

2011

After Truth: The Truth and Reconciliation Commission, Media and Race Relations in Post-Apartheid South Africa

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After Truth: The Truth and Reconciliation Commission,
Media and Race Relations in Post-Apartheid South Africa

Jazmin Acuña Cantero

Connecticut College

AFTER TRUTH:
THE TRUTH AND RECONCILIATION COMMISSION, MEDIA AND RACE
RELATIONS IN POST-APARTHEID SOUTH AFRICA

AN HONORS THESIS
PRESENTED BY
JAZMIN ACUÑA CANTERO

TO

THE DEPARTMENT OF GOVERNMENT
IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR
HONORS IN THE MAJOR FIELD

CONNECTICUT COLLEGE
NEW LONDON, CONNECTICUT
MAY 5, 2011

After Truth:

The Truth and Reconciliation Commission, Media and Race
Relations in Post-Apartheid South Africa

By

Jazmin Acuña Cantero

To every individual who, in a world that has lost its direction and refuses to pay attention, has hope still. May your truth be heard loud enough. May you find justice at last.

ACKNOWLEDGEMENTS

TRISTAN BORER

My time at Connecticut College would not have been as inspiring and crucial had it not been for your outstanding teaching. You embody the values that make your profession the most noble of all. Words are in short supply to thank you for the support and the unfaltering guidance that you have given me in the past three years. Your wisdom and your example have set a roadmap. In every step of the way, be sure that I am always hoping to live up to your legacy of academic excellence and your genuine commitment to the human.

ALEX HYBEL

For your time and insights on this project, I thank you. For your intelligence, your life experiences, and the way you always manage to challenge me only to help me broaden my perspectives, I deeply admire you. Gracias por todo Profe.

MAMÁ

Todo lo que he logrado en mis años de vida tienen como base principal tu incondicional apoyo. Miro el camino que he recorrido, y tu presencia está ahí, en cada paso que he dado, en cada caída y en cada salto. Lo que haya de bueno en mi, viene de vos. Te adoro.

MONIQUE DALKA

Your kindness and your positive energy are unmatched. Our world needs more souls like the one you have. Thank you for making Joburg feel like home to me.

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1. Introduction:

*The TRC and the Media's Effect on
Contemporary Race Relations in
South Africa*

History lives on in South Africa. The claim that almost every issue in the country can be traced back to its history of apartheid remains overwhelmingly true. To this day, the divisive legacy of that system of racial segregation continues to impact the lives of South Africans in many ways. For instance, alongside Brazil, South Africa has the most unequal income distribution in the world.¹ The large degree of economic disparity has in turn been identified as the source of various social maladies, such as high levels of criminal violence in the country.² Moreover, the violence that characterized apartheid did not necessarily diminish with the official end of the regime. It has taken on new forms in the post-apartheid era and continues to be a daily feature in South Africa, a phenomenon which has been cast as the product of a “culture of violence.”³ Although data provided by the Minister of Police Nathi Mthethwar point to falling rates of crime in 2010, the country is still perceived as among the most violent in the world.⁴ Within this context, race has been at the center of widespread debate.

Race remains a contentious topic among South Africans. It is the most salient element in the lives of millions in the country for a number of reasons. Economic inequality, for instance, is highly racialized. According to figures from the United Nations Development Program, “the standard of living of

¹ Villa-Vicencio & Ngesi. “South Africa: Beyond the Miracle”, in Erik Doxtader and Charles Villa-Vicencio, eds. *Through Fire with Water: The Roots of Division and the Potential for Reconciliation in Africa*. Cape Town: Institute for Justice and Reconciliation, 2003. Pg. 278

² Bruce, David. “To be someone: Status insecurity and violence in South Africa”, in Patrick Burton, ed. *Someone Stole my Smile: an Exploration into the Causes of Youth Violence in South Africa*. Cape Town: Centre for Justice and Crime Prevention, November 2007. Pg. 57

³ Shaw, Mark. “Confronting the Violent Society” *Crime and Policing in Post-apartheid South Africa*, Chapter 3. Pg. 53

⁴ “Crime Stats: Murders fall by 8,6%” *Mail&Guardian*, September 9, 2010. Accessed in September, 2010 at <http://www.mg.co.za/article/2010-09-09-crime-stats-murders-fall-by-86>

average Black South Africans is comparable to the 124th most wealthy nation in the world (after Congo), whereas for the average white South African it is comparable to the 24th (after Spain)."⁵ Violence also affects the population along racial lines. Wealthy South Africans are twice as likely as the poor to be victims of property-related crime, and yet the likelihood of dying in these incidents is 80 times more likely for poor South Africans, who are overwhelmingly non-white.⁶ Yet, there appears to be an aversion to labeling many everyday acts of prejudice as racially-based due to a "social silence about racism."⁷ Nevertheless, this apparent unwillingness to openly talk about the impact of race in society is counterbalanced by the media's portrayal of it.

Every so often, news stories with a strong racial undercurrent bring to light the still unresolved issues of race that characterize post-apartheid South Africa. A study undertaken by the Media Monitoring Group suggests an increase in the frequency of the media's attention to racially - based incidents in the post-1999 period.⁸ High-profile cases like the April 2010 assassination of Eugene Terre'blanche - one of the most vocal defenders of apartheid and founder of the far-right Afrikaner resistance movement Afrikaner Weerstandsbeweging (AWB) - at the hands of two of his black workers, instigated a renewed discussion on the role of race as a predictor of violence in

⁵ UNDP data, as quoted in Hamber, Brandon, "Have no Doubt, it is Fear in the Land: An Exploration of the Continuing Cycles of Violence in South Africa", *Zeitschrift für Politische Psychologie*, 1999. Pg. 117

⁶ Steinberg, 1999 quoted in Hamber, Brandon, "Have no Doubt, it is Fear in the Land: An Exploration of the Continuing Cycles of Violence in South Africa", *Zeitschrift für Politische Psychologie*, 1999. Pg. 117

⁷ Harris, Bronwyn. "Spaces of Violence, Places of Fear: Urban Conflict in Post-Apartheid South Africa." Paper presented on the *Conflicts and Urban Social Violence* panel in Colombia. Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/urbansafety/englishspaces.pdf>

⁸ Media Monitoring Group, "Shares of Prejudice: An investigation into the South African media's coverage of racial violence and xenophobia." Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/foreigners/shades.pdf> (hereinafter MMP).

South Africa. Likewise, the Reitz Four incident at Free State University in February of 2008, in which four white students were shown humiliating five black workers in a notorious internet video, brought to the surface another national debate about ongoing racial prejudice. Although only a few explicitly racial events receive wide coverage by the media, they serve as the symbolic representations of the small scale incidents that take place on a daily basis, thereby disclosing the sentiments of many South Africans in regards to race.

These recent race-related incidents lead one to re-examine South Africa's engagement in a process of reconciliation with the end of white-minority rule. More than a decade after the fall of the repressive regime, racially-charged events like those just previously outlined reflect a rather fragmented picture of the 'rainbow nation'. These events beg the fundamental question of whether or not South Africans have been able to depart from the racial foundation that defined their relations in the past, and if not, why not. These events cast the spotlight on the transitional justice process, and whether it in any way relates to how race continues to impact society today.

This thesis will assess the state of race relations in South African society, fifteen years after the end of apartheid. It will analyze the current racial context in relation to the reconciliation process that the country undertook in the aftermath of that system of racial segregation. The preliminary hypothesis that motivates this research is that the Truth and Reconciliation Commission (TRC), directed by the Parliamentary Act that established it, failed to properly integrate a discussion of race and racism into its work. Particularly, that the

conflict came to be understood in terms of victims of a small scope of human rights violations and perpetrators of those violations posed certain limitations on reconciliation. In the same manner, the way in which the media reported the TRC process only added to a lack of structural analysis about apartheid. Although extensive, the media limited its work to covering the TRC hearings without subjecting the content of the information they gathered to deeper criticism. Hence, by ignoring the context of the events described and discussed in the Commission, the media deepened the analysis gap of the transitional justice process. Ultimately, the TRC and the media's downplay of race as the explanatory variable for the violations that occurred during apartheid may have contributed to race relations that remain problematic in contemporary South Africa.

On the one hand, apartheid was, by all means and most essentially, a system of racial segregation. On the other hand, the Commission strove to take a higher stance by "casting the net of blame" on all sides.⁹ In this context, the language that guided the work of the Commission is relevant, since it may have downplayed or dismissed the 'race factor'.¹⁰ Similarly, the media, a key player in the dissemination of the TRC's work, reflected this stance through the framing of the information it delivered to the audience that followed the process. Hence, the sidestepping of race in the TRC and the media may have represented a missed opportunity to understand the framework that led to the

⁹ Gibson, James. "Overcoming Apartheid: Can Truth Reconcile a Divided Nation?" *The ANNALS of the American Academy of Political and Social Science*, (2006) 603:82. Pg. 103

¹⁰ Fullard, Madeleine, "Displacing Race: The South African Truth and Reconciliation Commission and Interpretations of Violence", *Race and Citizenship in Transition Series*. Centre for the Study of Violence and Reconciliation. Pg. vii (hereinafter Fullard)

establishment of and maintained apartheid in place for more than forty years. The subject of this thesis is the ongoing consequences of this missed opportunity.

With the demise of white-minority rule, the question of how to reconcile South Africans was pressing. The human rights violations of that regime had to be dealt with to set the foundations for a more peaceful environment in the future. Leaders rejected the immediate option of trials and decided to opt for the establishment of a truth commission, an increasingly common transitional justice mechanism. Transitional justice is defined as “the attempts of new governments in regimes that have recently undergone a transition to democracy to establish a process to hold members of the former regime and those against it accountable for gross violations of human rights that occurred during their tenure.”¹¹ Truth commissions have been established in countries around the world in the hope of preventing future violence.¹² Arguably, the most famous truth commission has been the South African Truth and Reconciliation Commission (TRC).

The TRC was the foundation of the transitional justice process of post-apartheid South Africa. In 1995, the South African Parliament passed the Promotion of National Unity and Reconciliation Act no. 34, which established the Truth and Reconciliation Commission (TRC).¹³ According to the TRC

¹¹ Borer, Tristan, “Truth Telling as a Peacebuilding Activity.” Tristan Borer, ed. *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*. Indiana: University of Notre Dame Press, 2006. Pg.17

¹² Hayner, Priscilla. “The Encyclopedia of Genocide and Crimes against Humanity”, Vol. 3. Macmillan Reference USA, 2004. Pg. 1045-1047

¹³ Borer, Tristan, “Truth, Reconciliation and Justice”, *Peace Review* (1999) 11:2. Pg. 306

Report, the Act dictated that the major objectives of the Commission would be to promote “national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past.”¹⁴ The Act established that these objectives-national unity and reconciliation- should be accomplished by:

- Establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings.
- 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;
- Establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;
- Compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission [...] and which contains recommendations of measures to prevent the future violations of human rights.¹⁵

Thus, the TRC had several goals, one of which was to restore the dignity of victims by acknowledging their stories. In terms of perpetrators, the Commission was in charge of providing amnesty to them in exchange for the

¹⁴ Truth and Reconciliation Commission, Vol. 1, Final Report, 55 (hereinafter TRC Final Report 1).

¹⁵ TRC Final Report 1, *supra* note 14, at 55.

full disclosure of the truth about the acts they committed. According to the Act, actions that could constitute gross violations of human rights included killing, abduction, torture or severe ill-treatment.¹⁶ This definition, among other concepts that the Commission had to interpret, has been subject to criticism by several scholars.

The fact that human rights violations were narrowed down to specific acts has been criticized and deemed as a factor that limited the TRC's capacity to address structural issues. Tristan Borer notes this critique of the definitions of gross violations of human rights, which emphasizes how bodily-integrity rights could ignore the relevance of the violation of socio-economic rights:

"The decision of the Commission to concentrate only on violations committed as specific acts...meant that victims of forced removals or of Bantu education or any other of a myriad of laws passed by the apartheid government, or of the effects of those laws including hunger, poverty, and the lack of basic health care would not be deemed victims according to the Truth and Reconciliation Commission."¹⁷

Some scholars hold the view that a structural analysis of how the system of apartheid itself affected the fabric of society was overlooked in the process of the TRC. Kader Asmal and Mahmood Mamdani suggest that this narrow focus on violations of bodily-integrity rights "ignored the implicit wider mandate of the Act", which according to them, "...included the wider structural violations of apartheid based upon racial discrimination."¹⁸ Other scholars, however, have identified that the very Act dismisses specific references to apartheid, race or

¹⁶ "Promotion of National Unity and Reconciliation Act 34 of 1995" *Truth and Reconciliation Commission*. Web.

¹⁷ Borer, Tristan. "A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa", *Human Rights Quarterly* 25, 2005. Pg. 1092 (hereinafter Borer, "A Taxonomy of Victims and Perpetrators").

¹⁸ Fullard, 2.

racism, and that these omissions had a clear impact on the work of the TRC.¹⁹ Similarly, the lack of a concrete understanding of what reconciliation should entail has added to the ongoing debate.

The TRC was given the task of laying the groundwork for reconciliation without a clear definition of what was meant by this objective. Borer shows how the very mandate that established the Commission did nothing more than spell out the tasks that ought to lead to reconciliation, without really grappling with the full meaning of this fundamental concept.²⁰ Similarly, Hamber states, "Reconciliation as an objective proved problematic. During the lifetime of the Commission, the term was never defined nor was a shared understanding ascertained."²¹ As a result, people could easily hold expectations that did not match up to the real delivery-capacity of the TRC, or have competing ideas of what a 'reconciled' South African should look like.²² Although at least one research study presents an improved picture of social relations in South Africa,²³ the 2010 South African Reconciliation Barometer offered a rather negative perception of the status of reconciliation in the country. In fact, the Barometer identifies that racial relations, among other dimensions of reconciliation, presents the greatest challenges.²⁴ The lack of conceptual clarity has had continuing effects, since the question of who should have reconciled

¹⁹ Fullard, 29.

²⁰ Borer, Tristan, "Reconciling South Africa or South Africans: Cautionary Notes from the TRC", *African Studies Quarterly*, Volume 8, Issue 1, 2004. Pg. 23. (hereinafter Borer, "Cautionary Notes from the TRC")

²¹ Hamber, Brandon, "Ere their Story Die: truth, justice and reconciliation in South Africa" *Race&Class*, Vol. 44 (1), 2002. Pg. 66

²² Borer, "Cautionary Notes from the TRC", *supra* note 20, at 23.

²³ See James Gibson's "Overcoming Apartheid: Can Truth Reconcile a Divided Nation?", *The ANNALS of the American Academy of Political and Social Science*, 2006 603:82. Pg. 103.

²⁴ Lefko-Everett, Kate, Rorisang Lekalake, Erica Penfold and Sana Rais, "2010 South African Reconciliation Barometer Survey Report." *Institute for Justice and Reconciliation*. www.ijr.org.za (hereinafter SARB 2010).

with whom remains subject to debate. In this respect, the language of victims' and 'perpetrators' that defined the work of the Commission, as originally established by its founding Act, becomes important.

The TRC's framing of the past as a conflict between 'victims' and 'perpetrators' may have misrepresented the nature of relationships during apartheid-which were essentially racial- and could explain the unresolved issues with race that surface in post-apartheid South Africa, which become evident in both the Barometer and the Terreblanche and Reitz Four incidents. The founding Act of the TRC makes use of these terms, by referring to "perspectives of victims" or "motives of persons responsible for the commission of the violations".²⁵ The TRC applied this language throughout its work, arguing for example that reconciliation should encompass "forgiveness and healing between victim and perpetrator."²⁶ This language is perceived as problematic because it disregarded the many individuals who in one way or another were involved in the system of apartheid: "While the TRC certified only approximately 20,000 individuals as victims and fewer than 10,000 individuals as perpetrators [...] apartheid surely had more 30,000 victims and perpetrators."²⁷ In a similar vein, Mamdani argues that the South African TRC left unaddressed the all-pervading nature of apartheid, a regime that did not target a particular number of individuals but rather attacked whole

²⁵ TRC Final Report 1, *supra* note 14, at 55.

²⁶ TRC Final Report 1, *supra* note 14, at 55.

²⁷ Borer, "A Taxonomy of Victims and Perpetrators", *supra* note 17, at 1102.

communities.²⁸ In light of Tina Rosenberg's description of "criminal regimes", one can begin to see how the violations of apartheid were largely bureaucratized and carried out by entire organizations.²⁹ This fact carried important implications, since it was difficult to spread the blame across all sectors of society. Mamdani says that accountability was not justly distributed, since the 'beneficiaries', those who by virtue of their whiteness benefited from the regime, did not fall under the scope of work of the TRC in terms of perpetrators. He poses the question: "How will those who continue to be the beneficiaries of apartheid, a substantial minority, and those who continue to be its victims, the majority, live together?"³⁰ In a survey carried out by the Institute for Justice and Reconciliation in 2003, less than a third of former beneficiaries acknowledged that they benefited from apartheid.³¹ Hence, the 'victims' and 'perpetrators' categories may have entailed the disengagement from "black and white" issues.³² In this discussion, the role of the media in engaging larger society in the TRC process is crucial.

The media played a key role throughout the life of the TRC. Alex Boraine has recognized how the Commission owes much of its success to the media, and how the entire effort of the TRC could have been wasted had it not been for the active involvement of broadcasting agencies, the press and the radio to

²⁸ Mamdani, Mahmood. "A Diminished Truth", W. James and L. Van de Vijver eds. *After the TRC: reflection on truth and reconciliation in South Africa*. Cape Town: David Philip, 2000. Pg. 59

²⁹ Rosenberg, Tina. "Dealing with the Past: Truth and Reconciliation in South Africa." Alex Boraine, Janet Levy and Ronel Scheffer, eds. IDASA. Cape Town: Clyson Printers. Pg. 96

³⁰ Mamdani, 59

³¹ Valji, Nahla. "Race and Recociliation in Post-TRC South Africa", paper presented at a conference entitled *Ten Years of Democracy in Southern Africa*. Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/racism/raceandreconciliation.pdf>

³² Fullard, 32

convey to South African society what came out of the hearings.³³ The relationship between the TRC and the media has been described as “symbiotic,”³⁴ a term that refers to the manner in which they have impacted each other. For instance, one analysis that was carried out in 1997 placed the success or the failure of the Commission on the work of the media: “Television, newspaper and radio journalists are going to observe this delicate and necessary operation and when they turn away from the operating table and report to the waiting world outside, their reports will be as important as the work of the commissioners themselves in determining whether the operation was a success or not.”³⁵ In the same manner, in reporting what was coming out of the TRC process, media workers also found themselves examining their own positions in relation to the past that the TRC was working with: “...As the process [...] unfolded, journalists [...] found themselves being pulled into the events covered. Some were victims of human rights abuses themselves; some were perpetrators; some found themselves implicated as part of the group who benefited from apartheid.”³⁶ These statements reveal the relevance of looking at the role of the media in the transitional justice process and the relationship it had with the TRC. Particularly important to investigate is how the media may

³³ Garman, Anthea. “How the TRC and the media have impacted on each other.” *Track Two* journal of the Centre for Conflict Resolution, Vol. 6 No. 3&4, December 1997. Web. http://www.ccr.uct.ac.za/archive/two/6_34/p36_garman.html (hereinafter Garman, “How the TRC and the media have impacted on each other”)

³⁴ Krabill, Ron. “Symbiosis: mass media and the Truth and Reconciliation Commission of South Africa.” *Media Culture Society* 2001 23:567.

³⁵ Bird, Edward and Zureida Garda. “Reporting the Truth Commission: Analysis of Media Coverage of the Truth and Reconciliation Commission of South Africa.” *International Communication Gazette*. October 1997. Pg. 334

³⁶ Garman, “How the TRC and the media have impacted on each other”, *supra* note 33.

have added to the dismissal of race and racism as explanatory variables of the events that fell under the purview of the Commission's work.

The media's coverage of the TRC may have downplayed a debate on the elements of race and racism and their relation to crimes of the past. According to findings of the Media Monitoring Group, the media projected the cases of the Commission in political and human rights terms, with minimal reference to race and racism.³⁷ They limited their work to mere reporting without engaging in a more critical approach to the process, a fact that some regard as having undermined the role of investigative journalism in South Africa.³⁸ Furthermore, some groups within the media were in an ambivalent position, because from having once been 'beneficiaries' of apartheid they suddenly became key players in the reconciliation process.³⁹ This contradiction was best exposed through the institutional hearings of the TRC's Human Rights Violations Committee. Among other sectors of society, the media were called to account in these hearings as a way to explore their involvement during apartheid and delve into a more tangible discussion about the structural aspects of the regime.⁴⁰ These discussions and others will be furthered in the thesis with the hope that the impact of the transitional justice process on race relations in South Africa will come to the surface more clearly.

³⁷ MMP, *supra* note 8

³⁸ Rolston, Bill. "Facing Reality: The media, the past and conflict transformation in Northern Ireland." *Crime, Media, Culture*. 2007 3:345. Pg. 355

³⁹ Rolston, *supra* note 38

⁴⁰ Fullard, 35

In Chapter 2, some of the most prominent views and arguments of the literature on truth commissions and media in transitional justice processes will be discussed. This discussion will help to identify how this thesis adds to the assessment literature on truth commissions in general. In chapter 3, the origins of the TRC will be described, followed by a discussion of the main critiques of the Commission and the media's work will follow. The chapter will focus on the political negotiations that shaped some of the key aspects of the transitional justice process that followed the end of apartheid, the reasons for which judicial trials were ruled out and the events that led to the insertion of the provision of amnesty in the post-amble of the new Constitution. A description of the Act that established the TRC and the implications of the terminology that Commissioners had to use will be examined, because these implications build much of the basis of scholarly critique of the truth-telling process of South Africa. Related to this, the debate about the impact of the TRC process and the media on race relations will be expanded. In chapter 4, a look at both James Gibson's findings about race relations and data from South African Reconciliation Barometer will reveal the complexity that is inherent to analyses of racial reconciliation in the country. For this reason, an analysis of two major events that involved discussion on the state of race relations in South Africa-the Reitz Four incident and the murder of Eugene Terre'Blanche-is warranted. These events will be the case studies for testing the hypothesis of this thesis. In chapter 5, the connections between the findings of these cases, the questions

that motivated this research and the literature on truth commissions and media in general will be forwarded.

2. Truth Commissions:

Assessment in Retrospect

The establishment of truth commissions in the aftermath of violent conflicts has become commonplace. Starting with the demise of authoritarian regimes in Latin America in the 1980s, more than thirty truth commissions in different countries around the world have been established.⁴¹ At a basic level, these bodies are set up for the purpose of investigating gross violations of human rights that were carried out at during the time period of a particular regime.⁴² The establishment of these truth commissions, however, does not bring closure to the debate about how societies should deal with their past. The field of transitional justice encompasses a range of mechanisms that can serve to hold the supporters of a previous regime as well as those opposed to it accountable for the violations of human rights that took place throughout that regime's term.⁴³ Countries that have gone through a transition to democracy, like some in Latin American and the Balkans region, have particularly rich histories in this field. As these countries strove to implement democratic governments and instill a human rights culture, the question of how to move on from their pasts became more pressing.

People have held different views about which mechanisms are the most appropriate for establishing justice in a post-conflict society. On one side, there is always support for punishment of former perpetrators in the form of prosecutions. Judiciary trials can deliver this form of justice. On the other side,

⁴¹ "Transitional Justice", International Center for Transitional Justice. Web. Accessed on March, 2011 at <http://es.ictj.org/static/TJApproaches/WhatisTJ/>

⁴² supra note 41

⁴³ Borer, Tristan. "Truth Telling as a Peacebuilding Activity: A Theoretical Overview", Tristan Borer ed. *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*. Notre Dame, Indiana: University of Notre Dame Press, 2006. Pg. 17 (hereinafter Borer, "Truth Telling as a Peace Building Activity").

there are those who value disclosure of the truth about past violations and redress for the wrongdoing that has been done by means other than prosecutions. Truth commissions are usually favored among individuals in the latter group. These commissions are not necessarily limited to collecting the facts of the past. In fact, a central premise is that this exercise will have an effect on the future, in the sense that exposure and condemnation of certain past events will prevent their repetition.⁴⁴ Truth commissions are often put in place with other defining expectations, such as providing an official platform where victims can commence healing through acknowledgement of their suffering. Also, through the often public shaming that could accompany the open disclosure of wrongdoings, truth commissions might provide some degree of punishment to perpetrators.⁴⁵ Yet, as the transitional justice field evolves, and the likelihood that truth telling mechanisms become more standard procedure grows, the ideas and expectations that motivate their promotion still remain largely untested.

The assessment of truth telling processes poses challenges to empirical research that begin in the field of transitional justice. Hugo van der Merwe recognizes two main issues that are difficult to address or to measure regarding mechanisms of justice in times of transition. The first issue, he says, is the lack of agreement of what justice should look like in the context of a transition, as it has already been mentioned.⁴⁶ What are the appropriate justice procedures and

⁴⁴ Borer, "Truth Telling as Peacebuilding Activity", *supra* note 43, at 3

⁴⁵ *supra* note 41

⁴⁶ Van der Merwe, Hugo. "Delivering Justice during Transition: Research Challenges." Hugo van der Merwe, Victoria Baxter and Audrey Chapman, eds. *Assessing the Impact of Transitional Justice*:

what would the outcome of such procedures be? The second issue, with which this thesis is particularly concerned, has to do with the lack of consensus on assessment of the impact of a justice mechanism.⁴⁷ In the words of van der Merwe, after the implementation of a transitional justice process, has justice actually been delivered? If so, to what extent?⁴⁸ These are difficult questions to answer that also apply to understandings of truth telling mechanisms. Do truth telling processes achieve the number of expectations that are assigned to them in reality? What research methods can elucidate the degree to which the work of truth commissions has an effect? For the international acclaim that it received in the past and the constant recognition it still has in academic circles, the South African Truth and Reconciliation Commission (TRC) is a good case in point for a much needed review of what truth commissions can accomplish in actuality.

The TRC is arguably one of the most widely known models of a robust truth-telling process. It is also one of the most studied and debated truth commissions in academia.⁴⁹ However, beyond the fact that scholars have discussed at length the factors that led to the establishment of the TRC, as well as the shortcomings and the successes of the process, analyses of the impact of the Commission in the long term may only begin to be reasonably feasible now—close to ten years after the TRC ceased its work officially. Thus, this thesis has the privilege of hindsight. With more perspective, the effect of the Commission's work can be assessed from different angles, and many events

Challenges for Empirical Research. Washington: United States Institute of Peace Press, 2009. Pg. 116 (hereinafter van der Merwe, "Delivering Justice during Transition")

⁴⁷ Van der Merwe, "Delivering Justice during Transition", *supra* note 46, at 116

⁴⁸ Van der Merwe, "Delivering Justice during Transition", *supra* note 46, at 116

⁴⁹ Borer, "Truth Telling as a Peacebuilding Activity", *supra* note 43, at 3

have taken place in South Africa since the Commission finished its work that offer opportunities for more in-depth analysis. An exercise in retrospection and an effort to draw the possible connections between the transitional justice process and the present is not only important for understanding the scope of influence of the Commission in South Africa. On a general level, the social and political features of the periods that follow truth commissions need to be taken into account to see the ways in which the premises for the establishment of these commissions (one of the central premises being that looking at the crimes that were committed in the past will guarantee that they are never again repeated) materialize. Only by continuously testing the connection between the premises and the facts on the ground, knowledge about areas of strength and areas where truth commissions can improve be gleaned.

In an attempt to add a research project that can be of value to the transitional justice literature, this thesis will look at contemporary race relations in South Africa as not only defined by the still recent history of apartheid, but as deeply connected to the transitional process that succeeded the demise of the racist regime. In fact, the notion of a “post-TRC South Africa” suggests that the Commission’s work may have transcended into the present as it was originally expected.⁵⁰ Have the goals of “national unity and reconciliation”, as stated in the Post-amble that sanctioned the TRC, been achieved? In regards to contemporary forms of racism, can they be attributed to some failure in the

⁵⁰ See Nahla Valji’s “Race and Reconciliation in Post-TRC South Africa”, *Centre for the Study of Violence and Reconciliation*. Web. <http://www.csvr.org.za/docs/racism/raceandreconciliation.pdf>; James, Wilmot and Linda van de Vijver Ed. “After the TRC: Reflections on Truth and Reconciliation in South Africa.” Cape Town: The Rustica Press, 2000.

work of the Commission? Before these questions are considered, an overview of different transitional justice mechanisms is warranted

Transitional Justice

Measures of justice respond to the particular needs of the contexts in which they are applied. They are also contingent upon the social and political processes that lead to their implementation. When countries undergo a transition from a regime that sanctioned violations of human rights to one that strives to embrace a culture that rejects those same violations and wants to uphold democratic standards, the question of how to achieve justice becomes crucial. The field of transitional justice covers the array of possible answers to this question. The International Center for Transitional Justice, perhaps the major think tank in the field, identifies the following transitional justice initiatives: criminal prosecutions, truth commissions, reparation programs, gender justice, and memorialization projects.⁵¹ Also, local or “traditional” rituals that have value in communities are beginning to figure as valid mechanisms that can accompany other transitional justice measures.⁵²

The establishment of these initiatives depends on the circumstances of the transitional period of a country, such as the type of political dispensations and sometimes even the cultural values of a society. Nevertheless, for almost every society that has emerged from a period of violent conflict, the question of

⁵¹ “What is Transitional Justice.” *ictj.org*. International Center for Transitional Justice. Web. Accessed on October 2010 at <http://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> (hereinafter “What is Transitional Justice”, *ictj.org*)

⁵² “What is Transitional Justice”, *ictj.org*, *supra note 51*

justice has emerged.⁵³ A tension generally arises between people who call for the application of what Neil Kritz calls “non-criminal sanctions” and those who advocate for the prosecutions of people who are accused of certain crimes.⁵⁴

The implementation of a retributive justice process, in the form of criminal trials and the adoption of punishment measures is one approach in the pursuit of a break from the past. Kritz explains that the foundational support for retribution is that only swift condemnation of past crimes will place a new government apart from the predecessor.⁵⁵ Indeed, Juan Mendez warns that not abiding by the rule of law could be taken as tacit complicity with the wrongdoers, which could undermine the legitimacy of the new government. He says: “One of the political arguments for prosecution is that if we are building a new democracy we must start with a non-discriminatory application of the law.”⁵⁶ Furthermore, he also stresses that for certain crimes, such as torture or murder on a massive and systematic scale, nothing short of prosecutions should be admissible: “In cases of crimes against humanity, there is always a clear duty to prosecute and not to give amnesties or pardons.”⁵⁷ This is a view that is more commonly shared among victims of violations of human rights. Their demand for prosecutions stems from the perception that the only way to achieve justice is by punishing perpetrators for their deeds. For many of them, the idea of

⁵³ Hayner, Priscilla. “Unspeakable Truths: Confronting State Terror and Atrocity” New York: Routledge, 2001. Pg. 5 (hereinafter Hayner, “Unspeakable Truths”)

⁵⁴ Kritz, Neil. “The Dilemmas of Transitional Justice,” in *Transitional Justice*, Neil J. Kritz, ed. Washington, D.C.: United States Institute of Peace Press, 1995. Pg. xxiv (hereinafter Kritz)

⁵⁵ Kritz, *supra* note 54, at xxi

⁵⁶ Juan Mendez in *Dealing with the Past: Truth and Reconciliation in South Africa*, 2nd Edition. Ed. Alex Boraine, Janet Levy and Ronel Scheffer. Cape Town: Clyson Printers, 1997. Pg. 92 (hereinafter Mendez)

⁵⁷ Mendez, *supra* note 56, at 90

foregoing trials and punishment for truth commissions and in some cases amnesty can be hard to accept.⁵⁸ In South Africa, many victims expressed that the TRC process engendered a sense of betrayal in them, particularly the provision of amnesty to some perpetrators. They argued that their right to justice had been traded for truth, and that compensations or reparations could not be a real substitute for punishment.⁵⁹ At the same time, some former regime supporters in South Africa argued that did not want to become victims of “retributive witch hunts.”⁶⁰ However, moral, legal and practical reasons, to be detailed in Chapter 3, precluded the adoption of a punitive process as the avenue for justice in post-apartheid South Africa.

In transitional contexts, justice measures are as much tied to the political environment as they are to pragmatic calculations. The nature of the transition from one regime to another and the length of the previous regime’s tenure often determine the transitional justice mechanism that is ultimately chosen. Some political transitions, according to Chilean philosopher Jose Zalaquett, diminish the prospects of trials. For example, if the former regime has not lost all of its power, there will have to be more room for compromise, which could entail ruling out punitive trials. The cases of post-WWII Germany and Japan are telling: “The Nuremberg and Tokyo trials could work the way they did only because the guilty lost their political power and their guns. Their defeat was complete and the conquerors needed only to wrestle with their own sense of

⁵⁸ Borer, Tristan. “Truth, Reconciliation and Justice.” *Peace Review*. 11:2. 1999. Pg. 305 (hereinafter Borer, “Truth, Reconciliation and Justice”)

⁵⁹ Borer, “Truth, Reconciliation and Justice”, *supra* note 58, at 306

⁶⁰ Borer, “Truth, Reconciliation and Justice”, *supra* note 58, at 306

justice.”⁶¹ In South Africa, however, the National Party did not lose its hold of power completely and could still influence the outcome of debates on justice measures for apartheid supporters. For instance, the amnesty clause of the interim Constitution’s post-amble reflected the compromises of the political negotiations that preceded the end of apartheid.⁶² Also, amnesty was a tangible gesture to NP officials calmed their fears of being persecuted by “retributive witch hunts”, as some referred to judiciary trials, after the elections.⁶³ Important as amnesty was to prevent deadlocks in the political negotiations, this provision, however, significantly reduced the likelihood of punishment of perpetrators.

Another reason why the implementation of criminal trials might be limited is the scope of influence of the repressive regime. The more widespread was a regime’s influence in society, the harder it becomes to point at those who should deserve punishment. Tina Rosenberg notes that the systematic nature of the violations of apartheid made the prospect of prosecuting every human rights violator hardly attainable. She says that apartheid was not a system in which only a few within it committed transgression. Instead, the system as a whole was a transgression, inducing large numbers of people to take part in those transgressions. Apartheid as a whole was a “criminal regime”, similar to

⁶¹ Zalaquett, Jose in Krog, Antjie, “Country of My Skull: Guilt, Sorrow and the Limits of Forgiveness in the New South Africa”. New York: Three Rivers Press, 2000. Pg. 32 (hereinafter Zalaquett in Krog, “Country of my Skull”)

⁶² Refer to Chapter 3 of this thesis for more details.

⁶³ Borer, Tristan. “Truth, Reconciliation and Justice”, *Peace Review* (1999) 11:2. Pg. 306

the Eastern European cases.⁶⁴ Hence, apart from being possibly too costly to carry out trials, it might be too complicated to apply fair punitive measures. Moreover, Kritz says that in some places the previous regime could have been in place for such a long period of time that the only people who have the practical knowledge to run basic administrative tasks of government are precisely the ones who would be targeted by policies such as the ones carried out in France and Czech Republic. The absence of these administrative personnel could endanger the viability of institutions of key relevance for the new government.⁶⁵ Aside from these purely practical reasons, there are also legal norms that weaken the case for retributive processes of justice.

The legitimacy of the democratic foundations of a new regime could be threatened in the face of a blind punitive process. Kritz says that the rule of law protects individuals from collective punishment in cases where the possibility of removing former regime workers from the state apparatus is considered.⁶⁶ The rule of law guarantees that political affiliation would not suffice as a reason for expelling people from their job places, unless there is evidence of individual wrongdoing.⁶⁷ Similarly, Rosenberg argues that basic legal principles that underscore democratic orders prevent the prosecution of people “for an act which was not criminal at the time it was committed” (i.e. *ex post facto* and *nulla*

⁶⁴ Rosenberg, Tina in “Dealing with the Past: Truth and Reconciliation in South Africa”, 2nd Edition. Alex Boraine, Janet Levy and Ronel Scheffer, eds. Cape Town: Clyson Printers, 1997. Pg. 96 (hereinafter Rosenberg, “Dealing with the Past”)

⁶⁵ Kritz, supra note 54, at xxiv

⁶⁶ Kritz, supra note 54, at xxii

⁶⁷ Kritz, supra note 54, at xxv

poena sine lege).⁶⁸ Hence, a new government which aims to punish individuals by virtue of who they were associated with in the past can actually run counter to what the rule of law establishes. Such punishment method risk the democratic credentials that a new government wants to earn, and will possibly alienate sectors of the population which are crucial in supporting the new system.⁶⁹ These are some of the arguments that underpin the support of justice mechanisms that would be less likely to sow the grounds for revenge or retaliation.

Beyond the legal and practical reasons motivating the choice of a justice mechanism other than criminal trials, there is a strong body of literature that highlights the benefits of the disclosure of truth about the past in a democratic transition. According to Zalaquett, in the aftermath of a repressive regime, what is important is to gather as much truth about the past as it is possible in order to prevent its repetition. He says, "If you are going to prevent something, you must know what it is that you want to prevent. If you are going to repair, what is it that you are going to repair?"⁷⁰ Criminal trials could be an avenue through which accurate information might be gathered. However, in Zalaquett's view, trials are unfit for the purpose of truth gathering, especially if the aim is not limited to holding people to account but also steering a national debate.⁷¹ Furthermore, trials can undermine justice, especially in cases of total victory

⁶⁸ Kritz, *supra* note 54, at xxii

⁶⁹ Kritz, *supra* note 54, at xxv

⁷⁰ Zalaquett, Jose in "Dealing with the Past: Truth and Reconciliation in South Africa", 2nd Edition. Alex Boraine, Janet Levy and Ronel Scheffer, eds. Cape Town: Clyson Printers, 1997. Pg. 103 (hereinafter Zalaquett, "Dealing with the Past")

⁷¹ Zalaquett, "Dealing with the Past", *supra* note 70, at 103

where the winners can engage in extensive punishment that may not necessarily be reflective of a pursuit of justice but rather of vengeance.⁷² Most importantly, there should be an effort to place peoples' actions in context before hurrying to judge them individually. Zalaquett argues that most people act in ways that respond to the context in which they are placed.⁷³ Under most circumstances, people are more likely to abide by social rules that appear legitimate rather than defy them and risk stigmatization. The question that follows is: how to apply measures of punishment that individuals should receive when the system under which they committed violations actually sanctioned those violations? In this case, punitive trials can be rather inadequate for such complex scenarios. Sometimes what is important is to understand this complexity rather than to assign culpability to a particular side of a conflict. In this respect, a truth commission can be an effective option to mediate with the demands for justice and to establish fair measures of accountability.

Truth Commissions

At a basic level, truth commissions are an alternative justice mechanism that responds to the question of how to deal with the past. Regardless of the mandate terms that may establish truth commissions, a backward-looking quality is the common denominator among them.⁷⁴ Priscilla Hayner outlines the

⁷² Zalaquett, "Dealing with the Past", *supra* note 70, at 103

⁷³ Zalaquett, "Dealing with the Past", *supra* note 70, at 103

⁷⁴ Rotberg, Robert. "Truth Commissions and the Provision of Truth, Justice and Reconciliation". Robert Rotberg and Dennis Thompson, eds. *Truth v. Justice: The Morality of Truth Commissions*. Princeton, New Jersey: Princeton University Press, 2000. Pg. 3 (hereinafter Rotberg, "Truth Commissions")

following basic aims of a truth commission: “To discover, clarify, and formally acknowledge past abuses; to respond to specific needs of victims; to contribute to justice and accountability; to outline institutional responsibility and recommend reforms; and to promote reconciliation and reduce conflict over the past.”⁷⁵ A number of untested assumptions have emerged around these qualities. One of the main assumptions is that societies need to learn about their past in order to prevent future conflict.⁷⁶ In this respect, the backward-looking approach of a truth commission is meant to fulfill a preventive role in the future. Also, through the recognition of the stories of previously disempowered people, some important degree of justice could be achieved in the present. Another assumption is that encouraging victims and perpetrators to come together and talk about their stories can enable reconciliation among them.⁷⁷ Alongside, learning about the needs of victims can facilitate the making of recommendations for reform.⁷⁸ Thus, truth commissions acquire a reparative or restorative capacity. Although these and other assumptions are often mentioned, the difficulty of corroborating their veracity with factual evidence engenders a constant debate between those who support truth telling processes and those who remain more skeptical about their effectiveness. This dimension of the debate on truth commissions is important to keep in mind, and this thesis will wrestle with it extensively. In examining whether race relations in South Africa today are in any way a by-product of the transitional justice process that

⁷⁵ Hayner, “Unspeakable Truths”, *supra* note 53, at 24

⁷⁶ Rotberg, “Truth Commissions”, *supra* note 74, at 3

⁷⁷ See James Gibson, “The Contributions of Truth to Reconciliation: Lessons from South Africa.” *Journal of Conflict Resolution*. (2006) 50(3):409-432.

⁷⁸ Hayner, “Unspeakable Truths”, *supra* note 53, at 25

the country went through, the assumed capacities of prevention and restoration of the TRC will be examined.

Truth Commissions: Prevention and Restoration

An aspect that is often attributed to truth commissions is their capacity to collect and produce an account of the past that can help to prevent the repetition of violent conflict. Through the disclosure of truth, facts can be gathered to paint a more complete picture of the past, which in turn would supposedly deter people from committing the same violations.⁷⁹ Zalaquett says that this is sometimes more important than prosecuting every human rights violator. Apart from unifying a society, the elaboration of a collective history might serve the desire of preventing future conflict better than the choice of retributive justice. Having a common understanding of the past as opposed to different and unreconciled versions of it can move society towards embracing the same values: "A community should not wipe out part of its past, because it leaves a vacuum that will be filled by lies and contradictory, confusing accounts of what happened. Identity is memory [...] Identities forged out of half-remembered things or false memories easily commit transgressions."⁸⁰ Alex Boraine coincides with this view, saying that South Africans had to forge a common memory that everybody -from apartheid official supporters, anti-

⁷⁹ Rotberg, "Truth Commissions", *supra* note 74, at 6

⁸⁰ Zalaquett In Krog, "Country of my Skull", *supra* note 61, at 32

apartheid fighters, and the people who claimed ignorance of what was taking place in their own country- would recognize.⁸¹

Not all societies that have undergone a violent period in their history have chosen to delve into their past though, including post-Franco Spain or Mozambique. Factors like political arrangements or fears of destabilizing the new order by reviving the memory of traumatic events may inhibit the establishment of truth commissions.⁸² Nevertheless, Paul van Zyl believes that when societies embark upon a truth telling process, they also initiate an important process of collective judgment, especially when accounts of human rights violations are delivered to society from an angle that motivates the condemnation of these violations. Apart from knowing about the human rights violations that happened in the past, he says, understanding why they are wrong is essential in order to prevent their recurrence.⁸³ Scholars like Charles Maier, however, remain more skeptical about of the benefits that the truth of truth commissions can provide.

Maier argues that the truth that comes from truth commissions cannot be history because truth commissions face significant challenges when gathering past accounts. He says that even though truth commissions want to collect a wide range of voices, the task of gathering stories should not be left in the

⁸¹ Borraine, Alex. "Truth and Reconciliation in South Africa: The Third Way", Robert Rotberg and Dennis Thompson, eds. *Truth v. Justice: The Morality of Truth Commissions*. Princeton, New Jersey: Princeton University Press, 2000. Pg. 153 (hereinafter Borraine, "The Third Way")

⁸² Supra note 41

⁸³ van Zyl, Paul. "Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission", *Journal of International Affairs*, 52, no.2, Spring 1999.

hands of a truth commission solely.⁸⁴ Historians, for instance, have a duty to explore the array of options that were available to different sides in a conflict, making it more feasible to assign due responsibility. In his view, truth commissions are less likely to do so since they can be more focused on other goals (i.e. repentance, confession) than judgment or allocation of blame.⁸⁵ For this reason, the findings of a truth commission, which are usually compiled in an official report, have to be seen as important pieces of a bigger whole, but never the unique narrative of the past.

Charles Villa-Vicencio and Wilhelm Verwoerd, who were deeply involved in the writing of the South African TRC report, confirm the challenges that Maier refers to. They claim that in fact, putting together all the material that the Commission gathered was an undertaking of much complexity for a number of reasons. Although the TRC already precluded the inclusion of the voices of many victims of apartheid due to its “narrow mandate and short life span”, investigating all the atrocities that people denounced or including every one of their stories became an insurmountable task.⁸⁶ For example, limited resources constrained the investigative capacity of the Commission, and the need to synthesize the large amount of information that was accumulated into a coherent and accessible reading material meant that only some accounts

⁸⁴ Maier, Charles. “Doing History, Doing Justice: The Narrative of the Historian and of the Truth Commission”, Robert Rotberg and Dennis Thompson, ed. *Truth v. Justice: The Morality of Truth Commissions*. Princeton, New Jersey: Princeton University Press, 2000. Pg. 247 (hereinafter Maier, “Doing History, Doing Justice”)

⁸⁵ Maier quoted in Rotberg, “Truth Commissions”, *supra* note 74, at 18

⁸⁶ Villa-Vicencio, Charles and Wilhelm Verwoerd. “Constructing a Report: Writing Up the “Truth”, Robert Rotberg and Dennis Thompson, eds. *Truth v. Justice: The Morality of Truth Commissions*. Princeton, New Jersey: Princeton University Press, 2000. Pg. 289 (hereinafter Villa-Vicencio et al., “Writing up the Truth”)

registered in the official report.⁸⁷ Moreover, even though the TRC held sectoral and institutional hearings to delve deeper into the role of a number of establishments during apartheid, Maier considers that the Commission could have not provided a complete picture of the past because that would have entailed concentrating much more on the institutions on which the apartheid regime rested.⁸⁸ For all these reasons, Villa-Vicencio says that the limited scope of the TRC report calls onto journalists, politicians, writers and others to continue the work that the Commission started.⁸⁹ His judgment of the report- that it constitutes a roadmap which others can use- can be applied to truth commissions' reports in general. If this is the case, the weight of preventing conflict would spread out, and a truth commission would be treated as one body out of many in society carrying this weight. This idea is particularly relevant for this thesis because it brings up an aspect that is worth considering: to what extent can the TRC, as well as other truth commissions, be held accountable for issues that remain in their aftermath? Hugo van der Merwe's words resonate here: "There is only so much that a truth commission can do."⁹⁰ Similar arguments are drawn around the restorative capacity of truth commissions.

In societies emerging from divisive conflict, the need to restore the broken social fabric becomes crucial to establish some measure of stability. This need is directly related to restorative justice, which according to Jennifer

⁸⁷ Villa-Vicencio et al., "Writing up the Truth", *supra* note 86, at 288

⁸⁸ Maier, "Doing History, Doing Justice", *supra* note 84, at 274

⁸⁹ Villa-Vicencio et al., "Writing up the Truth", *supra* note 86, at 289

⁹⁰ Van der Merwe, Hugo. Personal interview. July 2010

Llewellyn, is a theory of justice which “[...] is concerned with restoring relationships harmed by wrongdoing to ones in which all parties enjoy and accord one another equal dignity, respect and concern.”⁹¹ She explains that truth telling mechanisms may adopt restorative justice elements. For instance, the South African TRC a helpful model of what “restorative justice-based institution” could look like. In her view, the following elements made up the restorative justice character of this truth commission in particular: the provision of amnesty to perpetrators; the opportunity that victims were given to tell their stories; the public nature of the process; and the forward-looking approach of the Commission.⁹² All of these elements made the TRC process more inclusive and allowed an opportunity to restore previously damaged social relations. At the same time, Llewellyn asserts that the TRC had limitations that might have diminished its restorative capacity, such as the fact that the cases of victims and perpetrators were dealt by different committees (the Human Rights Violations Committee for the former and the Amnesty Committee for the latter). Llewellyn argues that this arrangement is problematic from a restorative justice perspective. She says that there fewer chances of “face-to-face” encounter between victims and perpetrators that could enable dialogue about past harms and measures of redress among them, which is considered to be an important step in restorative justice.⁹³ In spite of this and other challenges that the TRC faced, the basic idea is that truth telling mechanisms have a restorative potential

⁹¹ Llewellyn, Jennifer. “Restorative Justice in Transitions and Beyond: The Justice Potential of Truth-Telling Mechanisms for Post-Peace Accord Societies”, Tristan Borer ed. *Telling the Truths: Truth Telling and Peace Building in Post-conflict Societies*. Notre Dame, Indiana: University of Notre Dame Press, 2006. Pg. 91(hereinafter Llewellyn, “Restorative Justice in Transitions and Beyond”)

⁹² Llewellyn, “Restorative Justice in Transitions and Beyond”, *supra* note 91, at 99

⁹³ Llewellyn, “Restorative Justice in Transitions and Beyond”, *supra* note 91, at 99

because they can help set the ground for a future marked by different ways of relating to one another than in the past. Along this idea is that other assumptions emerge which associate truth telling with reconciliation and healing.

If promoting reconciliation and restoring dignity to victims rank high in the list of expectations, Martha Minow argues that truth commissions are better suited for the task than trials.⁹⁴ Opposite to the retributive character that is more commonly present in the event of prosecutions, truth commissions promote values of compassion and peace, which are vital for stability.⁹⁵ Indeed, many victims in South Africa expressed that the act of coming forward before the TRC and talking about their suffering helped them heal and move forward. Some of them said that in some way, the public recognition of what they went through restored their dignity.⁹⁶ Alex Boraine classifies this as the *healing and restorative truth*, which involves disclosure and acknowledgment. In his view, “deeply divided societies cannot rely on punishment to heal and to reconcile their several communities”, whereas the exercise of truth telling can contribute to a healing process that might do so.⁹⁷ Yet, this statement like a number of others need assessments to see whether truth commissions can in fact accomplish what is expected of them.

⁹⁴ Minow, Martha. “The Hope for Healing: What Can Truth Commissions Do?” Robert Rotberg and Dennis Thompson, eds. *Truth v. Justice: The Morality of Truth Commissions*. Princeton, New Jersey: Princeton University Press, 2000. Pg. 253 (hereinafter Minow, “The Hope for Healing”)

⁹⁵ Minow, “The Hope for Healing”, *supra* note 94, at 253

⁹⁶ Krog, Antjie, “Country of My Skull: Guilt, Sorrow and the Limits of Forgiveness in the New South Africa.” New York: Three Rivers Press, 2000. Pg. 41

⁹⁷ Boraine, “The Third Way”, *supra* note 81, at 152

The preventive and restorative capacities of truth commissions, and the number of other assumptions that surround them, need to be tested in order to establish expectations that do match up to the real potential of this alternative mechanism of justice. Hayner says that most often, expectations are much greater than what truth commissions achieve in reality: "Some of these expectations are simply not realistic in circumstances where there were thousands upon thousands of victims, where democratic institutions remain very weak, and where the will of perpetrators to express remorse or participate in reconciliatory exercises is tenuous, at best."⁹⁸ Due to the prevalence of these grand assumptions, the real contributions of truth commissions are minimized and remain unappreciated.⁹⁹ For this reason, the assessment literature needs to be strengthened to demystify the assumed capacities of truth telling processes so that a clearer picture of the benefits they do bring takes the forefront of discussions.

The field of transitional justice, and truth commissions as one mechanism within this field, need more evaluation of their impact. In "Assessing the Impact of Transitional Justice", van der Merwe et al. outline the many challenges that exist for empirical research, but also the necessity of establishing appropriate research methods that can demonstrate what transitional justice mechanisms accomplish. In regards to truth-telling processes, Tristan Borer identifies two main problems in the 'assessment literature': the lack of

⁹⁸ Hayner, "Unspeakable Truths", *supra* note 53, at 8

⁹⁹ Hayner, "Unspeakable Truths", *supra* note 53, at 8

conceptual clarity and the conflation of “aspiration with empiricism.”¹⁰⁰ First, she lists over twenty concepts that are associated with truth commissions, although how these concepts are in fact well-related to truth-telling processes and whether they can be realistically delivered remains to be studied.¹⁰¹ Strongly related to this point is a second issue of assessment, which is what Borer describes as the problematic “[...] phenomenon of equating ‘aspiration with empiricism.’”¹⁰² In other words, what often are no more than claims or unproven expectations about truth commissions eventually become facts. That truth heals, or that it leads to reconciliation, are statements that although time and again are linked to truth-telling processes, they nevertheless still need evaluation.

The largely uncontested idea that truth fosters reconciliation has prompted the attention of some scholars. Hayner says: “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 primary, purpose of creating a truth commission, which is not always true.”¹⁰³ Similarly, Robert Rotberg takes an issue with this loose association, arguing that it is an unproven assumption that reconciliation or restoration is attainable through the exercise of truth telling. Rotberg asks: “does the truth commission method, with its transparency and attendant publicity, retard or advance the

¹⁰⁰ Borer, “Truth Telling as a Peace Building Activity”, *supra* note 43, at 25

¹⁰¹ Borer, “Truth Telling as a Peace Building Activity”, *supra* note 43, at 26

¹⁰² Borer, “Truth Telling as a Peace Building Activity”, *supra* note 43, at 26

¹⁰³ Hayner, “Unspeakable Truths”, *supra* note 53, at 30

process [of achieving reconciliation]?¹⁰⁴ For instance, the very motto of the TRC, “Truth: the Road to Reconciliation”, assumed a causal relationship. He says that the TRC functioned under the somewhat unchallenged conviction that reconciliation could be possible, “...as if retelling the truth of the deepest machinations of apartheid-the culpability of its highest leaders and its mad-doctor schemes of biological and chemical warfare- would somehow set South Africa free to forge a successful multiracial society.”¹⁰⁵ In this respect, Borer warns that evaluations of the success of the TRC on the basis of whether or not it fostered reconciliation among South Africans are problematic for two main reasons. First, the truth-reconciliation connection makes it seem as if reconciliation is the only way to measure success.¹⁰⁶ Second, the very concept of reconciliation is not a conclusive one, because it can have multiple meanings.¹⁰⁷

The hypothesis of this thesis positions it within the assessment literature. The questions that motivate this research tackle the need of further research on impact of truth commissions –in this case, the TRC-that scholars refer to. Fifteen years after the end of apartheid, these questions are even timelier. Did the truth telling process of South Africa help to prevent the repetition of past abuses? More specifically, did it help to undermine the racism that characterized the past? Did the TRC establish a clean break from the regime that preceded the democratic order? Within this interrogatory framework, what should be clear is that the TRC, as other truth telling projects around the world, cannot be judged

¹⁰⁴ Rotberg, “Truth Commissions”, *supra* note 74, at 8

¹⁰⁵ Rotberg, “Truth Commissions”, *supra* note 74, at 7

¹⁰⁶ Borer, Tristan. “Reconciling South Africa or South Africans? Cautionary Notes from the TRC” *African Studies Quarterly*, Vol. 8, Issue 1, Fall 2004. Pg. 21 (hereinafter Borer, “Cautionary Notes from the TRC”)

¹⁰⁷ Borer, “Cautionary Notes from the TRC”, *supra* note 106, at 20

as if it were the sole entity responsible of such a daunting task as pushing a whole country away from the horrors of the past. The TRC had the support of different elements in society, starting from the government, religious groups, and human rights activists among others, in carrying out its work. Yet, the visibility of the truth telling process was largely a function of the relentless attention that the media gave to it. For this reason, attention to how their work could have affected the process and the outcome of the TRC is important. A review of the literature on this aspect, the role of the media in a transitional justice context, is thus necessary.

Media in Transitional Justice

A key intervening variable of a truth telling process is how engaged the public is with it. Findings of a truth commission may or may not be made available to people in general, but in order to attain their goals, there is an underlying assumption that the information gathered at a truth commission should reach the widest possible audiences. In this respect, Lisa Laplante and Kelly Phenicie say that “transitional justice projects inevitably rely on the media to reach their goals of disseminating the truth about a dark period of a country’s history.”¹⁰⁸ Apart from the official report that a truth commission can release, the media¹⁰⁹ have the power to bring people closer to the process by directing their attention to it. For this reason, the way newspapers, broadcasting

¹⁰⁸ Laplante, Lisa and Kelly Phenicie. “Mediating Post-Conflict Dialogue: The Media’s Role in Transitional Justice Processes” *Marquette Law Review*, (2009)93. Pg. 266 (hereinafter Laplante et al., “The Media’s Role in Transitional Justice Processes”)

¹⁰⁹ For the purpose of this thesis, the media will be used as the term of reference for the print media, radio stations and television. In fact, Chapter 4- the analysis of the case studies chapter- will only look at print media sources.

agencies and radio stations handle truth commission accounts and the events of truth-telling processes is crucial.

In South Africa, the deep involvement of the media with the TRC has been regarded as a unique and vital aspect of the democratic transition. Accordingly, an assessment of the Commission's work will and perhaps should always consider the impact that media work could have had on the process, and this is true not only for the TRC but for other truth commissions as well. Thereby, this thesis will analyze the work of the Commission as the central establishment of the transitional justice period of South Africa, but will remain attentive to the large influence of the print media in this period to reach a more accurate conclusion. It should be noted that even though the connection between the media and transitional justice – and truth commissions specifically – seems obvious, there appears to be a lack of in-depth research on this connection.¹¹⁰ Not much work has been done concerning peace processes and the involvement of the media either.¹¹¹ Nonetheless, for the research that has been done on these two related areas, the following themes are highlighted: the power of news framing, the possibilities of furthering peace, and the limitations of media in transitional justice schemes.

Journalists choose the angle of framework of truth commissions' coverage, and these choices have implications on truth-telling processes that are

¹¹⁰ Laplante, Lisa and Kelly Phinicie. "Media, Trials and Truth Commissions: 'Mediating' Reconciliation in Peru's Transitional Justice Process". *The International Journal of Transitional Justice*, Vol. 4, 2010. Pg. 208 (hereinafter Laplante et al., "Media, Trials and Truth Commissions")

¹¹¹ Wolfsfed, Gadi. "Media and the Path to Peace." New York: Cambridge University Press, 2004. Pg. 8 (hereinafter Wolfsfed, "Media and the Path to Peace")

worth considering. Much of the weight of the relevance of the media comes from the power they possess when processing information. Tomas Nelson et al say that how readers respond to information transmitted to them is a function of framing, which is a "...process by which a communication source, such as a news organization, defines and constructs a political issues or public controversy."¹¹² Similarly, Gadi Wolfsfeld states: "The power of journalistic framing rests on the 'social construction of reality theory', which posits that the meaning of events is not inherent in 'a fundamentally ambiguous social world' but rather is created by the press."¹¹³ It is not a question of what events are told, but how they are told that can make a huge difference.¹¹⁴ This idea automatically places a fair amount of responsibility on journalists, because they are the ones who decide what aspects of a story to emphasize: "...Journalists are responsible for not only reporting information, but also processing it, as opposed to leaving it in crude form."¹¹⁵ This is why Laplante argues that in some cases, the work of the media can be blamed for the deterioration or the advancement of a peace process. The continuity of conflict, she says, "may be attributed, in part, to the media's failure to adequately mediate conflicting views of a country's history-its causes and consequences, its villains and heroes."¹¹⁶ In the same manner, Ellen and Daniel Yamshom stress the media's potential in fulfilling the goal of reconciliation that some truth commissions aim

¹¹² Nelson, Tomas, Rosalee Clawson and Zoe Oxley. "Media Framing of a Civil Liberties Conflict and its Effect on Tolerance", 91 AM. *Political Science Review*, 567, 1997.

¹¹³ Wolfsfeld, Gadi. "Media and Political Conflict: News from the Middle East". Cambridge: Cambridge University Press, 1997.

¹¹⁴ Wolfsfeld, Gadi. "Media and the Path to Peace", *supra* note 111, at 15

¹¹⁵ Laplante et al., "The Media's Role in Transitional Justice Processes", *supra* note 108, at 273

¹¹⁶ Laplante et al., "The Media's Role in Transitional Justice Processes", *supra* note 108, at 252

for.¹¹⁷ Although truth commissions bear the main task of mediating the different accounts and demands of people in the aftermath of conflict, Laplante says that the configuration of a “collective memory” requires the involvement of the media “to encourage consensus-making about the past.”¹¹⁸ In fact, Escudero Scott et al regard the media as “the chief cultural guardians of national memories”, which is one reason they are invariably related to truth commissions in their pursuit of putting the past on record.¹¹⁹

While media outlets might promote values that could serve the goals of transitional justice mechanisms, they are still limited by a number of important factors. According to Wolfsfed, the press can establish the character of a national debate by emphasizing certain ideas and arguments. News headlines and slogans, as carriers of ideologies, can affect people’s perception on an issue.¹²⁰ Popular images of the enemy can be altered to change the public’s opinion and to mobilize for peace rather than war.¹²¹ This could also necessitate change in the way the media work. Laplante suggests that journalists need to be trained to frame the news in a way that will serve the purpose of transitional justice scheme.¹²² If the goal is to disseminate the idea that human rights violations are wrong, for instance, then the media ought to know how to convey this message with their choice of news angle. At the same time, the media have

¹¹⁷ Yamshon, Ellen and Daniel Yamshon. “Comics Media in Conflict Resolution Programs: Are They Effective in Promoting and Sustaining Peace?”¹¹ *Harvard Negotiation Law Review*, 2006. 421-425

¹¹⁸ Laplante et al., “The Media’s Role in Transitional Justice”, *supra* note 108, at 267

¹¹⁹ Lawrence Lessig, ‘The Regulation of Social Meaning’, *University of Chicago Law Review* 62, 1995. 943-1045

¹²⁰ Laplante et al., “Media, Trials and Truth Commissions”, *supra* note 110, 212

¹²¹ Wolfsfed, “Media and the Path to Peace”, *supra* note 111, at 14

¹²² Laplante et al., “Media, Trials and Truth Commissions”, *supra* note 110, at 210

to convey their stories in a simple manner sometimes, which makes it harder to portray the complexity of a conflict. Wolfsfed says that for issues of timing and space, journalists need to build their stories on “short and uncomplicated” storylines. He adds, “The news media are more likely to cover personalities than institutions, to prefer good visuals over complex texts, and to deal with specific opinions rather than general ideologies.”¹²³ This is particularly problematic for truth commissions, especially if they want to paint a complete and complex picture of the past. Neglecting the larger issues that lurk behind particular events risks over-simplification and misunderstanding on the part of the audience. In addition to this, Laplante explains how the journalistic value of neutrality may run counter to transitional justice aims. “[...] When a society needs a new direction in public discourse, [...] merely ‘reporting what each side says’ does not always ensure a fruitful discussion that leads to the establishment of a collective memory and national reconciliation.”¹²⁴ Of crucial importance is also the fact that sometimes the media are in a dual position within the transitional justice process itself. “The media,” Laplante says, “[are] both direct actor(s) in transitional justice and its subject(s).”¹²⁵ This statement resonates with particular strength when looking at the stance of the media during apartheid and the TRC process, an aspect that will be crucial to understand the criticism about the media in the transitional justice period.

¹²³ Wolfsfed, “Media and the Path to Peace”, *supra* note 111, at 19

¹²⁴ Laplante et al., “Media, Trials and Truth Commissions”, *supra* note 110, at 209

¹²⁵ Laplante et al., “Media, Trials and Truth Commissions”, *supra* note 110, at 208

As this chapter has sketched out some of the most important arguments surrounding transitional justice mechanisms, the role of truth commissions and the impact of the media in these contexts, it becomes clearer why some scholars call for further assessment in light of contemporary events. Before turning to the main analytical goal of this thesis, an exploration of the political negotiations that contributed to the demise of apartheid will follow. Understanding the compromises that had to be made in the run-up to the elections in 1994 is important because these compromises shaped the transitional justice process to a great extent. This examination will be the first step to learn why the TRC worked the way it did specifically, and where much of the criticism of its work comes from.

3. The South African Truth and Reconciliation Commission:

*The Commitment to Reconciliation and
Its Limitations*

*"...I do not believe a truth commission should take political decisions. If that is the intention, it is doomed to lack credibility from the start. I do not believe that any court, be it a truth commission, court of law, any judicial or quasi-judicial proceedings, can define its own terms of reference. These have to be determined by the politicians, who may find it easy, perhaps tempting, not to take difficult and unpopular decisions. However, these are decisions that have to be taken even before a truth commission or any other process can get under way."*¹²⁶

Prior to the end of apartheid, a number of political leaders and civil society organizations began to envision the need to put South Africa on the path towards a transitional justice process. Although the democratic elections of 1994 would mark the demise of the racist regime, many challenges lay before and after this remarkable event. Inevitably, the task of bridging the divide of a ruptured society would require extensive negotiations. Hence, the question was: how could South Africans overcome the legacy of apartheid and learn to coexist in a peaceful democratic environment? It was argued that a decisive break from the former order was an essential step for the emergence of a culture of human rights. A consensus in favor of establishing a transitional justice mechanism that could put society on a sound moral foundation began to emerge. The premise of the proposal for transitional justice, as Guillermo O'Donnell and Phillippe Schmitter have argued, is that a

¹²⁶ Richard Goldstone in "Dealing with the Past: Truth and Reconciliation in South Africa", 2nd Edition. Ed. Alex Boraine, Janet Levy and Ronel Scheffer. Cape Town: Clyson Printers, 1997. Pg. 119

society will not be able to progress if it does not somehow tackle the wrongdoings of the past.¹²⁷

The perception that all South Africans, irrespective of their allegiances, needed to examine their past deepened. Eventually, it became clearer that there would be no chance of a peaceful democratic establishment if apartheid leaders did not participate of the process leading towards that outcome; “A peaceful transition followed by a democratic order would not have been possible if the former apartheid leaders did not actively play a role in creating this new order.”¹²⁸ As a result, the question of justice and reconciliation was at the center of many debates during the political negotiations that brought apartheid to its end. Ultimately, political leaders and civil society groups decided that a truth commission would be the most appropriate mechanism of transitional justice for South Africa. In order to understand their decision, an examination of the circumstances under which apartheid came to an end is necessary.

The Negotiated End of Apartheid

The end of apartheid was the product of years of negotiations between the government, led by the National Party (NP), and anti-apartheid liberation movements, the most prominent of which was the African National Congress (ANC). Secret talks between government officials and Nelson Mandela had already begun back in the mid-1980s when he was still a political prisoner at Robben Island.¹²⁹ Nevertheless, it would not be until F.W. De Klerk became

¹²⁷ Sparks, Allister. “Tomorrow is Another Country: The Inside Story of South Africa’s Road to Change”, New York: Hill and Wang, 1995. Pg. 160. (hereinafter Sparks, “Tomorrow is Another Country”)

¹²⁸ Borer, Tristan. “Truth, Reconciliation and Justice.” *Peace Review*. (1999)11:2. Pg. 306 (hereinafter Borer, “Truth, Reconciliation and Justice”)

¹²⁹ Sparks, “Tomorrow is Another Country”, *supra note* 127, at pgs. 22-36

President in 1989 that the course of the talks took a major shift. On 2 February 1990, De Klerk declared that the banning orders on the ANC and other political parties would be lifted. At some point later when commenting on this historical event, he would confess that he did not proceed to unban the political parties because he had come to finally acknowledge the regime's unfairness. Instead, he did so purely on pragmatic grounds. He realized that apartheid was no longer workable and that dismantling it would actually serve the interests of his party better. "It was not a question of morality", he said, "but of practical politics."¹³⁰ Beyond the question of whether or not De Klerk acted out of moral enlightenment or opportunistic impulse, the release of Mandela became a memorable moment in the history of South Africa. On 11 February 1990, millions of people around the world watched this remarkable political leader of the anti-apartheid struggle walk out of prison after twenty seven years of imprisonment.¹³¹ An era of political negotiations was about to begin.

A number of factors propelled the decision of the apartheid government to enter negotiations with the liberation forces. Apart from mounting international criticism of the apartheid regime, growing economic isolation and global geopolitical changes such as the fall of the Berlin Wall gave the De Klerk impetus to engage in more sweeping political reforms.¹³² Particularly, with the collapse of the Soviet bloc, the alleged 'communist threat' vanished, so the National Party could no longer defend their actions by accusing the resistance movement of trying to impose a communist regime in South Africa. At the

¹³⁰ Sparks, "Tomorrow is Another Country", *supra* note 127, at 91

¹³¹ Sparks, "Tomorrow is Another Country", *supra* note 127, at 91

¹³² Guelke, Adrian, "The Pursuit of a Negotiated Settlement: Choice or Necessity?" Pg. 164

same time, Allister Sparks says that De Klerk did not envision how negotiations with the ANC and other major parties of the resistance would pave the way for black-majority rule. Sparks affirms that "...De Klerk did not expect his reforms to lead to black-majority rule ", and that in fact, he did not foresee "the end of Afrikaner nationalism before the end of the decade."¹³³ If anything, he expected a "power-sharing" arrangement with members of the liberation forces in which whites would still retain most power.¹³⁴ Once the negotiations began, however, he had to face the uncontrollable political determination of the ANC, and how this determination would limit the power of the NP tremendously.¹³⁵ Yet, the government was also resolute to keep its grip on power, so De Klerk developed concepts around minority rights and demanded a system of enforced-coalitions.¹³⁶ This and other demands had their weight, because in reality the government was not defeated militarily nor fully vanquished politically. This meant that the NP still possessed considerable political leverage and could affect the outcome of the negotiations that led to the first democratic elections.

The ANC found itself in a complex position during the negotiations, since it had to deal with the same leaders who upheld a regime that the party fought against for decades. At the most basic level, while NP leaders had to acknowledge that their party could no longer sustain white-minority rule, particularly in the face of economic stagnation and intensified international condemnation of the oppressive regime, the ANC had to accept the somewhat

¹³³ Sparks, "Tomorrow is Another Country", *supra* note 127, at 97

¹³⁴ Sparks, "Tomorrow is Another Country", *supra* note 127, at 97

¹³⁵ Sparks, "Tomorrow is Another Country", *supra* note 127, at 97

¹³⁶ Sparks, "Tomorrow is Another Country", *supra* note 127, at 97

heavier fact that the government would not lose full control of the state at least for five years. This acceptance was reflected in various concessions, particularly in the provision of a 'sunset clause', and the temporary establishment of multiparty government coalition known as "Government of National Unity" (GNU), both of which will be further detailed below. Discussions on appropriate mechanisms of justice also took into account the implications of the position of the NP in the transition.

At a "Justice in Transition" conference held in 1994 by the Institute for a Democratic South Africa (Idasa), Dumisa Ntsebeza –a future TRC Commissioner - reminded the attendants that "...the government is not a vanquished enemy. It is in power and still has armed forces in place."¹³⁷ This conference drew South African academics and experts from countries such as Chile, Argentina and Bulgaria to discuss the possible ways South Africa could deal with the legacy of apartheid.¹³⁸ Any choice of a transitional justice mechanism to address the past would be influenced by the very ones who would most likely be the subjects of this mechanism. In the words of Tristan Borer, "The implications of having to keep the National Party on-board and having to work side by side with those most likely to come under purview of any mechanism for political justice was simple: the necessity of a high degree of compromise in the development of such a mechanism."¹³⁹ The provision of amnesty in the post-amble of the Constitution was a notable example of a

¹³⁷ IDASA, "Dealing with the Past: Truth and Reconciliation in South Africa", 2nd Edition. Ed. Alex Boraine, Janet Levy and Ronel Scheffer. Cape Town: Clyson Printers, 1997. Pg. 126

¹³⁸ IDASA, xv.

¹³⁹ Borer, "Truth, Reconciliation and Justice", *supra* note 128, at 305

fundamental compromise, which was made in order to carry the negotiations forwards and assure the democratic elections, but other compromises also took place at different stages during the negotiations.

On the contentious issue of who should be part of the negotiations, it was Mandela who put forward the ambitious proposal of having a convention of all political organizations- later known as the Convention for a Democratic South Africa (CODESA). In it, leaders of all parties negotiated the core contents of an interim Constitution. The multiparty convention was significant because the groundwork that would alter the injustices of apartheid would be laid in there. In a sense, the very future of the democratic order of South Africa was at stake throughout CODESA, as well as the real potential to transform the status quo of a racially divided society. For these reasons, the process was marred with tension and distrust from every side, since party leaders were well-aware of the importance of every decision they arrived at.¹⁴⁰ Moreover, deep-seated disagreements among them surfaced, to the point of disrupting the flow of the negotiations often. These disagreements became particularly relevant in 1993.

At the time, the ANC and the NP were divided over what type of system would be the best to allocate power to parties in government. The NP advocated for “power-sharing”, an arrangement that which subject the decisions of the ANC or any other major party in Parliament to the veto power of minority parties such as the NP. Not surprisingly, ANC leaders strongly disagreed with this arrangement because it would essentially keep the political

¹⁴⁰ Sparks, “Tomorrow is Another Country”, *supra* note 127, at 125

establishment of apartheid intact.¹⁴¹ “The power of no,” comments Allister Sparks, “would remain in the hands of the old oligarchy [...]The apartheid thinkers had come a long way, but they were still not quite free of their ideological mindset [...]Now that they were having to go the whole hog and grant universal franchise, they were still trying to ensure that whites could protect the status quo by vetoing black decisions.”¹⁴² Negotiations were stalled around this issue, proof of the complexity of elaborating the interim Constitution. Yet, negotiations needed to go on, and the issue of power allocation had to be resolved to assure the realization of the democratic elections.

At this critical juncture, a ‘sunset clause’ proposed by Joe Slovo, then head of the South African Communist Party (SACP), managed to break the political deadlock that was keeping the process from moving forward. This clause conceded to the NP’s demand of establishing a power-sharing cabinet for the period that would follow after the adoption of a new Constitution.¹⁴³ According to it, the cabinet would be subject to proportional representation in the executive.¹⁴⁴ At the same time, the job positions of a predominantly Afrikaner civil service, the police and the military were guaranteed for five years.¹⁴⁵ However, in order to ensure that this arrangement would not hinder

¹⁴¹ Macdonald, Michael. “Power Politics in the New South Africa”, *Journal of Southern African Studies*, 22. June 2, 1996. Pg. 229

¹⁴² Sparks, “Tomorrow is Another Country”, *supra* note 127, at 127

¹⁴³ Slovo, Joe, “Negotiations: What room for compromise?”, South African Communist Party. Web. 2009. Accessed on November, 2010 at <http://www.sacp.org.za/people/slovo/negotiations.html> (hereinafter Slovo, “Negotiations: What room for compromise”, Web)

¹⁴⁴ Slovo, “Negotiations: What room for compromise?”, Web, *supra* note 143

¹⁴⁵ Sparks, “Tomorrow is Another Country”, *supra* note 127, at 182

the possibility of new developments in the democratic regime, the sunset clause was set to remain only for the five-year period. No veto power was granted to minority parties.¹⁴⁶ By CODESA's end, it was decided that the country would be governed by a power-sharing arrangement, named the Government of National Unity (GNU), which would stay in place until 1999.¹⁴⁷

When presenting his formula, Slovo made a point of stating what was a fact: The expectation that NP officials, who still held power, would easily surrender to the demands of the liberation movements were not realistic.¹⁴⁸ Echoing the comments of others, he said: "We [are] clearly not dealing with a defeated enemy."¹⁴⁹ The balance of political forces during the negotiations made compromises of this kind realistically necessary, he suggested. In his view, negotiations were not the justice end, but the means to justice, a 'stage' in the process of achieving a better and more legitimate position inside government than the one the ANC and others held of that moment: "Negotiations are only a part, and not the whole, of the struggle for real people's power."¹⁵⁰ As much as Slovo's proposal was strategically necessary, the deal ensured that the bureaucracy of the old regime remained intact, however. In other words, key privileges that apartheid conceded to whites would be unchallenged for a period of time. A similar compromise of the negotiated settlement was the provision of amnesty to perpetrators of political crimes.

¹⁴⁶ Sparks, "Tomorrow is Another Country", *supra* note 127, at 130

¹⁴⁷ Sparks, "Tomorrow is Another Country", *supra* note 127, at 129

¹⁴⁸ Sparks, "Tomorrow is Another Country", *supra* note 127, at 127

¹⁴⁹ Slovo, "Negotiations: What room for compromise?", Web, *supra* note 143

¹⁵⁰ Slovo, "Negotiations: What room for compromise?", Web, *supra* note 143

On Amnesty

The question of how to deal with the legacy of apartheid was raised throughout the course of the negotiations repeatedly. The demand for amnesty for political crimes committed during apartheid was directly correlated to this question, and it was one of the most difficult issues to resolve. In spite of the great deal of controversy that the issue produced and the rejection of some victims towards the very proposal¹⁵¹, amnesty was guaranteed in the interim Constitution in a post-amble, which reads as follows:

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

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. . . . ”¹⁵²

According to then Justice Minister Dullah Omar, amnesty was the inevitable price for securing a peaceful transition.¹⁵³ In reality, however, the insertion of the clause did not occur without a great deal of contention and an exhaustive search for consensus among the negotiating parties of the Constitution.

¹⁵¹ Ms. NM Biko, Mr. CH Mxenge, Mr C Ribeiro and the Azania Peoples Organization declared that the provision of amnesty was unconstitutional and that it robbed people of their right to justice. For this reason, they presented a formal demand against the TRC to the highest court. Although the case was later on dismissed, it became prominent. Source: TRC Final Report, Vol. 1, pg. 179

¹⁵² Minister of Justice, “Promotion of National Unity and Reconciliation Bill.”

¹⁵³ Borer, Tristan. “Reckoning with the Past: Political Justice in Times of Transition-The South African Truth and Reconciliation Commission”. Unpublished manuscript. Pg. 8 (hereinafter Borer, unpublished manuscript)

In 1992, negotiations were stalled due to the government's proposal of granting general amnesty to members of the security forces and the liberation movements.¹⁵⁴ Yet, this proposal *per se* was not the main source of strain during the negotiations. It was instead the NP's unilateral introduction of amnesty legislation that became problematic. The NP, acting out of growing pressure from right-wing elements and the security forces, passed the Further Indemnity Act in spite of strong opposition from the ANC and other parties. This Act granted the President the power to pardon any crime that was politically motivated, and hence eroded the possibility of punishing apartheid perpetrators for their actions.¹⁵⁵ The Act provided that ultimately, the State President could provide indemnity to "the perpetrators of acts with a political object advised, directed, commanded, ordered or performed...before 12:00 on 8 October 1990."¹⁵⁶ Even though the preceding 1990 Indemnity Act, which spelled out the terms under which liberators could receive indemnity and that had been worked out by the ANC and government members, De Klerk sought to pass a clause that would effectively rule out punitive trials. The liberation parties condemned the government's action accordingly. Louren Du Plessis captures this issue: "The government acted unilaterally and did not consult any of its major negotiating partners. This was in marked contrast to the culture of negotiation and consultation which characterized the adoption and

¹⁵⁴ Borer, unpublished manuscript, *supra* note 153, at 9

¹⁵⁵ Borer, unpublished manuscript, *supra* note 153, at 9

¹⁵⁶ Du Plessis, Lourens. "Dealing with the Past: Truth and Reconciliation in South Africa", Alex Boraine, Janet Levy and Ronel Scheffer, eds. Pg. 111.

implementation of the 1990 Indemnity Act.”¹⁵⁷ Although the 1992 Act caused much resentment, it became the foundation for the provision of amnesty that was included in the post-amble of the Constitution. The adoption of amnesty had a direct effect on the subsequent transitional justice process. At the same time, the establishment of punitive trials was also grounded in political, moral and legal assessments.

The Origins of the South African Truth Commission

The ANC had already set a remarkable precedent before the official establishment of the South African truth commission. In 1993, the Motsuenyane Commission of Enquiry –an ANC-led commission tasked with investigating accusations of human rights violations inside ANC training camps in exile– concluded that gross violations of human rights had been committed by a number of ANC members. In an outstanding move, the National Executive Committee (NEC) of the ANC accepted the findings of the Commission’s report in public, and it expressed a deep sense of collective moral responsibility and guilt for all those who suffered for the transgressions.¹⁵⁸ This event was a historical milestone, as never before had a liberation movement held its own members to account for human rights violations.¹⁵⁹ In fact, according to Johnny de Lange, the Motsuenyane Commission should be seen as part of the overall

¹⁵⁷ Du Plessis, 110

¹⁵⁸ De Lange, Johnny. “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”, Charles Villa-Vicencio and Wilhelm Verwoerd, eds. *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town: University of Cape Town Press, 2000. Pg. 20 (hereinafter De Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”)

¹⁵⁹ De Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”, *supra* note 158, at 20

process of dealing with the country's past and achieving reconciliation.¹⁶⁰ It was from the process and the result of this Commission of Enquiry that the ANC made a request to the government to establish a commission to deal with the violations that took place in the country during apartheid.

The ANC-NEC, in responding to the report of the Montsuenyane Commission, specified that a commission should be charged with the task of looking at all the abuses of human rights that took place under apartheid.¹⁶¹ The NEC outlined the reasons behind its proposal for a truth commission, one of which was the successful record of Latin American countries that had had truth commissions:

“The most important reason for the establishment of such a commission is to get to the truth. The experience of Chile, Argentina and El Salvador keenly reflects the cleaning power of the truth. Thousands of people who gave evidence rarely, if ever, showed a desire for vengeance. What mattered to most was that the memory of their loved ones would not be denigrated or forgotten and that such terrible things never happen again.”¹⁶²

The NEC suggested that perpetrators within the ANC ranks should be dealt with alongside other transgressors.¹⁶³ Many believe that Kader Asmal had an influential role in the drafting of the proposal of a commission of inquiry for the ANC, and that he was the first one to put forward the idea of confronting the past. In 1992, at a university lecture, he noted the idea of having a “conscious

¹⁶⁰ De Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”, *supra* note 158, at 20

¹⁶¹ De Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”, *supra* note 158, at 20

¹⁶² In Boraine, Alex, “A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission”. Oxford: University Press, 2000. Pg. 12

¹⁶³ De Lange, “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”, *supra* note 158, at 20

understanding of the past” in order to look to the future.¹⁶⁴ In parallel, civil society groups also took up the debate of how to deal with South Africa’s past.

The ongoing talks between South African activists, experts, and international advisors led towards a consensus that a truth commission should be established in South Africa. For this matter, the Institute for a Democratic South Africa (IDASA) was at the vanguard of a series of events set up for the purpose of searching an agreement on the most appropriate transitional justice mechanism. Under the auspices of this institute, in 1992 a group of South Africans went to Eastern Europe to learn how these countries were facing the challenges of their political transitions.¹⁶⁵ Alex Boraine, then head of IDASA, later met with experts like Lawrence Weschler who were working in the field of transitional justice. In these occasions, he was particularly moved by Weschler’s accounts of the cases of Brazil and Uruguay; “His book *A Miracle, a Universe: Settling Accounts with Torturers*...was of enormous inspiration in contemplating our situation in South Africa”, Boraine has said.¹⁶⁶ Following these events and bearing in mind the added pressure of the fast approaching 1994 elections, two conferences were held in South Africa to debate the subject of justice.

The inputs of lawyers, human rights activists, and Eastern European and Latin American distinguished intellectuals, among others, served to further cement the agreement that there was a pressing need to look at the human rights violations that took place in the past. However, only after the elections,

¹⁶⁴ Truth and Reconciliation Commission, Vol. 1, Final Report, 50 (hereinafter TRC Final Report 1)

¹⁶⁵ Boraine, ix

¹⁶⁶ Boraine, xiv

the consensus reached at the conferences translated into official petitions to the new government for a truth commission.¹⁶⁷ In a letter written to Nelson Mandela only weeks after the elections, Alex Boraine outlined the reasons for the establishment of a truth commission. He finalized the letter by saying that only through "...the knowledge and awareness of [the] violations, the dealing with them in terms of acknowledgment and compensation to victims and possible prosecutions of some of the perpetrators could well assist in ensuring that the long years of apartheid will never occur again in South Africa."¹⁶⁸ With Mandela's support for the proposal, the next and most significant step in formalizing a South African truth commission was taken up by Parliament. This was a remarkable development because the constitutional provision of amnesty did not require the set up of a truth commission. In other words, amnesty could have been granted without the establishment of a truth-telling process. The post-amble of the Constitution did not impose disclosure of truth as a condition for receiving this provision. Therefore, that the truth commission of South Africa had the power to mediate this provision, binding it to full disclosure of the facts about breaches committed in the past, set it apart from previous truth commissions.

The Mandate of the South African Truth and Reconciliation Commission

The new South African Parliament, through the 1995 Promotion of National Unity and Reconciliation Act no. 34, created the South African Truth

¹⁶⁷ Boraine, xv

¹⁶⁸ Boraine, 34

and Reconciliation Commission. In his presentation of the draft Act to Parliament, Minister of Justice Dullah Omar began his speech as follows:

“I have the privilege and responsibility to introduce today a Bill which provides a pathway, a stepping stone, towards the historic bridge of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and commence the journey towards a future founded on the recognition of human rights, democracy and peaceful coexistence, and development opportunities for all South Africans irrespective of colour, race, class, belief or sex.

Its substance is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: ‘...for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights violations...and a legacy of hatred, fear, guilt and revenge’. ”¹⁶⁹

The Minister’s opening words put stress on the intent of institutionalizing what the interim Constitution mandated. This Act would provide the platform of the TRC’s work.

Parliament vested the TRC with the task of fostering the reconciliation and national unity enshrined in the post-amble of the interim Constitution. It is important to note though that the TRC was not the only institution charged with this mission. Other institutions such as the Land Claims Court, the Constitutional Court, the Human Rights, the Gender and the Youth Commissions were also conceived within a framework that stressed the promotion of national unity and reconciliation in the new South Africa.¹⁷⁰

Another aspect to consider is that the proposal of setting up a truth commission was not necessarily new or unfamiliar, as previously discussed, and neither was

¹⁶⁹ Promotion of National Unity and Reconciliation Act in Parliament, as quoted in the TRC Final Report 1, *supra* note 164, at 48

¹⁷⁰ TRC Final Report 1, *supra* note 164, at 48

it set up without the formal objections of some prominent members of society.¹⁷¹

The Act delineated the Commission's work in various ways. It outlined its major goals, which in summary were: to determine a complete picture of the causes, nature and extent of the gross violations of human rights between March 1, 1960 and May 10, 1994; to facilitate the granting of amnesty to perpetrators of crimes who came forward and disclosed the whole truth about their acts while providing victims with a chance to share their stories; to prepare a final report with all the findings of the Commission with recommendations to prevent future human rights violations.¹⁷² The Commission had to complete its work in eighteen months beginning in December 15, 1995.¹⁷³ It was composed of seventeen commissioners, each of whom was appointed by the President, with the chairmanship and vice-chairmanship of Archbishop Desmond Tutu and Alex Boraine respectively.¹⁷⁴ Three committees -the Human Rights Violations Committee, the Committee on Amnesty and the Committee on Reparation and Rehabilitation of Victims-were established to fulfill the goals of the Commission. As noted in Chapter 1, concepts contained in the Act, such the terms 'human rights violations', 'victims' and 'perpetrators' were the subject of intense debate and deep contestation, and Commissioners had to put up with the challenge of putting

¹⁷² TRC Final Report 1, *supra* note 164, at 55.

¹⁷³ Borer, unpublished manuscript, *supra* note 153, at 16

¹⁷⁴ TRC Final Report 1, *supra* note 16, at 44

them into actual practice.¹⁷⁵ The implications of these terms are a central aspect of analysis in this thesis. How could this language of ‘victims’ and ‘perpetrators’ have impinged on the goal of reconciliation that the mandate had established? Before this question is taken into account and an examination of the critiques to the TRC and the media are outlined, the content of the main language of the Commission needs to be lay out.

Terminology of the TRC

- *Violations of Human Rights*

The task of investigating and condemning actions that the Act identified as violations of human rights posed some important challenges to the Commission. Commissioners argued that the lack of clarity of some of the terminology in the Act put limitations in their work. A gross violation of human right was one such term. The Act established the following definition:

“...‘gross violation of human rights’ means 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 committed during the period 1 March 1960 to 10 May 1994 within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive (section 1(1)(ix).”

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Commissioners argued that the Act could have been more precise or clearer in this area.¹⁷⁷ For instance, determining what acts had a clearly ‘political motive’ was difficult to assess. They said that it was hard to establish the most

¹⁷⁵ TRC Final Report 1, *supra* note 164, at 58

¹⁷⁶ TRC Final Report 1, *supra* note 164, at 60

¹⁷⁷ TRC Final Report 1, *supra* note 164, at 60

appropriate criteria for classifying an action as strictly political because of the very nature of apartheid: “Given the complexity of the conflicts that occurred in the past and the fact that the enforcement of apartheid legislation affected every sphere of society, the political nature of specific acts was hard to define.”¹⁷⁸ Hence, one of the most urgent tasks on the agenda of the Commission was to resolve what constituted a politically motivated act and what did not. Eventually, the Commission decided to narrow the understanding of political acts down to “...any attempt, conspiracy, incitement, instigation, command or procurement to commit an act”, and it was a decision largely informed by the Noorgard Principles.¹⁷⁹ These principles, which were elaborated by the president of the European Commission on Human Rights Carl Aage Norgaard at the time of the Namibian settlement in 1978,¹⁸⁰ included the following conditions to determine the political nature of an act:

“the motive of the person who committed the act; the context in which the act took place; the legal and factual nature of the act; the object of the act; whether the act was carried out on the orders of a body of which the perpetrator was a member; and the closeness of the connection between the act and the objective pursued.”¹⁸¹

As much as the definition of human rights violations posed some challenges to the Commission, so did the ‘victim/perpetrator’ binary.

- *Victims & Perpetrators*

The subjects of the Commission, as stated in the language of the Act, were victims and perpetrators of the actions that constituted gross violations of

¹⁷⁸ TRC Final Report 1, *supra* note 164, at 82

¹⁷⁹ Borer, unpublished manuscript, *supra* note 153, at 17

¹⁸⁰ Borer, unpublished manuscript, *supra* note 153, at 17

¹⁸¹ Quoted in Borer, unpublished manuscript, *supra* note 153, at 17

human rights. Nevertheless, Commissioners recognized that the terms victims and perpetrators had relevant limitations and problematic paradoxes. In this respect, Borer has elaborated extensively on the issues attached to the somewhat simplistic 'victim/perpetrator' binary. She has said that in reality, differences between these two groups were not necessarily as clear-cut, and that the "homogeneity that [was] often assumed to individuals within each group [has been] overstated."¹⁸² In what concerns to the term 'victims', at the most basic level, they were those individuals against whom any of the violations were committed.¹⁸³ If a person had undergone torture or persecution during the time period established in the Act, then that person could come forward and testify to the Commission. However, this concept did not necessarily match the perceptions or the ideas of those who were labeled as such. The TRC Report states that "...many described as victims might better be described, and indeed, might prefer to be described as survivors."¹⁸⁴ Particularly, some of those who actively fought in the struggle against apartheid felt uncomfortable with the 'victim' label.

In spite of its issues, the Commission ended up applying the term of victim as it was handed down to it by the mandate, limiting it even further to a closed-list of persons who could qualify for compensation. Only individuals who approached the Commission and fit the category of victim or those who did so on behalf of other victims, or if their names came up during the amnesty

¹⁸² Borer, Tristan, "A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa." *Human Rights Quarterly*, Vol. 25, No. 4, November 2003. Pg. 1094 (hereinafter Borer, "A Taxonomy of Victims and Perpetrators")

¹⁸³ TRC Final Report 1, *supra note* 164, at 59

¹⁸⁴ TRC Final Report 1, *supra note* 164, at 59

process were included in the closed-list of victims.¹⁸⁵ The issues that this particular term engendered were (and have been) as much the subject of criticism of the TRC's work as were the implications of the concept of 'perpetrator'.

Problematic as the term was, the Commission used the term 'perpetrator' when referring to those who could be held accountable for committing any violation of human rights motivated for political reasons. By mandate, the Commission had to identify all the persons who perpetrated human rights abuses with an exclusively political aim regardless of their backgrounds. Commissioners admitted that they used this term with unease. The label 'perpetrator' by itself made no distinction of context or the backdrop against which some actions were committed in the first place.¹⁸⁶ In fact, this was one of the primary reasons why the ANC expressed discomfort with the work of the TRC: "At the core of the ANC's anger and disagreement with the TRC was the government's perception that the TRC was not properly distinguishing between the morality of the violence perpetrated by the state versus the that of perpetrators fighting against the state."¹⁸⁷ According to the ANC, in trying to stay neutral when allocating responsibility, the TRC risked failing to acknowledge the structural factors that motivated the engagement in violent struggle on the part of the liberation movements. The Commission's response to this challenge was that even for just causes, unjust deeds might be carried

¹⁸⁵ TRC Final Report 1, *supra* note 164, at 86

¹⁸⁶ TRC Final Report 1, *supra* note 164, at 59

¹⁸⁷ Borer, "A Taxonomy of Victims and Perpetrators", *supra* note 182, at 1093

out.¹⁸⁸ Nevertheless, a perception of overall failure to acknowledge the bigger picture of apartheid, and the alleged repercussions of such failure on race relations specifically, has given substance to the critiques of the TRC which will be discussed in the next pages.

¹⁸⁸TRC Final Report 1, *supra* note 164, at 66

The TRC and Race

Race, the most distinguishable element of apartheid, was a complex subject for the TRC to grapple with. Due to decades of racial classification and segregation, race relations in South Africa were under much strain after the 1994 elections. The task of improving this state of affairs seemed immediate, and in many ways the TRC appeared as one mechanism that would help overcome the racist legacy of apartheid. Nevertheless, people's views and the sentiments about the work of the Commission and its handling of the race issue have been rather varied. For instance, according to Desmond Tutu, some people perceived that the truth-telling process that the Commission initiated was in fact detrimental to the state of race relations in the country and the greater goal of reconciliation.¹⁸⁹ In the foreword of the final report of the TRC, Tutu commented on this perception: "Some have been upset by the suggestion that the work of the Truth and Reconciliation Commission could have resulted in making people angrier and race relations more difficult, as indicated by a recent survey."¹⁹⁰ In this respect, scholars like Mahmood Mamdani and Brandon Hamber, among others, have put forward arguments that aim to prove how the limitations of the TRC have had an impact on reconciliation and racial relations in South Africa.

Mamdani has argued that the TRC's scope of work was too narrow and that for this reason, it did not strike at the core issues of apartheid, which were

¹⁸⁹ TRC Final Report 1, *supra* note 164, at 68

¹⁹⁰ TRC Final Report 1, *supra* note 164, at 68

mainly structural. In failing to include 'beneficiaries' of apartheid -those who did not necessarily engage in human rights violations considered by the Commission but still bore some responsibility- and the large majority of victims, he says, reconciliation was impinged.¹⁹¹ In more direct reference to the issue of racism, Brandon Hamber says, "Through the failure of the TRC to address structural issues, it was inevitable that in the post-TRC period, the inequalities of the past and their racial flavor would loom large-as indeed they do."¹⁹² Thus, racial relations remain largely problematic today. Scholars like James Gibson, however propose an alternative view and consider that the TRC fulfilled its role dutifully and that the Commission's work did in fact contribute to improving racial relations.¹⁹³ Before this debate is analyzed in detail, however, it is important to note that if there is agreement that the TRC had to lay the groundwork for 'reconciliation and national unity',¹⁹⁴ there is still disagreement over what reconciliation should entail. In effect, different understandings of reconciliation complicate views of the impact of the TRC on racism in South Africa. Whether the Commission could in any way be held responsible for either deteriorated or improved race relations is also a function of what concept of reconciliation one is looking at. For this thesis though, the aspect of reconciliation that will figure more prominently is that of racial reconciliation. Given that apartheid sought division through racism, then

¹⁹¹ Mamdani, Mahmood, *A Diminished Truth*. "After the TRC: Reflections on Truth and Reconciliation in South Africa." Ed. Wilmut James and Linda van de Vijver. Cape Town: The Rustica Press, 2000. Pg. 59 (hereinafter Mamdani)

¹⁹² Hamber, Brandon, "Ere their Story Die: Truth, Justice, and Reconciliation in South Africa."

¹⁹³ Gibson, James. "Overcoming Apartheid: Can Truth Reconcile a Divided Nation?" *The Annals of the American Academy of Political and Social Science*. 603:82. 2006. Pg. 87 (Hereinafter Gibson)

¹⁹⁴ "Promotion of National Unity and Reconciliation Act 34 of 1995" *Truth and Reconciliation Commission*. Web. 29 January 2011. <http://www.justice.gov.za/legislation/acts/1995-034.pdf>

reconciliation, as Gibson suggests, must happen among these races. Interestingly, by mandate the Commission could not deal with racism *per se*, even though it was the founding ideology of the system of apartheid.

The scope of human rights violations in the TRC's mandate limited the Commission in its treatment of racism. Commissioners argued that that they had to abide by the terms of inquiry that their mandate delineated, terms that in some ways ruled out attempting to denounce or solve purely racist issues.¹⁹⁵ In the Commission's report, the recognition of this limitation is made explicit in several instances. Under the topic of 'Racism', Commissioners explained how they were constrained to act when people brought forward problems with racism.¹⁹⁶ For instance, on several occasions, individuals were victims of racist attacks at the hands of people who were not necessarily tied to a particular political organization or political ideology. Yet, the Commission could not take these cases into consideration because the Act only took issue with abuses that had a specific political intent or motif. The final report notes: "Although racism was at the heart of the South African political order, and although such cases were clearly a violation of a victim's rights, such violations did not fall within the Commission's work."¹⁹⁷ At the same time, racism was taken into account in those cases that seemed to fall under the purview of the mandate of the Commission, as it was with the cases where racism and political ideology were closely intertwined: "Instances where racism was used to mobilize people through a political organization as part of their commitment to a political

¹⁹⁵ TRC Final Report 1, *supra* note 164, at 84

¹⁹⁶ TRC Final Report 1, *supra* note 164, at 84

¹⁹⁷ TRC Final Report 1, *supra* note 164, at 84

struggle or where racism was used by a political organization to incite other to violence.”¹⁹⁸ Killings of white farmers by the Pan Africanist Congress (PAC) or the ANC, and violence against Blacks by right-wing organizations, were some examples of such instances when racism was visibly guiding political actions.¹⁹⁹ In general though, Tutu reaffirmed that racism was the common element of the human rights violations that the Commission scrutinized. In fact, he said that the majority of those who perpetrated these violations were defending apartheid.²⁰⁰ Madeleine Fullard and Nahla Valji, however, believe that much more could have been done to deal with the race problem of apartheid by the TRC. They argue that the Commission failed to address the issue of racism in its work properly, and that in doing so an opportunity was missed to improve the state of race relations in South Africa.²⁰¹ James Gibson, however, asserts that the Commission’s approach to racism was appropriate and that it actually fostered better racial relations today.

Gibson has done quantitative analysis to demonstrate that TRC played an enabling role that eased racial tensions and helped lay the groundwork for improved racial relations in contemporary South Africa. In his view, an important aspect of the reconciliation that the TRC was meant to bring about was racial reconciliation.²⁰² If apartheid divided people along racial categories and exacerbated hostilities among these clearly defined racial groups, then

¹⁹⁸ TRC Final Report 1, *supra* note 164, at 84

¹⁹⁹ TRC Final Report 1, *supra* note 164, at 84

²⁰⁰ TRC Final Report 1, *supra* note 164, at 16

²⁰¹ Valji, Nahla. “Race and Recociliation in Post-TRC South Africa”, paper presented at a conference entitled *Ten Years of Democracy in Southern Africa*. Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/racism/raceandreconciliation.pdf>

²⁰² Gibson, 87

logically reconciliation must happen primarily between these groups. "In South Africa," says Gibson, "the groups that must reconcile are the four main racial groups in the country-whites, Africans, Coloured people, and South Africans of Asian origin."²⁰³ Ideally, if reconciliation has been achieved, these groups should see and treat each other as equal and with respect and dignity. ²⁰⁴ In theory, Gibson has argued a minimization of racial animosities would entail higher levels of interaction among people from different races, as well as more communication coupled with greater understanding and acceptance of distinct racial groups. If these elements are present, they would ultimately lead to an embrace of racial diversity and multiculturalism. ²⁰⁵ In his analysis, Gibson has contended that the nature of the work of the TRC enabled the emergence of these attitudes, thus contributing to racial reconciliation.

Gibson has argued that the non-biased, even-handed treatment of the gross violations of human rights that the TRC dealt with fostered racial reconciliation. In his view, the fact that the Commission acknowledged that people from every side perpetrated violations during the struggle against apartheid is what helped to defy racial boundaries. In other words, if what most people knew about apartheid was what the 'other' had done, the Commission challenged people's prejudices by virtue of its work. He says, "To get South Africans to change their attitudes toward those of other racial groups, it is essential that the cognitive basis of racial beliefs be shaken up... How might the truth and reconciliation process have created this dissonance? Perhaps the most

²⁰³ Gibson, 87

²⁰⁴ Gibson, 87

²⁰⁵ Gibson, 88

important lesson of the TRC was that both sides in the struggle did horrible things.”²⁰⁶ According to Gibson, the fact that the violations committed by the South African Police Force and the ANC were equally condemned was a step forward in demystifying ideas of those in different racial groups bringing people closer together.

Similarly, the Commission had to take into account that as much as there were perpetrators of gross violations of human rights in every group, there were also victims on every side. In relation to this, Commissioners explain that they had to apply an even-handed treatment to victims of human rights violations due to the terms of the founding Act. According to the report: “The Commission was obliged by statute to deal even-handedly with all victims. Its actions when dealing with individual victims were guided, amongst other things, by the principle that ‘victims shall be treated equally without discrimination of any kind’ (section 11 (b)). In so doing, it acknowledged the tragedy of human suffering wherever it occurred.”²⁰⁷ In Gibson’s view, it is precisely this neutral approach to human rights violations that has increased the likelihood of lasting reconciliation because it has given Blacks and whites the chance to see a more accurate picture of the reality of apartheid.²⁰⁸ Other scholars, however, have looked at the TRC’s alleged neutrality towards the violations it handled with unease, and have challenged the argument that the Commission’s approach was the most appropriate one.

²⁰⁶ Gibson, 98

²⁰⁷ TRC Final Report 1, *supra* note 164, at 60

²⁰⁸ Gibson, 100

Critics like Valji and Fullard argue that the TRC downplayed the role of racism in understanding the violations of human rights that came under the purview of its work. According to Valji, Commissioners treated racism and politics separately rather than as strongly related. She says that race was only explicitly addressed in the TRC process when it was used as a mobilizing tool of a political organization, which is a fair statement in light of Tutu's recognition of the instances when race came up in the work of the Commission as an issue to be dealt with. Valji argues that this approach to race is problematic because it served to disguise essentially racist acts behind the 'political' label.²⁰⁹ Similarly, Fullard considers that political and ideological affiliations mattered more to the TRC than people's racial identities and how these identities affected their lives.²¹⁰ She says, "Race and racism were de-centered as a critical interrogational framework for the TRC, along with several other key constitutive elements of the parameters of apartheid, including class, gender and ethnicity."²¹¹ Furthermore, Valji argues that throughout the process victims were forced to concentrate on the most important details of their stories and were discouraged from narrating everyday events of racial discrimination.²¹² In a similar line, Willhelm Verdoolaege states: "Stories were circumscribed and crafted through a variety of means, including pre-rehearsing of those who were to tell their stories publicly, the controlling of testimonies in

²⁰⁹ Valji, Nahla. "Race and Reconciliation in a Post-TRC South Africa". *Centre for the Study of Violence and Reconciliation*. Web. 17 July 2011. Pg. 5

<http://www.csvr.org.za/docs/racism/raceandreconciliation.pdf> (hereinafter Valji)

²¹⁰ Fullard, Madeleine. "Displacing Race: The South African Truth and Reconciliation Commission and Interpretations of Violence". *Race and Citizenship in Transition Series*. Centre for the Study of Violence and Reconciliation, 2004. Pg. 7 (hereinafter Fullard)

²¹¹ Fullard, *supra* note 211, at 4

²¹² Valji, *supra* note 209, at 4

the public arena using uniform questions and interruptions where witnesses strayed from expected testimony into unanticipated topics.”²¹³ As for the report, the topic of racism is minimally discussed and limited to a couple of pages. Posel says that racism figures more “as an answer, and not a question [...] Racism simply exists. Overall, there is little sense of interconnectedness of racism and other divides in the society.”²¹⁴ In Mamdani’s view, the categories of ‘victims’ and ‘perpetrators’ misrepresented the reality of apartheid.

Mamdani has pointed out that the truth that came out of the Commission did not mirror the realities of a large number of South Africans that lived under apartheid. He has said that the TRC had its own version of truth, reducing it to the voices of perpetrators and victims that took part in the process.²¹⁵ Critical of these definitions and the concept of gross violation of human rights that was established, he makes the comparison between the Gulag and the force removals of apartheid, after which he adds: “[The] 3.5 million victims comprise faceless communities, not individual activists. They constitute a social catastrophe, not merely a political dilemma...Why, then, did the TRC not include these people as ‘victims’?”²¹⁶ Essentially, he is saying that the reduction of victims to those who suffered politically motivated human rights violations such as torture or persecution excluded the large number of victims of apartheid laws from the TRC process. Although many Blacks might not have

²¹³ Verwoerd, Wilhelm. “The TRC and Apartheid Beneficiaries in a New Dispensation.” Paper read at *Politics and Promises: Evaluating the implementation of the TRC's recommendations*. Centre for the Study of Violence and Reconciliation, Johannesburg, 2000.

²¹⁴ Posel, Deborah and Graeme Simpson, eds. “Commissioning the past: Understanding South Africa’s Truth and Reconciliation Commission.” Johannesburg: Witwatersrand University Press, 2002. Pg. 165

²¹⁵ Mamdani, *supra note* 191, at 59

²¹⁶ Mamdani, *supra note* 191, at 60

been suffered the violations that the Commission investigated, their lives were severely circumscribed by the norms of the racist regime. In the same manner, not all whites perpetrated the acts that the Commission oversaw, but they still benefited from the racist underpinnings of the regime. These ‘beneficiaries’, as Mamdani calls them, were not brought to account by the Commission because their responsibility was not formally recognized in the mandate. In his view, these conceptual limitations had a direct negative effect on reconciliation.

The omissions of the TRC could have had the effect of limiting racial reconciliation and could account for race relations that remain strained in South Africa today. According to Fullard, after the TRC, reconciliation is still a largely unfulfilled goal. She thinks that the language that the TRC used, such as the term ‘political’ act or the ‘victims and perpetrators’ binary that the Commission dealt with, had the effect of displacing race and racial identity from understandings of the violence of the past and the present.²¹⁷ Valji also considers that the process that led to the formation of the TRC could have resulted in a rather limited, ‘superficial’ reconciliation. In disengaging from a more open discussion of how racism factored into the violations of human rights under the scrutiny of the Commission, the TRC “...has left many of the structures of inequality intact and unaddressed and has suppressed dialogue on the persistence of racism in the new South Africa.”²¹⁸ At a general level, the psychologist Pumla Gobodo-Madikizela argues that truth commissions risk becoming “...merely sites of symbolic apology and reconciliation that then

²¹⁷ Fullard, vii

²¹⁸ Valji, 5

stands as a substitute or excuse for actual and substantive transformation.”²¹⁹ In South Africa, the high levels of urban segregation and the 2008 xenophobic attacks are possible evidences of the lack of significant change that Gobodo-Madikizela refers to. In the same manner, Hamber says that there is a ‘silencing’ about how race in the present is still the defining element of social relationships.²²⁰ Valji attributes this silencing to the suppression of a more open dialogue about the racism of apartheid during the TRC.²²¹ At the same time, Fullard acknowledges that as much as the work of the TRC could be blamed for still problematic race relations in contemporary South Africa, this work was inevitably a function of the mandate that established the TRC in the first place.²²²

If by any measure the TRC failed to deal with race more appropriately, the effect of the mandate that established the Commission should be analyzed. Fullard note that in the language of the Act there is no reference to ‘apartheid’, ‘racism’ or ‘race’. Instead, a call to work for a future in which the rights of people are upheld irrespective of their color, gender, and so on is made.²²³ Hence, Fullard argues that the omission of the issue of race begins with the very founding document of the TRC. She says, “It could be argued that the legislation, which is quite literally the constitutive act of the TRC, decenters race through the use of descriptors that render the conflicts of the past unspecific

²¹⁹ Gobodo-Madikizela, Pumla. “Apologies Aren’t Enough”. *Boston Globe*. 20 September 2000.

²²⁰ In Valji, supra note 209

²²¹ Valji, 8

²²² Fullard, 29

²²³ Fullard, 29

and all-encompassing.”²²⁴ She adds that the TRC’s purpose, which emanated from the Act, could have inevitably meant that it had to suppress sites of potential conflict such as discussions on race; “The TRC was [...] an instrument of national unity and a project of national (re) construction, that involved silencing of conflict and concealment of the continuities of injustice from past to present, in order to ‘imagine’ the new nation.”²²⁵ The Commission had to build a new narrative that would necessarily preclude the kind of language and approach that would put race at the center of the truth telling process; “[Racism] had to be excluded from [the TRC’s] interrogational framework and the new values of constitutionalism and citizenship of the new South Africa inscribed accordingly.”²²⁶ However, it must be noted that the TRC did move beyond the boundaries of its mandate and, in an innovative move, devised a series of institutional hearings to examine the issues that critics think were left largely unattended.

Institutional hearings

Media, business, religious, legal and health sectors among others were all brought together under the TRC’s official attempt to address the structural framework of apartheid and disclose the role of these institutions in sustaining or defying the system. This was an important development in the truth-telling process because the Commission departed from its mandate to have an even deeper enquiry into the past. The Commission did not need to establish these

²²⁴ Fullard, 29

²²⁵ Fullard, 29

²²⁶ Fullard, 29

hearings since its mandate did not require so. Nevertheless, Commissioners recognized that the role of institutions as 'beneficiaries' of apartheid was being neglected in the process.²²⁷ For this reason, their attempt to fix that aspect was commendable. In Fullard's view, however, these hearings evidence how the TRC process as a whole dangerously disregarded the relevance of racism. She refers to these hearings by saying,

"They [hearings] were the place in the TRC where the questions of race and racism were most overtly considered and debated-where race was 'admitted' into official TRC regard...These hearings stood in awkward discontinuity with the amnesty hearings, where, as indicated above, racism was excluded as a legitimate political objective."²²⁸

It remains true as well that discussing or addressing every aspect of the apartheid past was a daunting task, especially when the kind of issues that characterized apartheid continued to be felt even within the Commission. The involvement of the media, for instance, is a good case in which to examine the contradictions and shortcomings of the overall process of transitional justice. A 'beneficiary' of apartheid itself, media outlets strove to have a positive role throughout the life of the TRC. At the same time, they had to come to terms with the fact that they were themselves at times the subjects with which the Commission was not properly dealing with. For these reasons, an exploration of the different views on the role of the media within the process is warranted.

²²⁷ Truth and Reconciliation Commission Final Report, Vol. 4, Pg. 1. (hereafter referred to as TRC Final Report 4)

²²⁸ Fullard, 20

The TRC and Media

The media, meaning newspapers, radio stations and television agencies, were key actors of the transitional justice process that South Africa embarked upon in 1996. Although the TRC was the cornerstone of this process, it was not alone in the pursuit of 'national unity and reconciliation' that the 1995 Parliamentary Act called for.²²⁹ The media delivered the information that came out of the TRC hearings with the intent of engaging the rest of society in the process. Thereby, the Commission has said that the media helped to enhance the public nature of the process, in line with what the Act had envisioned.²³⁰ Furthermore, the TRC Report has commended the fact that the accounts of victims and perpetrators effectively reached a large audience even beyond South Africa:

"People saw, for example, a former security police officer demonstrating his torture techniques. They saw weeping men and women asking for the truth about their missing loved ones. The media also helped generate public debate on central aspects of South Africa's past and to raise the level of historical awareness."²³¹

Even as the process was unfolding, some commentators made the claim that the success of the TRC lay with the media.²³² Nevertheless, while expectations about their involvement in the process ran high, criticism about their work soon began to emerge. Particularly, at a 1997 conference titled "Reporting the Truth Commission" in which journalists, editors and guests with varied expertise

²²⁹ "Promotion of National Unity and Reconciliation Act 34 of 1995" *Truth and Reconciliation Commission*. Web. 29 January 2011. <http://www.justice.gov.za/legislation/acts/1995-034.pdf>

²³⁰ TRC Final Report 1, 104

²³¹ TRC Final Report 1, 104

²³² Bird, Edward and Zureida Garda. "Reporting the Truth Commission: Analysis of Media Coverage of the Truth and Reconciliation Commission of South Africa." *International Communication Gazette*. 59(4-5). October, 1997. Pg. 334 (hereafter referred as Bird and Garda)

gathered to discuss their role in the TRC, a number of concerns about the way media outlets were reporting the hearings were raised.²³³ Eventually, some of these concerns would become the foundation of the main criticisms about the media's involvement in the TRC.

From the start of the TRC process, journalists showed committed engagement with the task of covering the hearings of the Commission, while they also demonstrated concern for a number of dilemmas. The Media Monitoring Group (MMG) research study about the media's coverage of the TRC between two different periods –April 1996 to February 1997 and March to September 1997 – confirms that “...the media covered the TRC comprehensively, particularly with regard to specific individual and group testimonies, issues of personal and/or political reconciliation, views of different political groups on the TRC, and the broad effectiveness of the Commission.”²³⁴ Antjie Krog, an Afrikaner journalist who followed the work of the Commission and wrote about it extensively, depicts the deep level of awareness of journalists who were covering it. At a media workshop for those reporting on the hearings, she points out at some important questions that journalists were dealing with:

“A workshop is organized for journalists who will be covering the Truth Commission and their immediate editors...Various topics are discussed: how can exhaustion be prevented? How can viewers, listeners, and readers be involved? Should Truth Commission stories be confined to a

²³³ Bird and Garda, *supra* note 232, at 334

²³⁴ Media Monitoring Group, “Shares of Prejudice: An investigation into the South African media's coverage of racial violence and xenophobia.” Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/foreigners/shades.pdf> (hereinafter MMP).

special page? Won't people just skip over this section? How can we see to it that the past becomes front-page news? No newspaper has the means to cover the commission full-time-will television be able to broadcast the hearings daily so that people can follow them from their offices?

What is the role of radio with its access to all the language groups and impoverished communities? And do all eleven official languages have the words needed to cover the commission? (...)." ²³⁵

These questions are evidence that journalists knew well that covering the Commission had complexities that needed to be addressed. Even so, critics have pointed out that the media's involvement was flawed and weak in different ways.

In a similar vein to those who argue that the TRC downplayed the impact that apartheid had on the lives of far more people than those who were directly involved in the hearings, some people also think that media outlets mirrored this flaw and missed an opportunity to rectify the shortcomings of the truth-telling process. Firstly, people argue that the 'truth' that came out of the Commission was taken as such -unchallenged and unquestioned- and delivered to the rest of society without a critical filter.²³⁶ As a result, in the same way that some people have suggested that the TRC narrowed down the conflict to a small number of victims and perpetrators, others have said that the media failed to portray the complexity of both the apartheid regime and the liberation struggle that brought it down.²³⁷ In other words, they limited their work to

²³⁵ Krog, Antjie. "Country of my Skull: Guilt, Sorrow and the Limits of Forgiveness in the New South Africa." New York: Three Rivers Press, 2000.

²³⁶ Bird and Garda, 335

²³⁷ Garman, Anthea. "How the TRC and the media have impacted on each other." *Track Two* journal of the Centre for Conflict Resolution, Vol. 6 No. 3&4, December 1997. Web. http://www.ccr.uct.ac.za/archive/two/6_34/p36_garman.html (hereinafter Garman, "How the TRC and the media have impacted on each other")

reflecting the process rather than challenging it.²³⁸ A point for consideration is that the media was in a rather odd position within the process, a consequence of what has been described as the media's 'symbiotic' relationship with the TRC.²³⁹ A closer look to the debate deems necessary.

The media utilized the same concepts and ideas that the Commission adopted from the Act at the expense of much needed discussion and criticism about them. For instance, Anthea Garman thinks that reporters borrowed the same 'victim/perpetrator' dichotomy that the TRC used in order to facilitate the framing of the information; "Both the TRC and the media have been guilty of seeking out those who fit into these two neat categories so that the story is easy to relate and fits a neat guilty-innocent dichotomy."²⁴⁰ Furthermore, Brandon Hamber echoes the argument of a number of people who have said that the media did not disclose anything new other than what the TRC managed to gather at the hearings.²⁴¹ He comments, "...The media reflecting the truths revealed by the TRC should not be undermined, but it is unlikely that truth alone will be sufficient to change the ingrained apartheid mindset."²⁴² The fact that racism was minimally mentioned as an explanatory variable of the events

²³⁸ Hamber, Brandon. "Reflecting on the Truth: Has the media coverage of the TRC changed the way the public sees itself, its history and its responsibility?" Paper presented at the TRC and Human Rights Journalism in South African Workshop. 3 October 1997. Centre for the Study of Violence and Reconciliation. Web. Accessed on January, 2011 at <http://www.csvr.org.za/articles/artrcros.htm> (hereafter Hamber)

²³⁹ Krabill, Ron. "Symbiosis: mass media and the Truth and Reconciliation Commission of South Africa." Media Culture Society, 2001. 23:567. Pg. 583 (hereafter Krabill)

²⁴⁰ Garman, "How the TRC and the media have impacted each other", *supra* note 237

²⁴¹ Hamber, *supra* note 238

²⁴² Hamber, *supra* note 238

that the media reported on is unsettling to critics of their work.²⁴³ For instance, in the same MMG research study that corroborates that the media covered the Commission, the lack of contextual analysis of this coverage is noted, particularly the aspect of racial segregation:

“[...] Stories were largely covered without any direct reference to race and racism. While the coverage often related to individual incidents or sets of incidents, these were very seldom described in racial terms. Instead, the media preferred to label incidents as “human rights abuses” or “politically motivated crimes”, thereby downplaying the racial element...”²⁴⁴

The study makes the observation that the omission of racism from these reports has the problematic implication of undermining the relevance of race to understand the past in South Africa and the cases that the Commission dealt with:

“While there is no doubt that the victims of repression under apartheid were indeed the victims of gross human rights abuses, it is also clear that many such incidents were informed by societal and institutional racism. While these acts may have been committed under the influence of a certain political ideology and could thus be regarded as political, the media has been complicit in denying the essential racist rationale involved. Much of the coverage simply ignored the racially-motivated context altogether.”²⁴⁵

Overall, the main point of concern here is the apparent disregard of context, and in this case the way reporting was done is relevant.

²⁴³ Media Monitoring Group, “Shares of Prejudice: An investigation into the South African media’s coverage of racial violence and xenophobia.” Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/foreigners/shades.pdf> (hereinafter MMP).

²⁴⁴ MMP, *supra* note 234

²⁴⁵ MMP, *supra* note 234

Through their reporting, some people think that the media furthered the omission of the wider picture of apartheid. In limiting their work to passing on the information of the human rights violations and the amnesty hearings to the public without a proper framework, they did not reflect the larger complexities of apartheid.²⁴⁶ Bird and Garda find it problematic that stories mostly focused on certain aspects of people's accounts, leaving out other important aspects that could have provided some background to understand these accounts; "Most media reporters would quote extensively from a survivor's testimony, especially of their suffering, but fail to report on the survivor's life afterwards or on their demands or requests from the commission."²⁴⁷ For this reason, the large numbers of people who were affected and benefited by apartheid fell outside of the frame of reportage of media outlets. At a conference in Cape Town titled "Reporting the Truth Commission", journalist Tony Weaver highlighted that the real object of reconciliation was among victims and the beneficiaries of the apartheid system, an assertion that echoes Mahmood Mamdani's main argument.²⁴⁸ But instead, media limited their coverage to high profile cases.²⁴⁹ In fact, some have suggested that the media did not represent properly those who were against the truth-telling process because they abided by this process without hesitation.²⁵⁰ This argument puts the spotlight on a key aspect of the media's involvement in the TRC, which has to do with the

²⁴⁶ Garman, *supra* note 237

²⁴⁷ Bird and Garda, 339

²⁴⁸ Garman, *supra* note 237

²⁴⁹ Garman, *supra* note 237

²⁵⁰ Rolston, Bill. "Facing Reality: The media, the past and conflict transformation in Northern Ireland." *Crime, Media, Culture*. 2007 3:345. Pg. 357

ambivalent relationship and position of certain media outlets during apartheid and in transitional justice process.

The involvement of the media in the TRC process, although perceived as fundamentally necessary for the success of this process, was also problematic and ambivalent. On the one hand, the media were seen as allies of the transitional justice process. TRC deputy chairperson Alex Boraine has said,

“The TRC owes a huge debt to the media of South Africa. Without coverage in newspapers and magazines and without the account of proceedings on TV screens and without the voice of the TRC being beamed through radio across the land, its work would be disadvantaged and immeasurably poorer.”²⁵¹

On the other hand, media workers also had to come to terms with their own roles and their mixed records of victimhood and culpability throughout apartheid. Hence, it was particularly difficult for journalists to report on a process of which they themselves were part of at different levels:

“Journalists have found themselves being pulled into the events being covered. Some were victims of human rights abuses themselves, some were perpetrators; some found themselves implicated as part of the group who benefited from apartheid. Some just found the ‘endless repetition of horror’...psychologically overwhelming.”²⁵²

Antjie Krog says that learning about the atrocities that members of her Afrikaner ancestry committed was a traumatic event.²⁵³ Also, in her depictions of the issues that media members had to grapple with when reporting the Commission, she portrays the ambivalent position in which many journalists found themselves in. At one particular instance at a TRC workshop for the

²⁵¹ Garman, *supra* note 237

²⁵² Garman, *supra* note 237

²⁵³ Krog, 123

media, Krog highlights the comments of two journalists –one from the *Sowetan*, whose readership was and still is mainly Black, and *Beeld*, a distinctively Afrikaaner newspaper- which offer a clear picture of the difficult stance of the media within the TRC:

“By late afternoon we are discussing how you keep your own past out of your reporting. The journalist from the *Sowetan* stands up: “My newspaper’s position is that it has actually always done TRC-type stories and will not make any special effort to cover the commission.”

Willem Pretorius of *Beeld* is on his feet. “In the army, I was sent to cut off Radio Freedom’s cables and take them off the air. What does that make me? Can I-or can I not-report on the Truth Commission?”²⁵⁴

Nevertheless, to some people the complex relationship between the media and the TRC did not rule out the possibility of being more autonomous in the process. Critics have argued that journalists could have still played a better or more effective role by “disentangling themselves from their ‘symbiotic’ relationship with the Commission”.²⁵⁵ In failing to do so, some people believe that the media did not take on the many issues surrounding the TRC. Yet, the extent to which the ambivalent position of the media had any impact in the work they carried out throughout the transitional justice process should still be noted. Nowhere was the relevance of this position as obvious as it was during the TRC institutional hearings.

The Media in the TRC institutional hearings

The media hearings, as part of the number of other hearings in which the TRC examined the role of institutions during apartheid, disclosed the many

²⁵⁴ Krog, 20

²⁵⁵ Krabill, *supra* note 239, 583

ways in which media outlets could have been responsible for the human rights violations that took place in the past. These hearings are important not only because they show evidence of the complexity of media's involvement in the TRC process. The hearings challenge criticism directed at the Commission and the media that blames them for excluding large numbers of people from the process and undermining the relevance of race and racism during apartheid. The real value of these hearings is that clear evidence of how the media establishment fulfilled a role in supporting the apartheid system - often in subtle ways but still relevant ones - and perpetuating racism is brought to forefront.

Previous knowledge of the fact that the media had a an incriminatory role in supporting the apartheid system is evident from the decision of holding the hearings at the offices of the South African Broadcasting Agency (SABC), later described in the TRC Report as "...a blatantly pro-government and apartheid institution."²⁵⁶ At the hearings, the Commission found that for the most part, the media "sanctioned" apartheid in various ways. Yet, some media outlets bore far more responsibility than others. For instance, the Commission found that by misrepresenting the human rights violations of the government, the Afrikaans press was particularly liable for instigating apartheid's prejudice.

"The Afrikaans press as a whole stands condemned for promoting the superiority of whites and displaying an indifference to the sufferings of people of colour. Despite a limited number of individuals who rejected the system, and despite examples of resistance to the policy of slavish reporting on government and race related issues, exceptions to the long

²⁵⁶ TRC Final Report 4, *supra* note 231, at 187

history of actively promoting the former state and its policies were minor ones.”²⁵⁷

In fact, the Commission declared that the Afrikaans media was at times directly responsible for providing support to the government’s security forces.²⁵⁸ On the part of the English media, the Commission accused them for establishing a policy of appeasement towards the state, which encouraged a large measure of self-censorship that would not allow condemnation of government’s violations.²⁵⁹ Most prominently, the Commission determined that the SABC was “a tool of government.”²⁶⁰ The interviews that senior broadcasts Hendrik and Christel Bussiek carried out with SABC workers helped to confirm that the broadcasting agency was closely related to the apartheid state. Furthermore, research done by Professor John van Zyl found that the SABC’s coverage ‘normalized’ apartheid’s daily occurrences:

“Content analysis by Professor John van Zyl over a period of sixteen years revealed a distinct bias at the SABC. According to his analysis, news bulletins maintained and cultivated a mindset amongst white viewers that apartheid was natural and inevitable. SABC programming, he found, was instrumental in cultivating a “war psychosis”, which in turn created an environment in which human rights abuses could take place.”²⁶¹

At the same time, the Commission recognized that as much as media propaganda contributed to the status quo, the liberation forces also had a stake in the perpetuation and intensification of violent conflict. For this reason, accusations from the South African Defense Force (SADF) about the role of

²⁵⁷ TRC Final Report 4, *supra* note 227, 186

²⁵⁸ TRC Final Report 4, *supra* note 227, 189

²⁵⁹ TRC Final Report 4, *supra* note 227, 188

²⁶⁰ TRC Final Report 4, *supra* note 227, 168

²⁶¹ TRC Final Report 4, *supra* note 227, 168

Radio Freedom –the ANC’s main media outlet- in instigating violence were taken up by the TRC. Nevertheless, the Commission made a sharp distinction about the way Radio Freedom could have enhanced the climate of violence. Commissioners reached to the conclusion that it is implausible to prove how radio broadcasts alone were responsible “...for the large number of incidents of gross human rights violations recorded in the SADF document, particularly as nobody was forced to tune in and listen to Radio Freedom.”²⁶² In a similar manner, even though racism was inserted into the legal system, the Commission found that some media establishments actively pursued racist actions beyond the parameters of law.

Although many laws were put in place to implement the racist foundations of the apartheid regime and also to restrict the agency of the media to challenge the system, the Commission found evidence of high levels of racism within media institutions that make them accountable. The state was active in its pursuit of curtailing media’s freedom via laws that inevitably enhanced racial injustices. At the same time, Commissioners declared: “It would seem, however, that discrimination went way beyond what was required by apartheid legislation. Individual testimony to the Commission confirmed this, validating the allegations made by Black journalists.”²⁶³ In fact, Black journalists manifested that racism took on different forms but was ever-present. For instance, they described that a selective approach to news stories was commonplace. This was done by questioning the legitimacy of a Black

²⁶² TRC Final Report 4, *supra* note 227, 173

²⁶³ TRC Final Report 4, *supra* note 227, 186

journalist's story or by giving a higher priority to stories that involved whites, even though those that involved Blacks were more relevant.²⁶⁴ In addition, they claimed that they had fewer opportunities for training or promotion, and they were penalized if they missed work days to go to a march while whites would not.²⁶⁵ These issues show proof that the concerns which journalists expressed at the start of the TRC process were well-founded. The media would in fact be challenged in their coverage work particularly by virtue of their position during apartheid.

This chapter has shown that the work of the TRC and the media had limitations that, in the view of some critics, carried negative implications. Specifically, the terminology of the Commission excluded a large portion of the population that either suffered or benefited from the regime. The lack of recognition of the thousands of victims of apartheid laws and the many individuals and institutions which, even though did not perpetrate the number of 'violations of human rights' that figured in the Commission's mandate but still advantaged from it, may have undermined the possibility of establishing an all-encompassing process of reconciliation. Furthermore, the minimal reference about how racism was the motivating element of the human rights violations under scrutiny by the TRC and the media may have prevented much needed challenge and discussion about the racist attitudes that characterized the past. The ways in which these problematic limitations impact contemporary race relations in South Africa will be the subject of the next chapter.

²⁶⁴ TRC Final Report 4, *supra* note 227, 175

²⁶⁵ TRC Final Report 4, *supra* note 227, 176

4. Race in Post-apartheid South Africa:

The Struggle against the Past

Fifteen years after the end of apartheid, assessing official efforts aimed at overcoming the divisive legacy of the racist regime in South Africa seems appropriate. An analysis of the impact of the Truth and Reconciliation Commission (TRC) and the media's role in disseminating this impact during the transition to democracy is now becoming possible because the passing of time allows for retrospective analysis. The effect of these two key actors of the transitional justice process can now be measured against the background of contemporary issues. In this regard, it is important to keep in mind that the end of apartheid did not usher in the beginning of a non-racial society in South Africa. To a much lesser degree, arguably, race and racism continue to be part of the social fabric of South African society in many ways.

Often, newspaper headlines bring attention to particular instances that reveal the still present racial tensions in the country. For instance, in November of 2010, the comments of Anneli Botes, a well-known Afrikaner novelist, sparked controversy over the level of racism in society. Her public assertion of her dislike of Black people stirred a round of debate about unspoken racist sentiments that people still harbored.²⁶⁶ In an interview with *Rapport* newspaper, she was asked who the people she dislikes the most are. Her reply was blunt: "Black people." She continued by saying, "In my daily life, there's no one else that I feel threatened by except black people. If a courier comes to my door and he's white, coloured or Indian, I'd have no problem inviting him in for a glass of water. But I would feel threatened by a black

²⁶⁶ Groenewald, Yolandi. "Author Annelie Botes stands by racist comments". *Mail&Guardian*, 26 November 2010.

man.”²⁶⁷ Interestingly, as much as many condemned and labeled the writer’s sentiments as racist, there were also people who praised her for speaking openly about what others would not dare to express.²⁶⁸ It is these types of seemingly ordinary incidents that bring South Africa back to revealing discussions about apartheid’s legacy. People have argued, for instance, that the 2008 xenophobic attacks, in which foreigners and South Africans alike were victims of violent attacks in urban townships, are a continuation of the recent history of racial violence, or that the generally high level of crime has its origin in the inequality that the apartheid regime created through racial segregation.²⁶⁹ For these reasons, attempts to measure the state of race relations in South Africa in a more rigorous, scientific manner have emerged, rendering disparate results. For instance, in 2000 and 2001, the scholar James Gibson conducted research on the impact of the TRC on racial reconciliation in the country, and he concluded that a high degree of interracial reconciliation appears to have been achieved.²⁷⁰ However, the South African Reconciliation Barometer (SARB) -by the Institute for Justice and Reconciliation (IJR) which has conducted an annual survey since 2003- has shown that levels of interaction among people of different races have remained consistently low.²⁷¹ Although the disparity of the findings could be attributed to different periods of time in which the research

²⁶⁷ Hanlie. “Hanlie Talks to Annelie Botes”. *Rapport*, 20 November 2010.

²⁶⁸ Mngxitama, Andile. “Hands off Annelie Botes”, *Mail&Guardian*, 1 December 2010.

²⁶⁹ Harris, Bronwyn. “Xenophobia: A new pathology for a new South Africa.” *Centre for the Study of Violence and Reconciliation*. <http://www.csvr.org.za/docs/foreigners/xenopobia.pdf>

²⁷⁰ Gibson, James. “Overcoming Apartheid: Can Truth Reconcile a Divided Nation?”, *The ANNALS of the American Academy of Political and Social Science*, 2006 603:82. Pg. 93. (hereinafter Gibson, “Can Truth Reconcile a Divided Nation?”)

²⁷¹ Lefko-Everett, Kate, Rorisang Lekalake, Erica Penfold and Sana Rais, “2010 South African Reconciliation Barometer Survey Report.” *Institute for Justice and Reconciliation*. www.ijr.org.za (hereinafter SARB 2010)

studies were administered, a closer look to the analyses of the data can provide important insights.

James Gibson's Approach

If reconciliation is understood as the improvement of racial relations, says James Gibson, South Africa has made significant progress. In his view, reconciliation in South Africa goes beyond the relationship between victims and perpetrators of the human rights violations of apartheid, and it encompasses those who were “masters and slaves” within the racial system.²⁷² Essentially, he says that reconciliation means historically divided racial groups “getting along better; a diminution of racial animosities.”²⁷³ Therefore, the goal of reconciliation is that South Africans of different races learn to treat each other as equals who are worthy of respect. “Consequently,” he says, “a ‘reconciled’ South African is one who: eschews racial stereotyping [and] treats people respectfully, as individuals, and not as members of a racial group (...).”²⁷⁴ This type of scenario would be the by-product of more interracial communication, greater empathy and embracement of multiculturalism and diversity.²⁷⁵ Hence, Gibson designed his work along these parameters.

The results of Gibson’s survey indicate that reconciliation in South Africa has been consolidated, an outcome in his view of the TRC. His survey, which was administered in 2000 and 2001, concludes that about 44% of the population

²⁷² Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 87

²⁷³ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 88

²⁷⁴ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 87

²⁷⁵ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 88

is "at least somewhat reconciled."²⁷⁶ He suggests that given that no similar research work had been done before this survey, it is fair to assume that reconciliation in previous years and certainly throughout apartheid was remarkably lower than 44%. This leads him to make the following assertion: "That nearly one-half of the South African population expresses some degree of reconciliation in less than a decade after the formal demise of apartheid represents, from my perspective, an unexpectedly high level of reconciliation. Reconciliation seems to have made inroads into a sizable portion of the South African population."²⁷⁷ He specifically attributes what he sees as an improvement in racial relations to the work of the TRC. Moreover, he says, no evidence indicates that the truth of the Commission harmed the goal of reconciliation.²⁷⁸ On the contrary, he argues, the findings demonstrate "that truth and reconciliation do indeed go together and are compatible with the view that the collective memory produced by the truth and reconciliation process contributes to levels of reconciliation."²⁷⁹ Certainly though, this conclusion ignores other findings in the analysis which are worth noting, such as that only 33% of Africans agreed that they were "somewhat reconciled" against the larger 56% and 59% of whites and Coloured people respectively.²⁸⁰ Gibson also recognizes some limitations when trying to establish causality. However, he concludes that the more people accept the process of the TRC, the more likely that they will feel reconciled with people from other racial groups.

²⁷⁶ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 93

²⁷⁷ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 93

²⁷⁸ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 84

²⁷⁹ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 96

²⁸⁰ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 92

Gibson argues that the TRC's success lay in the fact that it did not make distinctions between individuals who committed gross violations of human rights during apartheid. In contrast to this thesis' main hypothesis, –that the TRC's overall even-handedness contributed to race relations that remain problematic in South Africa- he proposes that Commission's equal treatment of guilt and responsibility could be the reason why his survey shows positive results. Had the TRC allocated all the blame on one side, he says, it would have been much less unlikely to achieve meaningful reconciliation.²⁸¹ Although many people disagree with the Commission's 'even-handedness', Gibson regards it as the ideal approach to violations of human rights. In the TRC report, Commissioners explain that this approach was informed by standards of international law which strictly prohibit acts such as torture or the killing of civilians. In light of this view, even those who might have justly fought against the apartheid regime could have been responsible for carrying out acts that could not, under any circumstances, be regarded as "morally or legally legitimate."²⁸² Hence, the Commission acknowledged that human rights violations were committed by either state or non-state actors.²⁸³ Gibson considers that this acknowledgment, "that both sides in the struggle [whites and Blacks] did horrible things", is perhaps the TRC's most important lesson.²⁸⁴ Thanks to this approach, he argues, whites could realize how the system that benefited them was "less than noble" and that those who actively opposed it

²⁸¹ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 102

²⁸² Truth and Reconciliation Commission, Vol. 1, Final Report, 69 (hereinafter TRC Final Report 1).

²⁸³ TRC Final Report 1, *supra* note 282, at 69.

²⁸⁴ Gibson, "Can Truth Reconcile a Divided Nation?", *supra* note 270, 98

were “less radically evil.”²⁸⁵ Similarly, Blacks were also given a chance to change their attitudes towards whites after learning that their liberation movement was not devoid of some degree of responsibility for the human rights violations that were committed during apartheid.²⁸⁶

In his assessment of the work of the media, Gibson suggests that it was precisely the simplicity with which they delivered the truth that came out of the hearings of the Commission that engaged people in the process.²⁸⁷ In contrast to critics of the work of the media during the TRC, like Edward Bird, Zureida Garda and Anthea Garman which are mentioned in Chapter 3, Gibson considers that the way the media framed the stories of the TRC was successful, because in lacking an “explicit ideological veneer, [...] they were palatable to South Africans of many different ideological persuasions.”²⁸⁸ The information, which he qualifies as “simple and subtle”, attracted the attention of people to the process because it was largely focused on the human side. The TRC, through the media, put forward stories that had to do with “bad guys hurting good guys.”²⁸⁹

However, one could argue that this framework was dangerously simplistic because it dismissed the role of the racist foundation that sustained the apartheid regime. Specifically, critics of the media and the TRC, as well as this thesis, regard that both establishments failed to promote racial

²⁸⁵ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 99

²⁸⁶ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 100

²⁸⁷ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 100

²⁸⁸ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 101

²⁸⁹ Gibson, “Can Truth Reconcile a Divided Nation?”, *supra* note 270, 102

reconciliation because no effective discussion on racism took place during the transitional justice process. The TRC's even-handedness that Gibson praises, and the simplicity of the information that reached wider society which he values, might just as well effectively disengaged the 'beneficiaries' that Mahmood Mamdani refers to from reflecting on their own roles during apartheid. Similarly, the majority of Blacks who did not qualify as victims under TRC terms, could have felt that the conflict's portrayal was unjustly partial because it did not take into account their hardships. In fact, many did feel so. Hence, to what extent do these views defy Gibson's interpretation of his data? The South African Reconciliation Barometer poses an alternative reading of the state of reconciliation in the country. Particularly, the Barometer's analysis of race relations poses a direct challenge to Gibson's findings.

The State of Reconciliation: The South African Reconciliation Barometer

Since 2003, the SARB has treated race relations as an important indicator when measuring the degree of reconciliation that the country has achieved. Established by the Institute for Justice and Reconciliation (IJR), the Barometer measures the public's opinion on different issues, and the results are compiled and published in a report.²⁹⁰ The complexity that is intrinsic to the concept of reconciliation is acknowledged, but the IJR asserts that developing certain quantifiable indicators that give a better picture of the degree of reconciliation is plausible.²⁹¹ The foundation of the SARB survey is modeled around the "contact

²⁹⁰ SARB 2010, *supra* note 271, at 5.

²⁹¹ "2009 South Africa Reconciliation Barometer Survey Report", *Institute for Justice and Reconciliation*, 2009. Pg. 4 (hereinafter SARB 2009)

hypothesis” or inter-group contact theory, which suggests that higher levels of interaction among people of different racial groups lead to a reduction in prejudicist attitudes and conflict among these groups.²⁹² Hence, echoing Gibson’s argument, the main hypothesis of SARB is that if “...South Africans of different races hold fewer negative perceptions of each other, reconciliation is more likely to occur.”²⁹³ The factors of identity, tolerance, and socialization among different racial groups are considered.²⁹⁴ In the context of this thesis, the relevance of this survey lies in its stated goal, which is to assess how people’s opinions may have an impact “...on national unity and reconciliation in post-apartheid South Africa.”²⁹⁵ This language mirrors the objective of the Parliamentary Act that established the TRC. As a result, the Barometer stands not only as a tool that shows where South Africa is in terms of reconciliation. Although it is not an explicit evaluation of the TRC, the Barometer could as well be taken as a measure of the efficacy of the Commission in fostering reconciliation in general.

The most relevant findings of the 2010 SARB are that while almost half of the population perceives that race relations in South Africa have improved since the end of apartheid, interracial interaction and socialization remain low. The latter appears to have remained consistent over the years.²⁹⁶ At a basic level, most respondents said that they identify with people who primarily speak their same language, followed by those who belong to their same ethnic

²⁹² SARB 2009, *supra* note 291, 63

²⁹³ SARB 2010, *supra* note 271, 10

²⁹⁴ SARB 2010, *supra* note 271, 10

²⁹⁵ SARB 2010, *supra* note 271, 5

²⁹⁶ SARB 2009, *supra* note 291, 15

group and race group. According to the report, this tendency has remained near constant since 2007.²⁹⁷ At a general level, the report notes that “...close to half of all South Africans (47%) feel that there has been an improvement in race relations in the country since 1994. A further 30% feel race relations have stayed the same over this sixteen year period, and 21% that they have worsened.”²⁹⁸ However, 42% of South Africans “rarely” or “never” speak to people of other race groups, and a high 60% “rarely” or “never” socialize with people of other race categories.²⁹⁹ Furthermore, 62% of South Africans found “the customs and ways of others difficult to understand...”³⁰⁰, and 35% of people consider groups from outside their race group to be untrustworthy.³⁰¹ The latter findings are relevant because the Barometer’s hypothesis –if South Africans of different races hold fewer negative perceptions of each other, reconciliation is more likely to occur- is somewhat disproved in light of the particularly high percentage of people who find people from other races unreliable or their customs rather odd.

When the analyses of James Gibson and the Reconciliation Barometer are compared, the complexity of assessing race relations becomes clearer. These studies are important because they show how certain research methods could measure the impact of a truth-telling process on a specific aspect of society-in this case, race relations. They engage with the difficult task of providing empirical evidence that help to draw connections with the TRC process,

²⁹⁷ SARB 2010, *supra* note 271, 10

²⁹⁸ SARB 2010, *supra* note 271, 11

²⁹⁹ SARB 2010, *supra* note 271, 10-11

³⁰⁰ SARB 2010, *supra* note 271, 11

³⁰¹ SARB 2010, *supra* note 271, 11

specifically James Gibson's work. At the same time, that these studies make different assertions on the state of race relations deserves further discussion. For this reason, more research work is needed in order to have more sources for comparison and correlation. This thesis grapples with this need and attempts to add another possible way of understanding race relations in South Africa today as related to the transitional justice process.

This thesis will make use of inductive analysis in order to establish the ways in which TRC's work and race relations in the present may be connected. In parallel, content analysis will reveal how the media frames racial issues today and the reasons for choosing such frameworks. Two particular events will be explored: the Reitz Four case and the murder of Eugene Terre'Blanche. These are good cases in line with the purpose of this thesis for following main reasons: a strong presence of the component of race; clear links to the history of apartheid and its legacy; the nature of the debates that ensued; and their extensive coverage in the media. Other cases could have been integrated in this discussion as well. Nevertheless, the Reitz Four incident and the murder of Terre'Blanche have happened at a recent time period that enables the necessary perspective for retrospective analysis. These cases bring to the fore how race is still a highly complex issue in South Africa which deserves further analysis.

Reitz Four: A University and Race

*"When the focus of analysis shifts from that of individual pathology to one of institutional culture, then it becomes clear that the problem of Reitz is not simply a problem of four racially troubled students. It is, without a question, a problem of institutional complicity."*³⁰²

Only a few events truly capture people's attention and stir the kind of debate that brings to light how race continues to be relevant in South Africa. The 'Reitz Four' saga, as it came to be known in the media, was one of those cases. It involved a video which showed five Black cleaners of a men's residence at the University of the Free State (UFS) being humiliated by four white Afrikaner students in what appeared to be an 'initiation ritual'.³⁰³ The video, recorded in September 2007 by the same students who administered the initiation ritual, and leaked in February 2008, caused a wave of outrage and condemnations from all levels of society. In the same manner, the decision of a new UFS Vice-chancellor to pardon the students for their actions was highly unwelcomed, initiating a new round of national debate regarding proper measures of justice to cases in which racism is a key issue. In July 2010, two years after the video became public, the Bloemfontein Magistrate's Court found the four students guilty of *crimen injuria*, which under South African law, is any act that intentionally and seriously impairs the dignity of others.³⁰⁴

The case became especially notorious as it spurred nationwide debate. The Reitz Four incident was as much about the five Black workers and the four

³⁰² Jansen, Jonathan. "For such a time as this". University of the Free State, Bloemfontein. October 2009. *Inaugural Lecture of the 13th Rector and Vice-chancellor of the University of the Free State*.

³⁰³ "A Nation Divided by Reitz Saga: Timeline of a video". *The Sunday Independent*. 25 October, 2009

³⁰⁴ Smith, Jane. "Vexed varsity's new broom", *Canvas Life. Saturday Star*. 17 October 2009.

white students in the video as it was about the environment of UFS as an academic institution. This event brought to light a number of troubling aspects that questioned the extent to which features of apartheid were truly in the past for this university. For instance, other issues of racism at UFS came to light, such as the continuing role of a political party in exacerbating those issues and memories of the position of the university during apartheid, as well as the legacy of that position. At the same time, the decision of the university's new vice-Chancellor to withdraw charges against the students was remarkable as it was done in the same spirit of reconciliation that the TRC aimed to embrace, and in spite of the immediate reaction of most newspapers to this decision which was overwhelmingly critical.

All these elements reveal a number of important dimensions for the analysis of race relations in South Africa today. The first dimension relates to the persistence of a racist legacy that has yet to be effectively uprooted. Another dimension relates to the way most people reacted and condemned the acts of the students, suggesting that racist acts are deeply rejected. At the same time, a larger debate about the state of race relations in the country curiously did not ensue. At best, the Reitz Four debate triggered a discussion and a revision of racial problems on university campuses. In this context, newspapers focused overwhelmingly on the individuals involved in the video, and they did so from a condemnatory angle. However, the conciliatory approach of the Vice-chancellor is particularly important in this analysis because it suggests the possibility that the TRC set a strong precedent. Related to this is the reaction of

the newspapers to the Vice-chancellor's decision, which seems to have revived the same debate about justice that accompanied the creation of the TRC. On one level, the generally negative response of a number of newspapers mirrors sentiments of unfulfilled injustice among Blacks, similar to the way that the TRC process and the foregoing of prosecutions dissatisfied some victims in the past. On another level, the supportive tone of newspapers such as the *Mail&Guardian* and *Business Day* reflects the type of attitude that individuals like Desmond Tutu, Nelson Mandela and others stood for at the demise of apartheid.

Reitz Four: Overview of the Case

In a timeframe of ten minutes, four white young men appear on a video subjecting five Black workers to what appear to be initiation rituals, which range from a running competition, to emptying beer bottles, to ultimately bending on the floor to eat what looks like food in which one of the students had urinated. The video, which was filmed in September 2007, became a scandal at a national level when the Afrikaner newspaper *Beeld* published it in February 2008.³⁰⁵ The white men in the video -Danie Grobler, Johnny Roberts, Roelf Malherde and Schalk van der Merwe - were Afrikaner students of the University of the Free State (UFS), which is located in Bloemfontein (capital of the Free State province of South Africa's central region). The scene took place in the residence halls of the all male's student hostel "President Reitz" - hence the

³⁰⁵ Monako Dibetle, Cornia Pretorius, and Primarashni Gower. "Racist video: FF+ must take rap'", *Mail&Guardian*, February 29 to March 6 2008.

name that the case earned in the media.³⁰⁶ Mothibedi Molete, Mankoe Phororo, Emmah Koko, Nkgapeng Adams and Sebuasengwe Ntlatseng, all janitors of the hostel, were the targets of the “initiation rituals” that the students administered.³⁰⁷ Soon after the video’s release, the South African Human Rights Commission initiated an investigation into allegations that the university had condoned human rights violations.³⁰⁸ Parallel to this, university officials stated that its legal-department would seek to file criminal charges against the students. Ultimately, it was decided that the criminal charges would be left in the hands of the South African authorities while the university would appoint a disciplinary committee to deal with the case.³⁰⁹ Four months after the scandal, the university’s rector Teuns Verschoor announced to the council of the university his decision to close down the Reitz residence.³¹⁰ Eventually, Roelf Malherde and Schalk van der Merwe were dismissed from the university and banned from campus, while Danie Grobler and Johnny Roberts had already finished their studies.³¹¹ The students claimed to the court that the workers had freely participated in the video, but still admitted their guilt and asked for forgiveness. In the end, the Bloemfontein Magistrate’s Court found the four students guilty of *crimen injuria* in July 2010.³¹² An aspect that quickly became prominent in the discussion surrounding this case was the position of the university during apartheid, and how that might help explain the ongoing

³⁰⁶ Monako Dibetle, *supra* note 305

³⁰⁷ *Supra* note 304

³⁰⁸ *supra* note 304

³⁰⁹ *supra* note 304

³¹⁰ *supra* note 304

³¹¹ Dibetle, Monako. ‘It was unexpected and inhumane’, “Racist video: FF+ must take rap”, *Mail&Guardian*. February 29 to March 6 2008

³¹² “Reitz 4 found guilty”, *News 24*, 27 July, 2010.

issues of racism that were brought to the spotlight. The wrongdoing of four individuals served to reveal the institutional dimension of racism, thereby suggesting a failure to fully remove some remnants of the racist past.

UFS and the Burden of History

Pressing issues of racism at UFS, often regarded as a 'bastion for Afrikaners', came under the national spotlight with the Reitz Four case. Former vice-rector of the university Teuns Verschoor admitted that an uncritical approach to politics had characterized UFS throughout history. When the British were in power in the early years of the 20th century, he said, "the university operated in English only and excluded many people on the basis of their race as well as their language." Once Afrikaans became the official language in the late 1940's, "[the university] not only followed but actively promoted the apartheid policy."³¹³ For this reason, university authorities have been trying to dismantle the legacy of the apartheid past by diversifying the student body, which today is made up of 58% African, 35% white, 5% coloured, and 2% Indian.³¹⁴ Yet, according to Black students who were interviewed by a white press reporter on the university campus, the percentages do not reflect how race still determines social interactions. "Just look around", said one of the interviewees when referring to different groups of students, "They are all racially separate groups. They think we're funny to be speaking to you."³¹⁵ Other Black students noted the high levels of exclusion in the residences, which

³¹³ McFarlane, David. "Free State joins the New South Africa", *Mail and Guardian*. 23 October 2009.

³¹⁴ McFarlane, supra note 313

³¹⁵ McFarlane, supra note 313

some even feared passing by due to the possibility of being verbally or physically abused.³¹⁶ Efforts to change this situation have not been met without obstacles either.

Throughout most of the 1990s, integration policies caused much conflict at UFS. For instance, in 1992, a policy was put in place to de-segregate residences. Nevertheless, violent protests led to their 're-segregation'.³¹⁷ The Reitz student residence was closed after some students released teargas in a university hall. Some years later, however, it reopened due to reported 'white-flight' from other university dorms because more Black students were moving in. Thereafter, the Reitz residence gained the negative reputation of being 'rowdy' and, as one student called it, "a home for disgruntled right-wing students during the mid-Nineties."³¹⁸ In 2007, the university tried to implement a policy that would re-integrate the residences, mandating that they each had to include at least 30% Black students. The attempt was unpopular in sections of the Afrikaner community of the university, with protests and demonstrations on campus following the implementation of the policy.³¹⁹ In the aftermath of the Reitz Four incident, these racial issues were brought up by the media. Interestingly, a link was established between the Freedom Front Plus (FF+) and its role in exacerbating Afrikaner students' defiance of university efforts to bridge racial divides.

³¹⁶ Monako Dibetle, *supra* note 311

³¹⁷ Monako Dibetle, *supra* note 305

³¹⁸ Dibetle, Monako and Cornia Pretorius. 'Reitz had been home to troublemakers', "Racist video: FF+ must take rap'", *Mail&Guardian*, February 29 to March 6 2008.

³¹⁹ Monako Dibetle, *supra* note 305

The FF+ is a small political party in South Africa that explicitly aims to safeguard the interests of Afrikaners. Founded in 1994 by the right-wing leader Constant Viljoen, the party has stood on a platform that is largely defined by an ethnic/racial component and secessionist ambitions. The party's ideology, which is modeled on the concept of minority rights, puts forward the argument that in a heterogeneous society such as South Africa, a "one man, one vote" system leaves the Afrikaner minority at an unfairly disadvantaged position.³²⁰ Under the leadership of Pieter Mulder, who is now Deputy Minister of Agriculture, Forestry and Fisheries, the party has continuously pressed for a legitimate Afrikaner dispensation and the provision of territorial autonomy (an Afrikaner 'volkstat' or homeland) in the region of the North Western Cape, in an area between the Orange River and the West Coast.³²¹ Although the party retains four seats in the National Assembly as of now, its political influence is low. Nevertheless, in provinces like the Free State where Afrikaners make up a significant portion of the white population, the FF+ can still rally enthusiastic supporters who feel threatened with official efforts at empowering the previously disenfranchised Black majority. Places like UFS, where racial tensions have run high for most of its history, are breeding grounds of potential followers for FF+, despite the fact that when compared with the large reach of major parties, the party mobilizes only a small number of people nationally.

³²⁰"Freedom Front Policy", Freedom Front Plus. Web. Accessed on February 2011, at <http://www.vryheidsfront.co.za/english/policy.asp>

³²¹ supra note 320

Although there was no specific connection between the FF+ and the Reitz Four incident, the party had a role in upsetting strategies towards racial integration at UFS which may have contributed to the types of attitudes that were present in the Reitz Four video. According to one press story, the political party and its youth wing, which stand on a platform of protection and representation of Afrikaner interests, have long been instrumental in historically-white academic institutions for promoting campaigns against racial integration.³²² During the 1990s, the party was involved at UFS through a cultural organization that promoted Afrikaner values. For instance, at the time when the Reitz Four case became a national controversy, the Student Representative Council (SRC) of UFS consisted of 16 members, of which 13 were members of the FF+. The role of the party became particularly relevant at the outset of the university's official efforts towards integration. In July 2007, the time when the university council approved the residence integration policy, the FF+ national leader Pieter Mulder, as well as other members of the party, was present at one of the biggest marches on campus organized by the party against the new policy.³²³ According to Sandra Botha, the then parliamentary leader of the Democratic Alliance (DA) party, racist songs such as *Bobbejaan klim die Berg*, ("baboon climbs the mountain") were allegedly sung by FF+ supporters at the march.³²⁴ Furthermore, in November of the same year, the party challenged the university's integration policy in court but withdrew the

³²² Monako Dibetle, *supra* note 305

³²³ Monako Dibetle, *supra* note 305

³²⁴ Monako Dibetle, *supra* note 305

case.³²⁵ However, the persistent demand of the party for racial separation did not dwindle even at the height of the controversy that the video sparked.

Although the FF+ denied any connection to the UFS student body and rejected accusations of responsibility for the Reitz Four scandal, in arguing for racial separation, party members were tacitly condoning the behavior of students. In one instance, the FF+ youth congress in the Northern Cape Province resolved that government-imposed quotas on student organizations, courses and residences would be countered by promoting a 'culture of freedom of association'. At the time, the national youth leader Cornelius Jansen van Rensburg expressed: "How free am I if government policy determines whom I should share a room with?"³²⁶ In trying to justify the racist sentiments that materialized at UFS, Pieter Mulder- the FF+ national leader- pointed at the famous "Two Nation" speech of former President Thabo Mbeki.³²⁷ He suggested that by alluding to the existence of two distinct racial groups (these groups being Blacks and whites), the former president had set a tone that would inevitably exacerbate racial tensions. In addition, he mentioned the unintended consequences of the policy of black economic empowerment and how it could feed into Afrikaner students' frustrations:

"Everyone has respect for [Nelson] Mandela and his rainbow nation, but it was exactly 10 years ago that [Thabo] Mbeki made his two-nation speech. He scratched out the rainbow nation with that speech by continuously speaking about two races... []

³²⁵ Monako Dibetle, *supra* note 305

³²⁶ Monako Dibetle, *supra* note 305

³²⁷ Monako Dibetle, *supra* note 305

Perhaps we are reaping the fruits of this. Students know that racism is unacceptable, but in the back of their heads they know once they leave university they will face affirmative action. They know they will be discriminated against and we don't know what role this is playing in the aggressive behavior we are now seeing."³²⁸

Certainly, Mulder's comments reflected the types of ideas and perceptions that continue to justify racism, particularly at academic institutions that carry the burden of apartheid's history like UFS and University of Pretoria. Although UFS authorities made gestures to change aspects of the university that were a legacy of apartheid's racism, a portion of the Afrikaner student body, sponsored by some political actors with a particular agenda, have actively pursued ways to undermine any meaningful change.

Thanks to the Reitz Four incident, issues of racism at the institutional level were revealed and a debate on the state of higher education ensued. The enduring racial segregation in the dorms, the strained relations among students of different racial groups, the dissatisfaction of members of the Afrikaner student body towards integration efforts, and the effect of political ideology in fostering racism at UFS were some of the problems that surfaced with this incident. These issues were unsettling because they made it seem as if nothing had truly changed at UFS. If anything, the departure from the past had only been superficial, while at a deeper level, the racist culture that characterized the institution during apartheid was still deeply rooted in its essence. At a broader level, while the incident sparked a debate on the status of higher education, it did not go beyond this realm of discussion. For instance, the Education Minister

³²⁸ Monako Dibetle, *supra* note 305

set up investigative committees to look into any irregularities on campuses that could dampen integration efforts. Furthermore, the vice-chancellor of the University of Limpopo, Mahlo Mokgalong, urged his colleagues to be frank and face the fact that there was a problem in the higher education system. He and all of the country's public university vice-chancellors convened to discuss strategies to combat racism at a meeting in March of 2008. Apart from these gestures, a general consensus seems to exist about the wrongness of the acts committed in the video.

The press covered the Reitz Four incident from a condemnatory angle, fair evidence that racist acts are not tolerated and earn the condemnation of the majority of the population. The fact that *Beeld*, the same Afrikaner newspaper that had declined to appear before the TRC, brought attention to the video is remarkable. In fact, that it was the same newspaper that supported apartheid for a long time that put the spotlight on the Reitz Four case could represent a step away from the past. Other major newspapers like *The Star*, *Sowetan*, and *Mail&Guardian* emphasized the outrage of the general public over the incident. These positions show proof that acts of racism could be the object of much criticism. The greatest limitation to this argument is the fact that most press stories focused on the case from a largely individualistic point of view. For instance, journalists gave much attention to the students who perpetrated the acts and the judiciary process they were involved in subsequently. In contrast, the victims of the video remained in the background of the stories. Their perspectives or opinions about what they went through almost never made the

headlines. This framework could have taken away the spotlight from the issues of institutionalized racism that later on, the new Vice-chancellor attempted to address.

A deeper reflection on the state of race relations in the country as whole seemed to have failed to materialize, if the newspapers' approach to the story is a legitimate representation of the main perspectives and interests of society. Largely, the debate swirled around the perpetrators of the video, some reference to the institutional environment at UFS, and at best, issues of racism in higher education. Neither was a connection to the TRC made at this point. At least in newspapers, a concrete discussion on how the transitional justice process might have accounted for the unchallenged features of apartheid did not emerge. References to an ongoing problem of a racist mentality among certain groups, particularly political parties like the FF+ that still advocate for racial segregation and a lack of oversight at academic institutions were made. Where a discussion on the morality and appropriateness of approaches to justice and redress did figure was a year after this incident took place. The decision of a new Vice-chancellor, unexpected and controversial, provoked yet another round of national debate that this time did resemble the discussions around the TRC.

A Bid for Reconciliation and its Repercussions

Professor Jonathan Jansen, the newly appointed 2009 vice-chancellor of UFS (the equivalent of the President of a university in the US), framed his decision to withdraw charges against the Reitz Four students, along with

compensating the victims, as a gesture of acknowledgment of the institution's responsibility in the matter and a step towards reconciliation and transformation. As the first Black vice-chancellor at UFS, Jansen was a highly-regarded professor who held various academic degrees, including a PhD in Education from Stanford University as a Fulbright scholar.³²⁹ In October 2009, his decision was a focal point of his inauguration speech:

"In a gesture of racial reconciliation, and the need for healing, the University of the Free State will withdraw its own charges against the four students. The University will therefore not pursue any further action against the four young men implicated in the Reitz incident. In this spirit of *toenadering* (*raprochement*), the University will go further, and invite those four students to continue their studies here.

In recognition of our institutional complicity in the Reitz saga, and the need for social justice, the University of the Free State will not only pursue forgiveness but will also pay reparations to the workers concerned for damages to their dignity and their self-esteem."³³⁰

This redefined position on the case was a part of Jansen's larger agenda of radically transforming the university.

The Vice-chancellor believed that the university had to accept its own responsibility in the matter. Clearly, structural conditions at the institutional level contributed to the kind of environment conducive to instances like the Reitz Four. He thought it wrong to understand the Reitz Four solely in individual terms and reminded the audience that racial tensions had been building up before the video scandal, showing evidence of a much deeper problem that could not be solved by punishing a few:

³²⁹ "Prof. (JD) Jonathan Jansen". University of the Free State. Web. Accessed on February 2011, at <http://www.ufs.ac.za/content.aspx?uid=38>

³³⁰ Jansen, *supra* note 302

“You see, the biggest mistake made in the analysis of Reitz is to explain the incident in terms of individual pathology. Yet to dismiss the video as a product of four bad apples is too easy an explanation. This video recording was preceded by a long series of racial incidents protesting racial integration especially in the residences of the university. Not all of these racially charged incidents made the press; in fact, had it not been for the public release of the video recording, no-one outside the university would have known about it.”³³¹

For this reason, he believed that a legal approach, with its court setting, would not solve the “deeper issues of racism and bigotry that conflict [the] university”, and added that unless something different was done, the university will continue dealing in the future with the “...same social, cultural and ideological complexities that stand in the way of transformation.”³³² Moreover, the vice-chancellor called for the re-opening of the Reitz residence in the hope that it would become a model for racial reconciliation and social justice. In addition, he expressed his intention of establishing *The Reitz Institute for Studies in Race, Reconciliation and Social Justice*,³³³ which in fact was inaugurated in January 2011 as the *International Institute for the Studies of Race, Reconciliation and Social Justice*.³³⁴ Jansen’s speech, in particular the withdrawal of charges, was met with immediate and overwhelming criticism from the population and most newspapers.

Even though the criminal charges against the students remained in Bloemfontein’s regional court, the decision of the vice-chancellor was the object of much disapproval. Soon after the decision hit the headlines, Jansen issued a

³³¹ Jansen, supra note 302

³³² Jansen, supra note 302

³³³ Jansen, supra note 302

³³⁴ “UFS institute set to contribute to transformation in South Africa”, University of the Free State. 27 January 2011. Media Release.

media statement in which he reiterated the following: "The criminal charges against the students were laid by the Directorate of Special Prosecutions in the province, and the university has no say over those processes in criminal courts. That process remains in place." He added that "the university simply withdrew its own complaint against the students...and on that basis decided to invite the students back to continue their studies."³³⁵ Nevertheless, a number of newspapers echoed the resentment of large parts of the population. The *Sunday Times*, South Africa's largest newspaper, sold the story under the headline of "Jansen 'racists' pardon slated: Vice-chancellor 'should have punished' the Reitz Four."³³⁶ "UFS racists free" read the cover-page of the *Saturday Star*, the weekend edition of *The Star*, a daily newspaper which has 50% Black readership.³³⁷ The story stressed the "outrage" that followed the dropping of charges against the students.³³⁸

For the most part, the ANC -the official party in government- declared that the vice-chancellor's decision was wrong for two reasons. First, the charges were withdrawn without admission of guilt and a formal apology from the perpetrators to the victims. Themba Maseko, the government spokesman, said: "The process that led to the dropping of the charges was flawed in that it did not follow the established norm of getting the perpetrators to admit guilt, to apologize to the victims before any charges could be dropped and to initiate a

³³⁵ Lacea Loader, "Clarification of charges against the Reitz Students: Statement by Prof. Jonathan Jansen". University of the Free State. 19 October 2009. Media Release

³³⁶ Chelemu, Khethiwe. "Jansen 'racists' pardon slated". *Sunday Times*, 17 October 2009. Accessed on February, 2011 at <http://www.timeslive.co.za/news/article156400.ece>

³³⁷ Ajam, Kashiefa, Sheree Bega, and Janet Smith. "UFS racists free". *Saturday Star*, 17 October 2009.

³³⁸ Ajam supra note 337

reconciliation process.”³³⁹ Also, the victims were not consulted as to whether they would feel comfortable with pardoning the students without proper redress for the damage that was done to them. The ANC Youth League spokesman, Floyd Shivambu, noted that people were still unaware if the perpetrators felt any remorse for their acts and if the victims would find peace without a proper judicial process.³⁴⁰ For these reasons, the Minister of Higher Education, Blade Nzimande, argued that the decision of Professor Jansen amounted to a superficial trade-off: “[He] has taken it upon himself to absolve the perpetrators on behalf of the victims and compensate the victims on behalf of the perpetrators.”³⁴¹ In the view of the Minister, this trade-off sadly meant more damage to the dignity of the victims. In taking a different approach to the case, the vice-chancellor appeared to have further divided society on how to deal with racism.³⁴²

These positions were strikingly similar to a number of perspectives towards amnesty for the perpetrators during apartheid and the TRC process in general. The newspapers primarily reflected a sense of justice unfulfilled with the decision of the vice-chancellor, similar to the sentiments that many victims expressed towards the provision of amnesty and the TRC process in general. The idea that drove people’s reactions in both instances (the TRC period and the reconciliation effort of the vice-chancellor) was that justice, understood solely in the form of judicial trials and punishment, cannot be replaced with any

³³⁹ Chelemu, *supra* note 336

³⁴⁰ Chelemu, *supra* note 336

³⁴¹ Chelemu, *supra* note 336

³⁴² Chelemu, *supra* note 336

alternative mechanism. In the Reitz Four case people were demanding that the students be sanctioned properly by a court for their actions, in the same way that victims of apartheid claimed that the torture and the killings of apartheid could not under any circumstance be pardoned. At the core of the students' behavior as well as in many of the acts of apartheid supporters was a racist mindset that needed to be castigated with a due judicial process. The desire to punish incidents motivated by racism surfaced with the Reitz Four like it did during the TRC process. People's negative reactions to the decision of the Vice-chancellor also have hinted at an ambition to not grant the kind of impunity that people in the past, or specifically Mamdani's 'beneficiaries', perhaps enjoyed with the lack of punishment of racism. Hence, many could have perceived Jansen's redefined approach to the case as an inadmissible violation of due justice.

The ANC, albeit highly critical of the withdrawal of charges, seemed to be rather more preoccupied about the manner in which the vice-chancellor proceeded. The reaction of some party and government members seemed to be informed with the same principle that established conditionality to the provision of amnesty during the TRC. As noted in Chapter 3, the Commission operated under the condition of full disclosure of the truth and public recognition of wrongdoing before the granting of amnesty. This condition was a breakthrough, because had the Post-amble of the Constitution, which guaranteed the provision of amnesty, been followed without objection, perpetrators of apartheid might have only needed to request amnesty to receive

it. In this sense, the TRC set a remarkable precedent because it ensured some degree of accountability from them. To an extent, the words of the government spokesman Themba Maseko were a request for the same type of accountability that the mandate of the TRC put in place, because while he did not condemn the vice-chancellor's attempt, he challenged the initiation of a 'process of reconciliation' without firstly providing the guarantee that the perpetrators recognized and assumed their guilt. Although the ANC Youth League spokesman did call for a fair judicial process for the students, he also mentioned the discomfort with the fact that the perpetrators had not expressed remorse clearly. Given that the students had not asked for forgiveness and since a proper measure of redress for the victims' had not been discussed, a judicial mechanism would be better suited for the case. The Higher Education Minister dismissed the vice-chancellor's decision on similar grounds, but was much more skeptical of the very attempt at reconciliation. The claim that the vice-chancellor had in fact further eroded any sense of national unity with such an approach could be understood as saying that most South Africans agreed that racism needed to be punished judicially, and that he was going against the will of many individuals.

Views supporting the Vice-chancellor were minimal. Nevertheless, some newspapers and particular individuals did take a more overarching approach to the case. For instance, the *Canvas Life* section of the *Saturday Star* newspaper presented a broader analysis, spelling out the reasons why the Vice-chancellor's decision was highly contentious. The headline of an entire page read "Vexed

varsity's new broom", followed by the statement "A brave new vice-chancellor won't just mop up the mess from one ugly racial incident..."³⁴³ Two problems were identified. First, confusion about the different legal processes underway appeared to fuel the sense of outrage of some people. Second, the fact that the workers were not consulted before any decision the vice-chancellor reached his decision deepened some people's sense of injustice.

A key aspect of the article was its reference to a lingering sentiment of uneasiness among people because appropriate judiciary measures to punish racism had not been established yet. The article stressed that the academic's decision would be praised as an act of reconciliation "in a country still troubled by the pain of the past", but that he would be equally "vilified for, at the very least, not giving Adams, Koko, Phororo, Ntseng and Molete the opportunity to be the catalysts of a formal court discussion about race that has been waiting for years in the wings of our democracy."³⁴⁴ The last statement is particularly important, because it alludes to a desire of having a discussion in South Africa that would specifically tackle the problem of racism. Moreover, the framing of the discussion as a "formal court discussion" suggests the aspiration of punishing racism through a court setting, and as far as the legal system would allow.

A couple of newspapers concentrated on Jansen's argument of institutional responsibility rather than on the fact that the students would be pardoned with his decision. The *Mail&Guardian*, a weekly newspaper known

³⁴³ Smith, supra note 304.

³⁴⁴ Smith, supra note 304.

for its in-depth coverage of political analysis, focused on the need to recognize the larger issues of racism at UFS.³⁴⁵ Similarly, the *Business Day*, South Africa's business daily newspaper, praised Jansen's announcement and called it a "brave decision" in its editorial.³⁴⁶ *Beeld* and *Die Burger*, both Afrikaans-speaking newspapers, reflected the controversy that the decision had caused, but refrained from framing the issue in a condemnatory way. The headline of *Beeld* read "Reitz: Offenders are welcome again, says Prof. Jansen"³⁴⁷, and *Die Burger's* remarked: "Jansen invited Reitz 4 back 'as gesture of reconciliation and healing.'³⁴⁸

Among the few people who came forward to support the vice-chancellor, were Desmond Tutu and the deputy chief executive of the South African Institute of Race Relations, Frans Conje. Tutu publicly supported Jansen's gesture, expressing that the new rector had made South Africans proud and reminding everyone of what could have happened had the country chosen revenge rather than the process of the TRC.³⁴⁹ Frans Conje called critics to reconsider their positions and praise Jansen's decision for what it was, courageous and exemplary. He reminded people that in the 1990s, many supporters of apartheid offered apologies to the point of insincerity. Contrary to the view of the Minister of Higher Education, Conje believed that Jansen was

³⁴⁵ Mcfarlane, David. "Free State joins the new SA", *Mail&Guardian*, 23 October 2009

³⁴⁶ "A brave decision", Editorial. *Business Day*, 20 October 2009

³⁴⁷ Coetzee, Gert. "Reitz: Offenders are welcome again, says Prof. Jansen", *Beeld*, 17 October, 2009. Accessed on February 2011, at <http://www.beeld.com/Suid-Afrika/Nuus/Reitz-Oortreders-is-weer-welkom-se-prof-Jansen-20091017>

³⁴⁸ Coetzee, Gert. "Jackson invited Reitz 4 back 'as gesture of reconciliation and healing", *Die Burger*, 17 October 2009. Accessed on February, 2011 at <http://www.dieburger.com/Suid-Afrika/Nuus/Jansen-nooi-Reitz-4-terug-as-gebaar-van-versoening-genesing-20091016>

³⁴⁹ "Tutu backs Jansen over controversial Reitz decision", *Mail&Guardian*, 19 October 2009.

setting an extraordinary precedent, because, as a Black man, it could only be remarkable that he would be calling for reconciliation. He said: "Here was a black man assuming the responsibility for what the white guard had done before him, and apologizing to the country for that."³⁵⁰ Such support for Jansen's position was in line with the views of people who stressed the need to reconcile and to focus on restoration after apartheid, rather than to choose revenge and retribution. The newspapers that focused on the institutional issues of UFS put forward arguments that resembled the support for a truth-telling mechanism over prosecutions. Their emphasis was on the idea that punishment of a few individuals would not fix the much deeper structural problems of racism.

Reflecting on Conje's comments, it could be said that Jansen followed the steps of Nelson Mandela or Desmond Tutu. Jansen, as the first Black man to become vice-chancellor of a historically white-Afrikaner university, emulated Tutu and the former president, himself the first democratically elected Black president of South Africa, by requesting a departure from the past via the path of reconciliation and not vengeance. For the symbolism, Jansen's gesture was comparable to the time when Mandela attended a rugby match of the world cup competition - rugby being a traditionally Afrikaner sport - wearing the jersey of the team. His reasoning was in tune with scholars who supported the TRC and considered that mechanisms of justice other than trials might do more for the advancement and the entrenchment of a culture respectful of human

³⁵⁰ supra note 304

rights. In addition, Jansen's decision was accompanied by a commitment for institutional transformation, such as making classes of African-speaking languages like isiZulu and isiXhosa compulsory for Afrikaner students, while Afrikaans would be mandatory for Blacks.³⁵¹ Also, the inauguration of the *International Institute for the Studies of Race, Reconciliation and Social Justice* in January 2011 shows evidence of the continuing efforts to move away from the legacy of apartheid and the racist elements that led to the Reitz Four incident. Yet, a year before this event took place, in April 2010, the murder of Eugene Terre'Blanche took place, shaking the conscience of South Africans and again earning the attention of the international media.

Eugene Terre'Blanche: A Man and his Race

Just as the Reitz Four saga became a nationwide topic for debate, the murder of the Afrikaner leader Eugene Terre'Blanche in 2010 motivated another discussion that brought to the forefront the issue of racism from a different angle. In contrast to the Reitz Four case, the notoriety of Terre'blanche's murder was as much as result of his historical position, coupled with the fact that two of his African workers murdered him on his own farm. The killing unleashed a debate with a number of important layers. As a founder of the Afrikaner Weerstandsbeweging or most commonly known as AWB (Afrikaner Resistance Movement in English)³⁵² and as the leader of the hard-line resistance against the impending demise of apartheid, the murder of

³⁵¹ Jansen, *supra* note 302

³⁵² "Afrikaner Weerstandsbeweging", AWB website. Accessed on February 2011, at <http://www.awb.co.za/>

Eugene Terre'Blanche highlighted the interplay of politics and race in South Africa. On one hand, it put the spotlight on the political role of Eugene Terre'Blanche in the past and sparked a debate about his influence in the present. On the other hand, the issue became all the more controversial because it happened only a few months after Julius Malema, leader of the African National Congress Youth League (ANCYL), was accused of inciting racial violence for singing a song from apartheid's resistance years with the lyrics "shoot the boer" in it (*boer* is the Afrikaans word for farmers, especially Afrikaner farmers). For this reason, newspaper headlines reflected the speculations of growing racial divisions in the country and the potential for violent racial conflict. In fact, the AWB used the instance as an opportunity to show evidence of the alleged dangers that the Afrikaner community faces in the new South Africa, particularly the violent attacks against white farmers. However, some commentators disagreed that the murder was a by-product of racial tensions and argued that class status was a better determinant of this incident.

The Terre'Blanche case provides important insights for the analysis of contemporary race relations in South Africa as a potential function of the TRC process and the media. On one level, the murder exposed how political actors and specific ideologies continue to exacerbate racial tensions, thereby challenging the idea that a full departure from attitudes of the past has been achieved. For instance, both Terre'Blanche and Malema had been responsible for using language that could incite racial division and racial violence. Also, the

AWB's relentless demand for racial segregation, similar to the ideology of the FF+, shows that remnants of the divisive racist ideology which kept apartheid in place still remain. On another level, the Terre'Blanche murder initiated a debate about the nature of violence in South Africa and its connection to race. An aspect of the discussion focused on 'farm attacks', an issue that affects the Afrikaner community most prominently. The fact that many Afrikaners believe that these are attacks fueled by racism, disregarding the fact that crime is widespread and that, in fact, Blacks are more likely to be assaulted by other Blacks, shows proof of an ongoing distrust towards members of other races. Also, the heightened fears of a potential breakout of racial violence that loomed in the aftermath of the murder point to persistent racial tensions in the country. At the same time, the fact that no major event of racial violence materialized after the murder –despite its anticipation by the international media in contrast to the less sensationalist tone of local newspapers- could underpin the argument that factors other than race play a more relevant role in incidents of violence.

Terre'Blanche's Murder: the Case

On April 3, 2010, news that Eugene Terre'Blanche, the leader of the AWB, had been found murdered on his farm spread quickly around the country. Two African male workers on Terre'Blanche's farm located, on the outskirts of the town of Ventersdorp in the North West province of the country,

were charged with the murder.³⁵³ On April 6, the suspects Chris Mahlangu (27) and a 15-year-old minor appeared at the Ventersdorp Magistrate's Court amid tight police security due to fears of violent encounters between supporters of Terre'Blanche and black residents who were present.³⁵⁴ The accused faced charges of "murder, housebreaking with intent to rob, robbery with aggravating circumstances, crimen injuria and attempted robbery."³⁵⁵ According to the police, the mutilated body of Terre'Blanche was found on his bed with his pants pulled down, and a panga (machete) and a knobkerrie (cane) were lying around him, signs of the violent nature of murder.³⁵⁶

Terre'Blanche in Politics

Eugene Terre'Blanche embodied the racism and violence that characterized apartheid South Africa. In the 1970's, he founded the Afrikaner Weerstandsbeweging movement (AWB) to push a white supremacist agenda.³⁵⁷ Flags with swastika-like symbols and neo-Nazi anthems were common features at gatherings of the movement's adherents.³⁵⁸ He is remembered as a "powerful Afrikaans orator" who would appear at rallies riding a horse.³⁵⁹ He became particularly notable during the transitional period to democracy because he sought to destabilize the political negotiations through violent attacks and threats of civil war.³⁶⁰ In fact, a hundred people were injured and 21 people

³⁵³ Vena, Vuvu. "Anatomy of a farm murder", *Mail&Guardian*, April 8 2010.

³⁵⁴ Vena, supra note 353

³⁵⁵ Vena, supra note 353

³⁵⁶ "Eugene Terre'Blanche killed after row with farmworkers" *Mail&Guardian*, April 4, 2010.

³⁵⁷ supra note 356

³⁵⁸ supra note 356

³⁵⁹ Tiisetso Motsoeneng, "Zuma calls fo calm after Terre'Blanche murder", *Mail&Guardian*, April 4 2010.

³⁶⁰ supra note 356

died in one of his most brutal attacks.³⁶¹ Nevertheless, his campaign failed to stop the eventual demise of the racist regime, and in 1998, he recognized his political and moral responsibility at a TRC hearing for some of the deadly violence that threatened to destabilize the 1994 elections.³⁶² Terre'Blanche's prominence during apartheid and his ideals would play a negligible role in post-apartheid South Africa.

Although Terre'Blanche's rhetoric was largely discredited in the new democratic order, he continued to advocate for a racially segregated South Africa. His insistence that a multiracial democracy would fail, coupled with a shameful three-year term in jail for assaulting a Black gas station attendant and attempting to kill a Black security guard made him earn even the contempt of some Afrikaners.³⁶³ For these reasons, for the most part he kept a low-profile after his jail release in 2004. Speaking about Terre'Blanche's influence, Allister Sparks expressed: "He was a has-been personality...his influence is absolutely minimal. I regarded him as one of the most remarkably powerful orators I've ever heard. He spoke with great passion and could really move people, but that was before 1994 when he was trying to mount his rather crazy resistance campaign."³⁶⁴ Yet, Terre'Blanche's desire to keep the races apart never waned. One year before his death, he attempted to make a comeback in politics by declaring his intentions of rallying Afrikaner far-right groups behind the

³⁶¹ In the run-up to the elections in 1994, the AWB established a bombing campaign to disrupt the transition to democracy. In one of the deadliest attacks of the movement, 21 people and many more were left injured. Source: SAPA <http://www.justice.gov.za/trc/media/1998/>

³⁶² "Terre'Blanche tells TRC he accepts responsibility for AWB bombs", SAPA. 18 June, 1998. Accessed on April, 2011 at <http://www.justice.gov.za/trc/media/1998/>

³⁶³ "Terre'Blanche killing: AWB vows revenge", *Mail&Guardian*, April 5, 2010.

³⁶⁴ *supra* note 363

secessionist goal of establishing an Afrikaner republic. This republic would stand in Northern Natal and the Eastern Transvaal, today the provinces of Kwa-Zulu Natal and Mpumalanga respectively, which, according to him, were territories that belong to the boerevolk (Dutch settlers' land) by divine right.³⁶⁵ He also justified his claims by pointing at the dangers that Afrikaners faced in a racially-integrated country. Terre'Blanche argued that the unity of the new South Africa was the cause of all the contemporary maladies that pervaded society. "It's about the right of a nation that wants to separate itself from a unity state filled with crime, death, murder, rape, lies and fraud" he once said.³⁶⁶ Although his ideas never materialized, they became significant in the discussion that took place after his murder. In the same way, the inflammatory rhetoric of ANC leader Julius Malema gained importance as some commentators blamed him for heating up the political atmosphere which could trigger racial violence.

Who is Julius Malema?

Immediately after the death of Terre'Blanche, a wave of accusations was directed at the ANC Youth League main leader Julius Malema for what some commentators considered to be his role in inciting racial violence against white farmers. In order to understand the reason why Malema's comments have earned the attention of the public and have become the object of much debate until today, his influence of in South African politics has to be examined first. Born in Polokwane, the capital of Limpopo- in northern region of the country-

³⁶⁵ "AWB: 'All we want is a volkstaat", *Mail&Guardian*, April 6, 2010.

³⁶⁶ *supra* note 363

and coming from a poor rural background, Malema rose to forefront of the political arena in the ANC through its Youth League, which is, according to *Mail&Guardian* political reporter Mandy Roussow, “a powerful lobby group that prides itself in selecting the future ANC president.”³⁶⁷ Malema has claimed that he was recruited into the party at the age of nine, and that by the age of thirteen he was given a handgun to attend the funeral of anti-apartheid Chris Hani in Johannesburg.³⁶⁸ He ascended the ranks of the party structure surrounded by well-known ANC leaders such as the late Peter Mokaba,³⁶⁹ who once himself was an ANC Youth League leader and a popular militant of the resistance against apartheid, known for shout the slogan “Kill the farmer, kill the boer” at rallies in the 1980s and 1990s.³⁷⁰ In fact, when Malema was indirectly associated with the murder of Terre’Blanche, an AWB leader compared him to Mokaba.

By April 2008, Malema took on the presidency of the Youth League.³⁷¹ “Being Youth League president,” Roussow explains, “made Malema a force to be reckoned with in the South African political scene, a position which he used to his full advantage.”³⁷² The fact that he was elected president by the youth of a key establishment of the ANC is telling of the influence that Malema wields,

³⁶⁷ Roussouw, Mandy. “Re: Question on Malema.” Message to the author. 28 April, 2011. E-mail

³⁶⁸ Chris Hani was assassinated in 1993. He was the leader of the South African Communist Party (SACP) and the chief of staff of the armed wing of the ANC Umkhonto we Siswe.

³⁶⁹ Roussouw, Mandy, Matuma Letsoalo and Mmanaledi Mataboge. “Inside the Malema machine”, *Mail&Guardian*, 9 October, 2009. Accessed on April, 2011 at <http://mg.co.za/article/2009-10-09-inside-the-malema-machine>

³⁷⁰ “Peter Mokaba: ANC politician and AIDS denialist.” *The Independent*, 13 June, 2002. Accessed on April, 2011 at <http://www.independent.co.uk/news/obituaries/peter-mokaba-645198.html>

³⁷¹ “Malema elected as new ANCYL leader.” *Mail&Guardian*, 7 April, 2008. Accessed on April, 2011 at <http://mg.co.za/article/2008-04-07-malema-elected-as-new-ancyl-leader>

³⁷² Roussouw, supra note 367

even though he is also disliked by many people in society.³⁷³ Malema draws his power from his own character- a powerful mixture of demagoguery and bluntness that makes him earn both respect and fear among those who surround him: “Although Malema holds no official government position and is only an ad hoc member of the ANC’s powerful national working committee (NWC), he knows that when he talks, everyone –inside and outside the ANC – listens.”³⁷⁴ His remarks and the issues in which he has been involved continuously have been the subject of newspaper headlines. At the same time, issues that he has brought up have been received with skepticism and sometimes condemnation within his own party.³⁷⁵

Of the issues that have raised Malema’s profile, his support for a nationalization plan that could mirror the problematic experience of neighboring Zimbabwe, particularly with land reform, has been the object of concern and speculation inside and outside the ANC. While the Terre’Blanche murder was making the headlines, Malema publicly praised President Robert Mugabe’s economic policies at a rally in a township of Harare, the capital of Zimbabwe. He expressed his approval of the contested land reform record of the country, which at some point has been based on drastic and even violent measures of seizures of white-owned land. He proclaimed that he would bring that strategy to South Africa, and justified the confiscation of property on the grounds of race: “In South Africa we are just starting. Here in Zimbabwe you

³⁷³ Rossouw, *supra* note 369

³⁷⁴ Rossouw, *supra* note 369

³⁷⁵ Rossouw, *supra* note 369

are already very far. The land question has been addressed. We are very happy that today you can account for more than 300,000 new farmers against the 4000 who used to dominate agriculture. We hear you are now going going straight to the mines. That's what we are going to be doing in South Africa."³⁷⁶ In specific reference to white-ownership of mines in South Africa, he added, "We want the mines. They have been exploiting our minerals for a long time. Now it's our turn to also enjoy from these minerals. They are so bright, they are colorful, we refer to them as white people. Maybe their color came as a result of exploiting our minerals."³⁷⁷

These comments were all the more significant because not only was Malema's behavior being the target of widespread criticism, but he was also contravening Zuma's political agenda. For instance, while Malema was siding himself with the ZANU-PF (Mugabe's political party) and its tactics, President Jacob Zuma was engaged in negotiations to settle a deal between President Mugabe and Prime Minister Morgan Tsvangirai.³⁷⁸ In spite of several attempts to minimize the implications of his nationalization proposal by saying that no Zimbabwean style 'land-grabs' would happen in South Africa, his demeaning comments about president Jacob Zuma, coupled with an incident in which he verbally confronted and insulted a BBC journalist at a news conference,

³⁷⁶ "Malema lauds Bob, says South Africa will copy land seizures." *Times*, 4 April, 2010. Accessed on April, 2011 at <http://www.timeslive.co.za/sundaytimes/article385668.ece/Malema-lauds-Bob---says-SA-will-copy-Zims-land-seizures>

³⁷⁷ supra note 376

³⁷⁸ Bearak, Barry. "South African President Rebukes a Disciple", *New York Times*, 10 April, 2010. Accessed on April, 2011 at <http://www.nytimes.com/2010/04/11/world/africa/11safrica.html>

motivated the ANC to undertake a disciplinary process for Malema.³⁷⁹ His final sentence included taking anger management classes and making a public apology for his careless references about the president.³⁸⁰ In fact, he was put down by Zuma for wanting to make nationalization an ANC policy at an ANC conference in Durban in September 2010.³⁸¹ Malema, however, did not become associated to the murder of the AWB leader simply because of his personality. A particular event that took place a month before the murder of Terre'Blanche ignited a row of discussion on the implications of using of anti-apartheid struggle songs and symbols in the post-apartheid period.

What is in a Song and a Farm

On March 10, 2010, Malema led a student protest at the University of Johannesburg in the Gauteng province in which he made derogatory comments about opposition leaders like Helen Zille of the Democratic Alliance (DA) and Patricia de Lille of the Independent Democrats (ID).³⁸² Yet, the focus of outrage was a song from the anti-apartheid period which contained the lyrics "shoot the boer" (kill the farmer) in it.³⁸³ Condemnation by members of parties like the Freedom Front and the Afrikanerbond organization followed immediately, and an order was issued by the North Gauteng High Court which prohibited Malema from singing the song again.³⁸⁴ Yet, with the murder of the AWB

³⁷⁹ Rossouw, supra note 367

³⁸⁰ Rossouw, supra note 367

³⁸¹ Rossouw, supra note 367

³⁸² "Malema under fire after controversial comments", *Mail&Guardian*, 10 March 2010.

³⁸³ supra note 382

³⁸⁴ Smith, David. "Julius Malema banned from singing South African apartheid-era song", *Guardian*, 2 April, 2010. Accessed on February, 2011 at <http://www.guardian.co.uk/world/2010/apr/02/julius-malema-south-africa-banned-song>

leader, some people argued that at some level, Malema was largely to blame. In this context also, the general state of insecurity that white farmers have suffered since the end of apartheid was highlighted, although the connection between the post-apartheid state and these attacks has been hard to prove.³⁸⁵

Analyses of the possible motivations of farm attacks discredit racism as a explanatory variable. Farm attacks have been defined as a particularly violent phenomenon that originated in the 1990s, whereby a large number of white farmers were the targets of attacks, some of them characterized by their extreme brutality.³⁸⁶ These attacks built the misleading perception among members of the Afrikaner community that the state wanted to drive them out of their land, even though a commission of inquiry in 2001 revealed that Blacks were also the object of this type of violence. Furthermore, out of the 3000 farm attacks that took place from 1998 to 2001, only 2% appeared to have a racial or political motive.³⁸⁷ In the words of Johan Burger from the Institute for Security Studies, “all research so far show[ed] that far more than 90% of these attacks can be attributed to simple crime—robbery [was] the main motive.”³⁸⁸ However, a Human Rights Watch study in 2001 showed that a number of white farmers still believed the attacks were part of a larger plan by the government to drive them off their lands.³⁸⁹ With the murder of Terre’Blanche, these perceptions fed into

³⁸⁵ Tiisetso Motsoeneng, “Zuma calls for calm after Terre’Blanche murder”, *Mail&Guardian*, April 4 2010

³⁸⁶ “The Violent Nature of Crime in South Africa.” Centre for the Study of Violence and Reconciliation, 25 June, 2007. Accessed on April, 2011 at http://www.csvr.org.za/docs/crime/compatibility_mode.pdf

³⁸⁷ Lebone, Kerwin on a report for the Committee of inquiry into farm attacks by the SAPS, 2003.

³⁸⁸ Vena, Vuvu. “Anatomy of a farm murder”, *Mail&Guardian*, April 8 2010

³⁸⁹ Vena, supra note 388

the fears of racial violence. The reactions to the murder from AWB leaders were also the cause of more concern.

Reactions

The responses to the murder of Terre'Blanche from some AWB leaders fed into fears of racial conflict in the country. The event, which was highly publicized in the local and international media, turned into an opportunity for AWB leaders to make intimidating statements that contributed to the rising tension. Andre Visagie, AWB spokesperson, said that the party would seek ways to "avenge" the death of Terre'Blanche, a death that he considered to be "a declaration of war by the Black community of South Africa to the white community."³⁹⁰ Also, the attention of the media gave the new AWB leader Peter Steyn van Ronge a platform to forward Terre'Blanche's political agenda. In front of the court where the two murder suspects appeared, Steyn made comments that echoed Terre'Blanche's secessionist goals: "All we want is a piece of land in South Africa where we can settle ourselves and call it our own and govern ourselves with our religion...and our own laws."³⁹¹ These comments were made amid the fraught atmosphere that characterized the court appearance, where police had to set up barbed-wire to separate white and Black locals as a measure that would deter them from engaging in a scuffle.³⁹² The same tense mood was seen at Terre'Blanche's funeral, an event that also

³⁹⁰ *supra* note 363

³⁹¹ "AWB: 'All we want is a volkstaat', *Mail&Guardian*, April 6, 2010.

³⁹² Graham, Stuart. "World Media to attend Terre'Blanche funeral", *Mail&Guardian*, April 7, 2010.

demanded tight police security.³⁹³ Here, AWB followers took the opportunity to make public their loyalty to the movement by singing the apartheid era national anthem *Die Stem* and carrying flags with swastika-like symbols.³⁹⁴ In the same way, expressions of disenchantment with the government were particularly focused on Malema. Afrikaner singer Hofmeyr said: "If you understand the hate speech of [ANC Youth League president Julius] Malema, you must understand why I cannot enter a stadium named after Peter "kill the boer" Mokaba."³⁹⁵

When put in context, the political ideology of movements like Terre'Blanche's AWB as well as Malema's provocative rhetoric could be taken as evidence of a lack of fundamental change in some aspects of the political culture of South Africa. It could be argued that the TRC process, which focused on a narrow number of human rights violations, could account for an apparent failure in pending attitudinal elements that can stir up racial divisions. That white supremacist ideologies are still part of the political fabric of South Africa is rather unsettling. At the same time, it is equally problematic that Malema, as a representative of the youth wing of the official party in government, revived a highly polarizing song from the apartheid era fifteen years after the demise of the regime. Nevertheless, it has to be noted that movements like the AWB which have an exclusively segregationist agenda do not garner widespread support from the population.³⁹⁶ Also, major parties' firm condemnation and

³⁹³ Pillay, Verashni. "Emotions run high at Terre'Blanche funeral". *Mail&Guardian*, April 9 2010

³⁹⁴ Smith, David. "Tension simmers as Terre'Blanche is laid to rest" *Mail&Guardian*, April 10 2010

³⁹⁵ Pillay, supra note 393

³⁹⁶ Smith, supra note 394

rejection of attitudes that controversial figures like Malema embody demonstrate that a system of checks and balances is in place, and that racist or inflammatory comments of any nature are not taken lightly.

At another level, the misleading perceptions that some members of the Afrikaner community have about farm attacks speak of a prejudicist, racist mindset that still inform some people's judgments. In this respect, James Gibson's claim that the TRC process helped to change images of the "enemy" is challenged. It could also be said that it is not racism but a lack of information that fuels these perceptions. Yet, it cannot be assumed that with better information people would change their views of others just as much as it could not be asserted that the TRC's even-handed approach effectively helped to defy racial categorizations. Yet, the way the national newspapers framed the murder show that, in spite of the fact that a prominent white figure was killed by two black workers, racism may not be necessarily a source of violent conflict.

The Media's Spotlight on Terre'Blanche

The murder of the AWB leader caught the attention of people in South Africa and abroad. The fact that it took place only months before the Football World Cup could have intensified the particular interest of the international media on the case. At the same time, the framing and the reflection of international media outlets in comparison to local newspapers' approach to the case was interesting. National newspapers largely focused on the political figure of Terre'Blanche and echoed the fears of racial violence. Nevertheless, none reflected on this event as evidence of failure of the post-apartheid state to

bridge the racial gaps. The *Sunday Times* headline read: "Terre'Blanche killed: Hacked to death on his own farm." The lead of the story stressed the violence that was espoused by the leader and his record as a white supremacist: "Eugene Terre'Blanche's violent life came to a brutal end last night...In 1970, Terre'Blanche founded the fringe right-wing AWB, and spent three decades championing white supremacy."³⁹⁷ *Beeld* remarked "Eugene Terre'Blanche killed" in its headline, followed by a summary of police allegations on the case.³⁹⁸ The *Mail&Guardian* highlighted the role of the farmworkers ("Eugene Terre'Blanche killed after row with farmworkers") including a lengthy description of Terre'Blanche's political ideology and history. The lead of the story was as follows: "Eugene Terre'Blanche, who once threatened to wage war rather than allow black rule in South Africa was hacked to death at his farm on Saturday following an argument with two employees."³⁹⁹ In the days after the murder, attention shifted to the court appearance of the accused farmers and the funeral of the AWB leader, but beyond these As these events were taking place, analyses in the international media establishments were that the murder showed proof that South Africa continues to be a racially divided country with potential for racial conflict.

International news outlets delivered the news of the murder and the aftermath as evidence of ongoing racism in the country. *Time* magazine's

³⁹⁷ Charles Molele, Mzilikazi Wa Afrika and Bobby Jordan. "Terre'Blanche killed: Hacked to death on his farm", *Sunday Times*, 4 April 2010. Accessed on April, 2011 at

<http://www.timeslive.co.za/sundaytimes/article385669.ece/Terre-Blanche-killed>

³⁹⁸ Amy Johndon and Herman Eloff. "Eugene Terre'Blanche killed", *Beeld*, 4 April, 2010. Accessed on March 2011 at <http://www.beeld.com/Suid-Afrika/Nuus/Eugene-TerreBlanche-vermoor-20100404>

³⁹⁹ supra note 353

headline read: "In South Africa, Murder in Black and White."⁴⁰⁰ The analysis of CNN mentioned the divisive and racist record of Terre'Blanche, while it also referred to South Africans allegedly fearing that the murder could be a sign that the country, once again, was on the grip of "racial hatred."⁴⁰¹ The *Guardian* of the UK implied that some Afrikaners' "sense of vulnerability", born out of fears that Blacks will take away their lands or that South Africa will become "another Zimbabwe", impinges on the process of reconciliation that Mandela strove to establish.⁴⁰² In its headline, a *BBC* article emphasized the emotionally charged event of the murder ("Anger and anxiety after Terre'Blanche murder"). Most prominent, however, was the reference to the likelihood that the murder would escalate to the point of violent racial conflict. The reference alluded to the history of the country and the supposedly unchallenged racist attitudes that still haunt South African society: "This murder has the power to unleash the demons of deep-seated racial hatred that have bedeviled this country for three centuries."⁴⁰³ In the extreme side of these types of analyses of the killing, a column by Andrew Bolt, a co-editor at the *Herald Sun* (Australia's largest newspaper) announced in its title "New Racism grips South Africa."⁴⁰⁴ The author highlighted the alleged indirect role of Malema in the killing, and warned the following: "South Africa is sliding back into a new racial divide,

⁴⁰⁰ Alex Perry. "In South Africa, Murder in Black and White", *Time*, 5 April, 2010. Accessed on March 2011 at <http://www.time.com/time/world/article/>

⁴⁰¹ Robyn Curnow. "Terre'Blanche's death stokes racial tensions", *CNN*, 4 April, 2010. Accessed on March, 2011 at <http://articles.cnn.com/2010-04-04/world/terreblanche.analysis>

⁴⁰² David Smith. "Eugene Terre'Blanche's death stirs up fear and anger in South Africa", *Guardian*, 5 April 2010. Accessed on March, 2011 at <http://www.guardian.co.uk/world/2010/apr/05/eugene-terre-blanche-south-africa>

⁴⁰³ "Anger and anxiety after Terre'Blanche murder", *BBC*, 4 April, 2010. Accessed on March 2011 at <http://news.bbc.co.uk/>

⁴⁰⁴ Andrew Bolt. "New racism grips South Africa", *Herald Sun*, 13 April, 2010. Accessed on March 2011 at <http://www.heraldsun.com.au/opinion/new-racism-grips-south-africa/>

perhaps even a new apartheid. And this time most of the racists and thugs are black.”⁴⁰⁵ In spite of the negative forecasts about the implications of the murder, no major violent event materialized in actuality, which is a fact that puts to question the extent to which racism could be the source of conflict.

What explains the approach of South African newspapers to the murder could be the perception of the majority that racism would not be the trigger of conflict. The most prominent newspapers seemed to have paid more interest in the case because such a contentious figure was involved in it rather than because it was a murder in ‘black and white’, as some international media establishments put it. Although the tension that followed the murder was identified in the headlines, the newstories did not go beyond that. No grand debate on the state of race relations in the country emerged, and not much reference to the possibility of racial conflict breaking out was made. For purposes of comparison, as the World Cup drew nearer to its finale, threats of xenophobic violence were captured in the headlines with much more anticipation than in the case of Terre’Blanche. Instead, the wage dispute that could have motivated the killing figured more prominently, as well as the discussion on Malema’s possible role in the incident or Terre’Blanche’s ideology. It could be argued that South African newspapers, in contrast to international media outlets, projected the right image that violent conflict of a racial nature in South Africa is rather uncontemporary.

⁴⁰⁵ Andrew Bolt, *supra* note 404

5. Conclusion:

*The South African TRC, Media and
Race Relations*

Assessing the impact of truth-telling processes in post-conflict societies is a challenging task. It requires extensive and careful analysis of all the political and social factors that lead to the implementation of truth commissions, the capacities that are assigned to these commissions, and the expectations that people may have in regards to a particular transitional justice mechanism in order to make fair judgments about their effectiveness. Even when these elements are taken into consideration, many other factors may explain the subsequent outcomes of a truth telling-process that escape the range of assessments. However, in the South African case, as this thesis has shown, provides a wealth of knowledge and insight from which more can be learned about the work of a truth commission and the impact it may have had in the present.

The question with which this research has wrestled specifically is whether there is relationship between contemporary race relations – a key to both South African history and the current reality of the country- and the transitional justice process. The views and critiques about the work of the South African Truth and Reconciliation Commission (TRC) and the media during the transition to democracy and its effect on the present have been explored. Under the premise that reconciliation, one of the overarching goals of the TRC, would by virtue of the legacy of the racism of apartheid signify reconciliation among previously antagonistic racial groups, this thesis has examined the state of race relations in South Africa fifteen years after the transition. Two recent events- the

Reitz Four incident and the murder of AWB leader Eugene Terre'Blanche- have served as case studies for this analysis. The nature of the debate that these events ensued, the larger issues that they brought up and the way the print media portrayed them, have offered ways to understand the hypothesis that has prompted this research.

The preliminary hypothesis that has motivated this research is confirmed. The hypothesis that is stated in Chapter 1 reads as follows:

“[...] the Truth and Reconciliation Commission (TRC), directed by the Parliamentary Act that established it, failed to properly integrate a discussion of race and racism into its work. Particularly, that the conflict came to be understood in terms of victims of a small scope of human rights violations and perpetrators of those violations posed certain limitations on reconciliation. In the same manner, the way in which the media reported the TRC process only added to a lack of structural analysis about apartheid. Although extensive, the media limited its work to covering the TRC hearings without subjecting the content of the information they gathered to deeper criticism. Hence, by ignoring the context of the events described and discussed in the Commission, the media deepened the analysis gap of the transitional justice process. Ultimately, the TRC and the media's downplay of race as the explanatory variable for the violations that occurred during apartheid may have contributed to race relations that remain problematic in contemporary South Africa.”⁴⁰⁶

Certainly, the findings of the case studies demonstrate that there are ongoing issues of racism in South Africa which can be correlated to the TRC and the media's work. Causation is less easy to determine, however. How exactly the process of the TRC, with the intervention of the print media that reflected this process and delivered it to larger society, could account for the number of issues that came up in the case studies that have been explored in this research is a question that could only be answered by drawing tentative connections.

⁴⁰⁶Refer to Chapter 1 of this thesis.

Recognition of the fact that the Promotion of National Unity and Reconciliation Act no. 34, which established the TRC, delineated fundamental aspects of the scope of the Commission's work is imperative as well. It is important to acknowledge that at some levels, criticism of procedures or terminology of the TRC would be better directed at the Parliamentary Act which created the Commission. This means that, although the focus of this research is on race relations as a function of the TRC, a number of conditions of the truth-telling process that are the object of debate in this analysis, such as the terms 'victims' and 'perpetrators', were pre-defined in the Act.⁴⁰⁷ Nevertheless, although the Commission was circumscribed by the terms of the Act that established it, it could have still done much more than what it actually did to avoid the exclusion of a much needed structural analysis of apartheid. The same can be said about the media. The close examination of the two case studies of this research offer insights into how contemporary race relations in South Africa bear the effect of some aspects of the transitional justice process.

Features of the racist legacy of apartheid still remain in place in South Africa in ways that can support some of the criticism that has been made about the TRC process and what it actually delivered in terms of racial reconciliation. Some of the problematic aspects that came up in the case studies paint a rather fragmented picture of a post-apartheid, 'post-TRC' South Africa which should have ideally overcome the main source of antagonisms of the past-in particular, race. Following the argument of Madeleine Fullard and Nahla Valji in regards

⁴⁰⁷ See Chapter 3 of this thesis.

to the 'displacement of racism' from accounts of the TRC, and Anthea Garman's criticism of the media in general for having downplayed the explanatory value of racism for understanding the human rights violations of the past, the cases studies have shown that in fact the racist ideology that underpin the structural establishment of apartheid remains unchallenged at some levels. The degree of institutional segregation at the University of the Free State (UFS), the rejection of integration policies on the part of Afrikaner students, the salience of Afrikaner nationalism to justify segregationist political platforms, the role of leaders like the ANC Youth League President Julius Malema or Eugene Terre'Blanche in mobilizing constituencies by inciting racial divisions and racial prejudices, and the level of mistrust and misunderstanding in the Afrikaner community in regards to 'farm attacks' are issues that question the extent to which South Africans-particularly Afrikaners- are racially reconciled.

The fact that many of the issues at UFS as well as at other institutions of higher education were born out of ongoing racism validates criticism of the TRC process. This fact underpins Valji's argument: "The TRC has left many of the structures of inequality intact and unaddressed and has suppressed dialogue on the persistence of racism in the new South Africa."⁴⁰⁸ The institutional issues at UFS also support Fullard's assertion that the TRC's institutional hearings could not have done more for reconciliation because they were not the main focus of the process, but rather an 'awkward' discontinuity

⁴⁰⁸ Valji, Nahla. "Race and Recociliation in Post-TRC South Africa", paper presented at a conference entitled *Ten Years of Democracy in Southern Africa*. Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/racism/raceandreconciliation.pdf>5

from the common procedures of the TRC.⁴⁰⁹ Hence, it could be said that a more ample discussion during the TRC process on the role of racism at the institutional level in apartheid could have undermined the racist foundations of establishments like the UFS.

The largely negative reactions to the Vice-chancellor's decision, reflected in the most prominent newspapers of the country, could be the result of the sole focus of the TRC and the media on victims and perpetrators and a set number of human rights violations to the exclusion of a more structural analysis. Had the TRC, and the media, approached the apartheid's past from a more comprehensive angle (i.e. more regard to institutions, laws, and ideologies), more people could have felt part of the process and hence, express more supportive views towards the Vice-chancellor's decision of foregoing punishment and engaging in a conciliatory path. As Mamdani has argued, the narrow approach of the TRC had the effect of disengaging a large portion of the population who were victims as well as those who were apartheid's 'beneficiaries', thereby impinging on reconciliation.⁴¹⁰ The exclusion of the theme of how racism affected the whole of society from the accounts of the Commission that Valji describes, and in the media's framing of the stories that covered the hearings which the MMG report has pointed at, could be reflecting itself in partial, individualized understandings of racist acts today in South Africa.

⁴⁰⁹ Fullard, Madeleine, "Displacing Race: The South African Truth and Reconciliation Commission and Interpretations of Violence", *Race and Citizenship in Transition Series*. Centre for the Study of Violence and Reconciliation.

⁴¹⁰ Mamdani, Mahmood. "A Diminished Truth", W. James and L. Van de Vijver eds. *After the TRC: reflection on truth and reconciliation in South Africa*. Cape Town: David Philip, 2000.

Both case studies show that there are still ideologies and political actors which promote attitudes from the past that exacerbate racial tensions. Inflammatory political platforms and rhetoric have a degree of influence in certain sectors of society in South Africa. The Afrikaner nationalism of political parties like the FF+ and AWB stirs racist sentiments and segregationist aspirations in their Afrikaner constituencies. Strategically, the FF+ and the AWB target audiences who feel vulnerable in a multiracial society that no longer guarantees the unfair privileges they used to have in the past. Their political demands are based on the same type of ideas that motivated apartheid era leaders to implement their racist laws. When these factors are taken into consideration, an essentially 'Afrikaner' problem seems to emerge. A sense of not belonging in the new, multiracial South Africa appears to exist among some sectors of the Afrikaner population that denotes a lack of reconciliation from their side. Figures like Julius Malema would want to revive the memory of the struggle against apartheid, in detriment of racial reconciliation, in order to downplay the failure of the ANC ruling to deliver to a yet largely disenfranchised Black majority.

Criticism of the TRC for having failed to reveal and condemn the racism behind the 'politically motivated acts' that it explored finds some ground in the present when looking at the ideologies and attitudes of the political actors which are mentioned above. In lights of this, Valji's assertion that the TRC's 'political' label of human rights violations committed in the past disguised the racism that motivated those violations and ruled out a proper discussion and

condemnation of racism as such gains force.⁴¹¹ The platform of the FF+, Eugene Terre'Blanche's AWB, and the comments of Julius Malema incite racism and racial conflict behind a political façade. These are elements that attack the 'rainbow nation' that Mandela envisioned. They foster the vilification of others and weaken integration efforts. They are a negation to the goals of 'national unity and reconciliation' that the TRC aspired. They exploit people's fear and exacerbate their prejudices which lead up to racist acts such as the Reitz Four. In the same way that torture, killing and persecution could only have taken place in the past in an environment conducive to racism, these political parties and actors seek to enforce racial identities in order to advance particularly divisive agendas that could only bring back the past. Can the work of the TRC explain the continuity of these attitudes? Certainly, the TRC did not directly reject these types of attitudes. It condemned a number of human rights violations, but it did not hold perpetrators to account for the racism that motivated their actions and informed their political ideologies. This could have been the product of the even-handedness that the Commission embraced when assessing the violations. Had it not aspired to stay neutral in regards to human rights violations, a debate on the role of racism could have been initiated and extended.

At the same time, although the Reitz Four incident and the Terre'Blanche killing highlight the racist attitudes at the individual and group levels, it would

⁴¹¹ Valji, Nahla. "Race and Recociliation in Post-TRC South Africa", paper presented at a conference entitled *Ten Years of Democracy in Southern Africa*. Centre for the Study of Violence and Reconciliation. Web. <http://www.csvr.org.za/docs/racism/raceandreconciliation.pdf>

be unfair to make a generalization about the whole of society from these samples. It has to be noted that Terre'Blanche and Malema fall toward the extreme of the political spectrum in South Africa. Terre'Blanche did not have much prominence in the years after 1994, and Malema is a contemporary political figure who is better known for his controversial remarks and extravagant lifestyle rather than for enjoying wide support across the population. Furthermore, major parties swiftly condemned the role of political ideology in both incidents, which is a sign of a political culture that is increasingly more intolerant towards racism. At the same time, the larger issues that came to the forefront of the public discussion on the newspapers indicate that a lack of racial reconciliation is at work, which could be a result of the TRC's 'de-racialization' of the past, as Fullard argues. Afrikaner farmers who hold onto the prejudicial belief that farm attacks are an attack on their race, groups of students who are opposed to racial integration, and young political leaders who rally support by using symbols from a time of violent conflict reveal the need for further progress in terms of racial reconciliation.

While conjectures of a lack of racial reconciliation –a lack that can be related to the omission of a more assertive discussion on the role of racism during truth telling process- are valid, it is also worth noting that the response to the challenges that racism posed in these cases studies speak of measure of progress that could also be attributed to a precedent set by the TRC. For instance, in spite of the bad press regarding the decision of the UFS Vice-chancellor to drop the charges against the Reitz Four incident, the logic that

formed the basis of his decision resembles the ideological and moral foundations of restorative justice mechanisms which is consistent with the TRC's approach. Also, the fact that no major violent racial event materialized in the aftermath of the murder of Terre'Blanche supports claims that racism is not a main catalyst for violent conflict.

The restorative justice approach of the new Vice-chancellor of UFS not only shows signs of a positive post-TRC legacy, but is in fact the continuation of the process that the Commission sought to initiate. The vice-chancellor's position mirrors the TRC and other truth commissions foundations effectively: that it would take much more than trials and prosecutions to change the whole establishment of apartheid, and that any fractured society that aims to transform itself and move on from the past, as Alex Boraine has said, cannot count on punishment to restore the broken social fabric. The fact that it was the first Black Vice-chancellor who apologized for the failures of his white predecessors to dismantle the racism that haunted UFS for decades puts him on the level of moral icons such as Nelson Mandela and Desmond Tutu. The Vice-chancellor knew that given the historical record of the University and the number of larger racial issues that continued to affect the institution, punishment of the four Afrikaner students who attacked the dignity of the five Black workers would not end the racism that permeated the very structures of the university. Therefore, in the same way that the TRC took up the task of providing amnesty to the perpetrators of apartheid and acknowledging the victims as the first stepping stones in the direction of reconciliation, the Vice-

chancellor sought to initiate his plan of transforming the university's culture by acknowledging that punishment would not set the right tone to fight against institutional racism. Both the TRC and the Vice-Chancellor attempted to bring together the people who would have to bear and drive forward the larger changes that need to take place.

Another positive development illustrated in the case studies is that in spite of expectations that the murder of Terre'Blanche would ignite racial violence in the country, the largely peaceful response of the public proves that racism is not necessarily a factor that could lead to the escalation of violent conflict, as some studies have shown as well. Thus, it could also be argued that the TRC language of 'victims and perpetrators' that Mamdani and Fullard criticize did change people's perceptions of each other, as Gibson has argued, and might account for the fewer number of events in which another person's race is the sole catalyst for violence in South Africa. The fact that no major events of racial violence materialized in the aftermath of Terre'Blanche's killing represents a step forward in the dynamics of race relations in the country that could be taken as a measure of reconciliation, thus a correlation with the work of the TRC. A more relevant causal factor of violence, as statistics show, is class and not race, as was the case during apartheid. Furthermore, the absence of racial violence in this particular case also shows that the misleading claims and demands of the AWB or the FF+ do not resonate with the greater bulk of society. Nevertheless, South Africa is still characterized by its high levels of violence.

This is a phenomenon that poses a great threat to the need to move away from the violent past.

The case studies have shown that newspapers have at times framed racial issues better today than during the TRC process. At other times, however, they have failed to stress important aspects of events related to these incidents. In the Reitz Four case, newspapers of varied readership highlighted the wrongness of the acts perpetrated in the video. However, most newspapers largely concentrated on the few individuals involved in this particular case. This type of approach is precisely the one that critics saw as problematic during the TRC process. In delivering the findings of the hearings of the Commission to wider society, newspapers and other media outlets also simplified the conflict of the past by only highlighting the role of high profile perpetrators and a small number of victims. The negative portrayal of the Vice-chancellor's decision in the headlines of major newspapers, without regard to what his decision actually entailed, reflects a failure of not delving into a deeper understanding of the 'institutional complicity' that the Vice-chancellor had referred to. In the present like in the past, most newspapers failed to address the bigger issues that were at work at UFS. As a result, it could be argued that a chance to initiate a public debate on the way racism impacts society was missed again.

The more nuanced approach to the murder of Terre'Blanche by local newspapers is a positive aspect of print-media's current analysis of racial events. This approach also reinforces the argument that racism is no longer a

predictor of violence in South Africa. The framing of content in South African print media analyzed in this research has shown that they had a much better understanding of racial dynamics in the country than international media outlets. The predictions of imminent racial violence that major newspapers around the world made stood in sharp contrast to the focus of national newspapers on the minor relevance that Terre'Blanche and his ideology enjoyed in the new South Africa.

As part of the literature that assesses the work of truth commissions and the media in transitional justice processes, this thesis adds a qualitative analysis of one truth-telling process in particular that can serve as a guide for analysis of other experiences. The thesis exposes the complexity of measuring success or impact of a truth-telling process, but does not deny the possibility of drawing connections between contemporary events and justice efforts of the past. The inductive methodology that this thesis has relied on complements other research works that make use of quantitative tools. The methodology has revealed that some correlations can be established between the TRC, the media and racial reconciliation in South Africa.

Causation is harder to prove with the case studies examined in this research. At the same time, this limitation opens up the opportunity for further research. For instance, more contemporary case studies could reveal more connections with the TRC process. Also, analysis of the framing of media outlets other than newspapers could add to the depth of any research. Furthermore, a comparative analysis of a truth commission that did or may

explicitly address racism in its work and the outcome of such an approach could show what other factors explain the development of racial relations in a post-conflict society.

Certainly, this thesis could not have addressed all the elements that shape and define the state of race relations in South Africa today. In the same manner, the TRC and the media could only have done so much to establish a clean break from the past. Furthermore, in a now democratic South Africa, as this thesis has shown, even strong racial identities that have their origins in the long history of segregation of the country might not determine the outcomes of some incidents. However, the assessment of past efforts of redefining the attitudes and the ways people relate to each other show that there are opportunities for improvement. In South Africa, when apartheid affected such a large number of people in such varied ways, the truth-telling process could have been more inclusive and more critical of the establishments that sustained the racist regime. In this context, the media could have helped to shed light over those areas where the Commission could not reach. They could have held the people and the institutions that did not fall under the purview of the work of the TRC more accountable. The positive aspect of this reflection is that today, much more can still be done to rectify any shortcomings of the transitional justice process. When the sources of conflict of the past such as racism take the forefront of the national debate, the opportunity to initiate another round of efforts to move away from the past should not be missed.

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