives. As Wilhelmina Cupido’s reported of her sister’s detention: “she just wanted to go on with her life, she just wanted to leave it here and carry on,”³² many women did not want to reopen past wounds, but would rather just forget and move on.

The commission concluded that these silences could be explained by a number of reasons: a desire to protect her family, a desire to protect herself by keeping silent about “illegal” activities and/or a desire to forget a terrible experience.³³ Victim Ms Jessie Duarte explained, “if women said that they were raped, they were regarded as having sold out to the system in one way or another.”³⁴ Sexual assaults were common during apartheid, but it is seen as taboo to talk about such issues in the patriarchal South African society: “for many women, relating the story of their sexual abuse would... leave them

³¹ *TRC Report*, 5: 201.

³² As cited in Stanley, 534.

³³ *TRC Report*, 5: 293.

³⁴ *TRC Report*, 4: 294.

feeling a loss of dignity.”³⁵ Often times, women would not regard their experiences as important enough to report to the commission: “given the culture, which puts pressure on family life and creates limited opportunities for women to remove themselves from repressive situations. Women often fail to see that their experience of sexual violence has a political dimension...”³⁶ Because women did feel that their personal assaults were worthy of the commission’s time, many testimonies were left unsaid.

This lack of testimony of personal harm was apparent from the start of the commission and was acknowledged on the submission form. It was written:

IMPORTANT: some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don’t forget to tell us what happened to you yourself if you were the victims of a gross human rights abuse.³⁷

It is admirable that they acknowledged the fact that many women did not want to speak of their own accounts. Nevertheless, these silences still occurred and because of it there was a less complete picture of the crimes committed against them. The few that testified were left to represent the majority of women and the abuses they suffered.

The limited mandate of the commission can also be seen in regards to the crimes against women. The commission regarded rape and genital assault as human rights violations. But other methods such as failure to provide menstruating women with sanitary towels, making them undress in front of warders and body searches by men were not considered to be violations, either by the women or society as a whole.³⁸

³⁵ *TRC Report*, 5: 294.

³⁶ Goldblatt, 10.

³⁷ *TRC Report*, 5: 283.

³⁸ Goldblatt, 11.

Aside from the lack of participation from the South African community as a whole, another factor that proved detrimental to the finding of the complete truth was the destruction of records and documents by the previous government. A common practice of many countries, the systematic legal destruction of records in South Africa took place long before the decline of apartheid. However, it was soon realized that some unauthorized destruction had also been transpiring. The Commission laments that “the apparent complete destruction of all records confiscated from individuals and organizations have been this country’s richest accumulation of records documenting the struggle against apartheid.”³⁹ The work of the commission was negatively affected by this destruction in that some truths could never be uncovered now, when one piece of evidence could have potentially exposed entire atrocities and truths.

It can be concluded that there were not enough “truths” provided by the key apartheid and anti-apartheid leaders to paint a complete picture of the atrocities committed under the governance of the National Party. Women participation in the commission was the key to understanding the daily lives of individuals and how they were affected. Despite this, the main focus of their testimonies was on their male counterpart, relaying only limited information about their own abuses. The lack of documentation proving crimes and offenses left the commission to rely solely on willing testimonial participants who suffered only politically motivated crimes. There were obvious crimes against humanity executed in enormous numbers, but the lack of cooperation in creating a common history showed the resistance against a new form of government and its objectives. Without truths proper reconciliation cannot be achieved.

³⁹ *TRC Report*, 5: 236.

Amnesty and Reparations

The amnesty provision was arguably the most controversial issue connected with the South African Truth and Reconciliation Commission. Whether or not an individual was granted amnesty that person walked away from the commission free and without repercussions for their crimes. If the Commission believed that details of the story were left out, they had the power to deny pardon and recommend the case for prosecution. However, little judiciary action was actually taken to pursue the cases.⁴⁰ Time and cost of the prosecution of these cases seemed to be the main obstacles. In a country overrun by violent crimes such as murder, rape and car jacking, it was these cases that were put forth before the older crimes.⁴¹ Criminal charges could be brought upon a person denied amnesty, but that was rare due to the lack of resources of most victims. To counteract amnesty, victims were made promises of “recommendations” that would be made regarding reparations. In reality, any sort of reparation was received long after the completion of the commission, if at all. This blatant discrepancy between the treatment of perpetrators and victims obstructed true justice and reconciliation.

Human rights violators continued to hold government positions and other offices of standing even after the commission. At the same time, victims continued to struggle economically and psychologically. Seeing their assailants around their community often left victims feeling vulnerable and cheated. One woman reported that, “the TRC has not helped with anything here in Duduza. My son was shot with four bullets by a policeman last year. When I went to the police to inquire I was told that the case ended on 5th

⁴⁰ Stanley, 533.

⁴¹ Stanley, 535.

February 1996. The policeman is still working here.”⁴² The commission acknowledged lustration – the removal of human rights offenders from office- and

Considered it carefully and decided not to recommend that this step be pursued. It is suggested, however, that when making appointments and recommendations, political parties and the state should take into consideration the disclosures made in the course of the Commission’s work.⁴³

Although it was suggested that the social stigma attached to the exposure of crimes was punishment enough, it did nothing for the justice of the victims.

Some of the victims openly asked the Commission for justice by exposing their or their loved one’s assailants. Maria Molokwane of Orange Free province testified to the commission on behalf of her late brother. His involvement in a rent boycott in 1984 had led to his arrest and torture by the police forces in Parys:

Dr. Boraine: Did he describe what the torture was that he had?

Mrs. Molokwane: He said there were two policemen, and they assaulted him, they kicked him. They wanted to remove him from his statement, and they said to him they were going to kill him if he is still on this rent boycott issue.

Mr. Lax: Do you know the place in Zimbabwe where your brother died?

Mrs. Molokwane: No, I don’t have an idea.

Dr. Magwaze: Again, I wish to let you know that the Commission would like to ease your pain as much as possible. We would like to know from you what do you think the Commission can do to ease the pain?

Mrs. Molokwane: I want the policemen who assaulted him to appear public so that they can be known, and justice can be done.⁴⁴

To promote justice, restitutions were promised to victims who testified before commission. Five categories of reparations were proposed by the R&R: urgent interim reparation, individual grants, symbolic reparation/legal and administrative measures such

⁴² CSVR and Khulumani Support Group, “Survivors’ Perceptions of the Truth and Reconciliation Commission and Suggestions for the Final Report.”

<http://www.csvr.org.za/wits/papers/papkhul.htm> (accessed October 27, 2010).

⁴³ *TRC Report*, 1: 3.

⁴⁴ Human Rights Violations Hearings, *Proceedings Held at Durban on 7 May 1996* (Truth and Reconciliation Commission, 1996): 1-71.

as proper burials and memorials, community rehabilitation programs such as psychological assistance and housing and lastly institutional reform to prevent the recurrence of the human rights abuse.⁴⁵ Each victim would be considered under their necessary circumstances which type of reparation best suited their needs. Despite the assurance of distribution, the reparation program has not been as successful as the commission and its participants had hoped. It was not until two years after the completion of the commission that the “urgent” payments were made; this included those who had “urgent medical, emotional, education, material and/or symbolic needs.”⁴⁶ While violators of crimes received immediate freedom and the beneficiaries of apartheid were not punished by the TRC, victims had to wait for any form of atonement, even if it was crucial to their economic situation.

It was later decided by the R&R Committee that in addition to individual analysis of desired reparations, all victims who gave their stories to the TRC would be compensated equally, regardless of their financial status. Committee member Piet Meiring explained the situation:

We cannot attach a value to the life of a husband, wife, son or daughter. We cannot put a price on the length or intensity of a torture. Whatever money is available should belong to all victims equally. A politician on the gravy train would receive the same amount as an unemployed mother whose only breadwinner has been killed. It is my personal hope that those who do not need the money will return it for redistribution to those who are more needy.⁴⁷

Monetary reparations were finally distributed in 2003 after mounting pressure on the government to fulfill its promises to the victims. Chairperson Desmond Tutu gave a

⁴⁵ Goldblatt 15

⁴⁶ Cited in Stanley, 539.

⁴⁷ *Mail and Guardian*, April 11, 1997.

speech earlier that year expressing his concern that the government had “let victims down.”⁴⁸ President Mbeki announced that the South African government would pay \$85 million to over 19,000 victims that had shared testimony to the TRC. This would equal to about \$3,900 per victim, which is compared to the average annual salary of \$3,000. These reparation payments fell short of the \$360 million that had been requested in 1998 by the commission. Many of the victims were disappointed and felt their suffering should have been acknowledged with more money. The South African government retaliated in saying that “no amount of money could make up for the suffering.”⁴⁹ While this true, those who testified still felt their abuses were not fully acknowledged.

Post-Commission Victim Opinion

Research done in 2005 by the Center for the Study of Violence and Reconciliation (CSV) gathered perspectives of those victims that publically testified at the TRC. It found that many of the victims were dissatisfied with the composition of the commission. One member of the Johannesburg study group told of their expectations and hopes in the TRC:

When I went to the TRC I thought we would see a big change in our lives. We thought we would feel better after telling people about our stories but we were wrong. Our health deteriorated after the testimonies and it brought us more pain. We knew the people who killed our husbands and we thought after we had met them there would be a big change or difference in our lives but we were wrong, we saw no change. (JB6)⁵⁰

⁴⁸ Ginger Thompson, “South Africa to Pay \$3,900 to Each Family of Apartheid Victims,” *New York Times*, 2003.

⁴⁹ *Ibid.*

⁵⁰ Picker, 6.

It was concluded that the promised reparations was the key subject among participants. As stated previously, any sort of monetary or symbolic reparation were slow in coming after the commencement of the commission. This lack in funds was especially pivotal to those who had lost their breadwinner and were struggling to provide for their dependants. One participant in Johannesburg shared her story about the TRCs failure to assist her impoverish conditions:

My child is crippled and they promised to help with her studies and her medical bills. ... It was difficult to take her to physiotherapy, as I have no money. I never even received that 2000 Rand they promised. The TRC has done nothing for me. I also cannot work because I'm sick, I am owing in school fees and have huge medical bills. ... We were made to fill papers and we don't know what reparations we will get. The TRC has made me false promises and I don't trust it any more.

The issue of victim reparations in relation to perpetrators' amnesty was also seen as biased towards the violators. A victim from the same support group noted that they thought the Commission would "provide us with the same privileges they provided the perpetrators with. We feel as if they don't care about us. They should have taken measures to improve our lifestyles, as we are all poor. We feel as if they don't care about us at all." This statement clearly demonstrates the sense of victim disparity in regards to the treatment of victim versus violator.

The lack of counseling and medical help post-testimony was reported by victims to be another downfall of the commission. By exposing ones painful past with the public, there was bound to be some psychological effects on the participants. However, most victims reported that they were not even offered counseling after their testimony. A participant in the Durban research group shared how the commission had failed them:

They saw the pain we were going through and did not even attempt to help us. We had to relieve our sad experiences and most of us got sick after that, they did not even take us to doctors to receive medication. We were left to see how we take

care of ourselves. They are the ones who asked us to testify after so many years, we were already forgetting what had happened and they reminded us of the events.⁵¹

The research is clear that the victims also realize that the white community, the beneficiaries of apartheid, had not come forth to reveal their sides of the story. It was widely believed that the “only people who are reconciling here are the disadvantaged. (Cape Town, Group 3).”⁵² Many of the victims believed that the Commission did not want to “rock the boat” in order to reveal truths.⁵³ The restriction of ability to judicially call perpetrators forward is due to the limited mandate of the negotiated settlement. Because of this limitation, one can conclude by the previous research that victims are still haunted by the past and have not received much help from the commission.

Conclusion

In attempts to deal with a past littered with atrocities and hidden crimes, a truth commission was established in South Africa. While this was not the only option that could have been chosen to move forward, it was the best model for the South African situation at the time. The Truth and Reconciliation Commission of South Africa is deemed a unique model in the transition to democracy. It offered individual amnesty to perpetrators who fully disclosed the facts of a crime with a political agenda. It also offered a place for victims to go to share their stories of politically associated suffering. The result was the exposure of many truths about the dark and haunting past; this was believed to jumpstart reconciliation for South Africa. The commission, however, was

⁵¹ Picker, 10.

⁵² Picker, 8.

⁵³ Picker, 9.

flawed and unyielding in three areas in particular. The negotiated settlement between the old and new governments had established the mandate of the commission in obvious regards to the previous apartheid leaders. By placing the stipulation of “political” crimes on the commission, much of the general South African population was excluded from participation. The mandate also restricts the commission from court ordering particular political players from participating. Consequently, many political leaders choose not to share their knowledge of apartheid and their participation in it. This resistance proved to the rest of the country that the political leaders were not willing to reconcile and move forward, consequentially hindering the reconciliation process as a whole. The granting of amnesty was seen as unfair among victims, seeing that it took years after the cessation of the commission to receive any “recommended” reparations.

It has been argued that the Truth and Reconciliation Commission has still not achieved its objective of reconciliation. South Africa today still suffers from crime, violence, unresolved land issues, and impoverished communities. A lack of education, a surplus of unemployment, and inadequate resources to support the health and welfare of the general public haunts the country still today. President Mdeki, had stated in 2003 that South Africa is “two nations... the one an elite minority with First World standards of living, the other a predominantly black majority living below the international poverty line.”⁵⁴ This can be attributed to the lack of white political leaders that participated in the TRC. Because of their refusal to acknowledge their crimes against the black population, South Africans have obviously had little encouragement to reconcile the past.

⁵⁴ Nahla Valji, “South Africa: no justice without reparations,” *openDemocracy*, July 2003, <file:///Users/lindahae/Desktop/TRC%20RESEARCH/South%20Africa:%20no%20justice%20without%20reparation%20%7C%20openDemocracy.webarchive> (accessed 8 December 2010).

Stanley asserts that the violence in South Africa can be attributed to the “disaffected black youths.” It was these kids that had grown up in a culture devoted to the resistance of apartheid. Faced with daily police beatings, sexual assaults and tortures, their childhood was spent in weaponry and explosive training with little education or other skills. It is these army cadres that know no other life other than resistance that are causing most violence in South Africa today. Lack of funding has also placed the country in desperate condition with little chance of economic improvement. Reconciliation is deemed nearly impossible in these conditions.

With the current conditions in mind, the Truth and Reconciliation Commission is still considered a workable model for other countries to follow in the transition to democracy. Graybill explained, “Perhaps other nations with wounded histories may find here a model for hope. As the international communities comes to recognize that there is no peace without confronting the hurts of history and without the healing of national and ethnic memories, one nations imperfect attempt to do so may inspire... these lands too.”⁵⁵ She also claims that in order for such a model to function the “right political and spiritual leadership is needed.”⁵⁶ Because of President Mandela and Chairperson Tutu’s adamancy for peace, truth, and reconciliation, the country was able to form such a commission and promote such a task. In countries that lack such leadership and prefer silence over the painful exposure of truth, such operation as the truth commission would be useless.

Although many of the victims that had participated in the public hearings had unfavorable opinions of the reparation program of the TRC, there was an overall approval

⁵⁵ Graybill, 179.

⁵⁶ Graybill, 178.

of a truth commission as a potential source for mass healing. One participant at a Cape Town research group promoted the commission:

I would give another country advice to set up a TRC because they came up with the truth and things that were hidden away from the past. What I did not know I know now. It was public. A lot of things happened that we did not know about and overseas did not know about. I would recommend it to get the truth out.⁵⁷

Learning the fate of loved ones proved to be helpful in bringing the country into a brighter future. However, without the participation of key policy makers and the lack of follow through for reparations South Africa was hindered from true reconciliation.

Based on what this research has concluded, a truth commission in a similar situation could be more useful with some slight improvements. First and foremost, a country needs to have a committed desire for truth and change. A participation requirement would be useful for ensuring that all levels of society would be involved. This would result in an even larger number of exposed truths and potentially heal a larger number of the population. Secondly, it would be helpful if the government had the necessary means for reparations before the commission began. It is deceiving to promise monetary relief for victims when there is actually no money available. Thirdly, post-commission counseling would be useful to help guide the reconciliation process amongst the population. This would encourage overall reconciliation and healing. Overall, the Truth and Reconciliation Commission provided an example to the world that hearts can be healed after a destructive past. Although it was not perfect, it did impart a sense of hope for future generations.

⁵⁷ Picker, 12.

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