

Restorative Justice in  
South Africa's Truth and Reconciliation Commission

by

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A Thesis submitted to the Faculty of Graduate Studies of

The University of Manitoba

in partial fulfilment of the requirements of the degree of

MASTER OF ARTS

Department of Sociology

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## Abstract

This thesis examines the founding documents of the South African Truth and Reconciliation Commission (SATRC) to assess if the commission was founded on restorative justice values (RJ). Following this, a discourse analysis is employed to examine a sample of transcripts from the victims' hearings and the outcomes of the hearings to assess whether or not the victim hearings followed RJ practices and if the outcomes were indeed of a restorative nature. It is concluded that the SATRC was founded on RJ values and the practices utilized through the hearings were restorative in nature. However, it cannot be concluded that the outcomes of the hearings and the SATRC were entirely restorative in nature. This conclusion takes into account that each individual's experiences are unique, as are his/her expectations. Furthermore, many of the outcomes identified in this thesis may take a lifetime to achieve, if ever.

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## Chapter 1 Introduction and Background

### **Introduction**

Restorative justice is an approach to addressing harms. It is distinct from the adversarial criminal justice system. It seeks to engage all individuals who were affected by a wrongful act in a process to heal the harm that was done. As such it possesses the potential to deal with the wrongdoings while allowing victims and perpetrators to establish improved relationships.

The South African Truth and Reconciliation Commission (SATRC) was a government-supported effort to come to terms with gross human rights violations that occurred between 1961 and 1994. In response to the racism that subjugated the majority of the population, citizens joined political groups, some of which resorted to violence in a desperate attempt to make their voices heard. The victims of gross human rights violations include not just anti-apartheid political activists, but also innocent bystanders and children, as well as government security personnel.

Influenced by restorative justice theory, the SATRC invited the victims of these acts to come forward and share their stories, identifying those responsible and indicating their needs that resulted from the violation(s) committed against them. Perpetrators were also offered the opportunity to come forward and speak at the Amnesty hearings. They were expected to relate the entire truth of their wrongful actions. The



Amnesty Committee assessed their testimony and determined whether or not they met the criteria to be granted amnesty for their offences.

This thesis reviews the background to the SATRC, looking briefly at the history of the struggle between the settlers and indigenous populations for dominance in South Africa. This will provide the reader with an overview of the context out of which the SATRC was developed as well as offer an understanding of the complexities that surround the issue of reconciliation. During most of the 20<sup>th</sup> century, the white population treated all other racial groups as inferior, implementing laws that worked to prevent them from succeeding financially, professionally, and also in their personal lives. In the struggle for equality, the government ordered abuses of individuals it considered a threat. Political groups that were seen as a threat to the reigning government were banned and went underground, responding with violence to their mistreatment.

Employing a discourse analysis, this thesis examines the victim hearings and the literature on the outcomes of these hearings. It considers how victims who took part in the hearings perceived the reconciliation process and assesses whether or not their perceptions correspond with justice principles derived from restorative justice theory. This research will provide insight into the applicability of restorative justice theory in efforts to reconcile victims and perpetrators of acts of gross human rights violations that occurred on a national scale.

It is hypothesized that the findings will show that the development and operation of the victim hearings themselves reflected the values and practices of restorative justice theory, but that the outcomes to date have been less than restorative. This research will also look at the advantages and disadvantages of applying a restorative justice approach when dealing with gross human rights violations.

Before discussing the SATRC, it is first necessary to present an overview of South Africa's history.

### **Historical Context**

The history of colonialism in South Africa is long and complex. Battles for land and independence occurred throughout the region both between Europeans looking to settle and with the groups indigenous to the land. The latter included a Bantu-speaking agricultural population<sup>1</sup> who came to South Africa in a mass migration hundreds of years before the Europeans.<sup>2</sup> There were also the main indigenous groups in South Africa, the San who were hunter-gatherers, and the Khoikhoi, herders who moved south from northern parts of Africa and introduced herding to the area (Worden 1994). When the Dutch (who became known as Boers) arrived in the Western Cape in the late 17<sup>th</sup> century, it was these Khoikhoi they encountered (Worden 1994). As pastoralism expanded, so did the battle for land, and in the

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<sup>1</sup> Currently, Bantu is more identifiable as a language group than as a distinct cultural group, and many tribes speak Bantu, including the Xhosa, Zulu, Kikuyu and Shona peoples  
[http://library.thinkquest.org/16645/the\\_people/ethnic\\_bantu.shtml](http://library.thinkquest.org/16645/the_people/ethnic_bantu.shtml), November 23 2006.

<sup>2</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/history.htm](http://www.southafrica.info/ess_info/sa_glance/history/history.htm), October 21 2006.

process some Khoi were defeated in raids by the Dutch East India Company<sup>3</sup> and were forced to work on settler farms. Other Khoi adopted the hunter-gatherer lifestyle of the San (Worden 1994).

In some regions, battles routinely erupted between Khoi, San and the settlers over environmental and human resources as the settlers, or trekboers, continued to expand inland and in the process, captured women and children as forced labourers (Worden 1994). In the late 18<sup>th</sup> century indigenous labourers were required to carry passes authorizing them to move about<sup>4</sup> (Worden 1994). Around the same time, the Xhosa, a southern Nguni tribal clan, split into rival sections because of disputes between chiefs (Thompson 2000)<sup>5</sup>. Early in the 19<sup>th</sup> century, the British gained control of the region (Worden 1994). Needing to minimize costs and conflicts between settler farmers and the Xhosa chiefdoms, the British government and local Dutch administrators worked together, attacking Xhosa with violence and stealing their cattle (Worden 1994).

Incorporating the Cape into the British Empire resulted in a move away from “tied labour systems” such as slavery (Worden 1994: 13). Additionally, the economy changed towards developments in wool production and created a new level of affluence (Worden 1994). As a result of the changing social order and resultant

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<sup>3</sup> The Dutch East India Company was established in 1652. The Cape colony that developed from this settlement eventually formed the basis of the eventual conquest of South Africa. (Worden, 1994: 6)

<sup>4</sup> Worden (1994:9) explains that the “Bastaard Hottentots” were required to carry passes. These were the offspring of Khoi and slaves or Khoi and colonists.

<sup>5</sup> [http://www.mongabay.com/reference/country\\_studies/south-africa/SOCIETY.html](http://www.mongabay.com/reference/country_studies/south-africa/SOCIETY.html), November 23, 2006.

economic impoverishment of many immigrants who struggled with land-based debt they incurred after arriving to South Africa, many trekkers migrated out of the colony to find unused land in the interior (Worden 1994). Battles between chiefdoms and settlers resulted. With the discovery of diamonds in 1867, the South African interior became a desirable area for the British to control (Worden 1994).<sup>6</sup> Cape colony was established in 1880. Trade and mineral expansion continued which resulted in intensified invasions of farms and the building of railways on land, as well as the imposition of hut taxes; this undermined the chiefdom's authority and secured labour for mines and plantations by limiting the options available for sustenance while mandating that costs be paid (Worden 1994). In 1896-7, an epidemic of rinderpest insects swept across the farms and many starving African farmers were unable to recover from the disease (Worden 1994). A combination of all of these factors (colonial imposition on the land, battles between settlers and Africans, changes in the economy, and pestilence) reduced indigenous independence. It took the South African (Anglo-Boer) War between settler colonies and Boer republics to establish the Union of the South African state in 1910 (Worden 1994).

65,000 Boers fought against half a million British soldiers and black South Africans were pulled onto both sides of the battle.<sup>7</sup> The British victory came in 1902 after thousands of Boer and African women and children died in concentration camps (Warwick in Worden 1994). The British victory marked a significant turning point in the treatment of the indigenous African population. In 1910, Afrikaner parties joined

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<sup>6</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919546.htm](http://www.southafrica.info/ess_info/sa_glance/history/919546.htm), October 21 2006;

<http://www.south-africa.org.za/history/mineral-revolution.php>, November 13 2006.

<sup>7</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919547.htm](http://www.southafrica.info/ess_info/sa_glance/history/919547.htm), October 21 2006.

with the governments of Natal and the Cape to form the Union of South Africa (Worden 1994). The republic retained the discriminatory practices that began years earlier under Boer rule and “white supremacy was entrenched in the constitution” (Worden 1994:31; Meredith 1988)<sup>8</sup>. In the Cape, white supremacy was less overt as power was determined by ownership of property, a privilege held almost exclusively by whites (Worden 1994). Blacks were barred from membership in Parliament<sup>9</sup> and measures to formalize segregation practices came quickly, including ‘Pass Laws’ and the *1913 Land Act*, reserving 90% of the country for ownership by whites, who were estimated at that time to comprise 21.5% of the population.<sup>10</sup> In January 1912, the African National Congress (ANC) came into being and provided formal resistance to the colonial land grab and discriminatory practices implemented against the non-white population.<sup>11</sup> The Indian population had also experienced discrimination since its emigration to South Africa.<sup>12</sup>

Prior to 1948, South African society was characterized by segregation according to skin colour with the minority white population benefiting economically and politically from this arrangement. Following the National Party taking office in 1948, Parliament formalized this racial discrimination through legislation enacted to maintain the supremacy of the white population (Meredith 1988).

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<sup>8</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919548.htm](http://www.southafrica.info/ess_info/sa_glance/history/919548.htm), October 21, 2006.

<sup>9</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919548.htm](http://www.southafrica.info/ess_info/sa_glance/history/919548.htm), October 21, 2006.

<sup>10</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919548.htm](http://www.southafrica.info/ess_info/sa_glance/history/919548.htm), October 21, 2006.

<sup>11</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919548.htm](http://www.southafrica.info/ess_info/sa_glance/history/919548.htm), October 21, 2006.

<sup>12</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919548.htm](http://www.southafrica.info/ess_info/sa_glance/history/919548.htm), October 21, 2006.

Numerous laws were passed to formalize the policy of apartheid<sup>13</sup> and they can be grouped according to the specific policy area they targeted. These include laws regarding: the segregation of race groups; the determination of racially based labour practices; the establishment of detention practices; limitations upon political rights; the development of black rural areas and the homelands; access to education; and, issues of movement and land ownership in white urban areas. Volume One, Chapter Thirteen of the SATRC Final Report lists many of the Acts developed to support these policies, including:

- The *Immorality Act* of 1927, which prohibited extra-marital intercourse between whites and blacks. In 1950, this was extended to include coloureds and Asians.
- The *Prohibition of Mixed Marriage* of 1949. This Act prohibited whites from marrying members of other racial groups.
- The *Internal Security Act* (Suppression of Communism Act) of 1950, which prohibited listed organisations and persons from promoting a broadly defined version of communism.
- The *Population Registration Act* of 1950. This Act required that at birth people be identified and registered as belonging to one of four distinct racial groups: White, Black, Coloured, or Other.

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<sup>13</sup> The term apartheid means 'apartness.' It is a term Afrikaner intellectuals began to use in the 1930s to describe the treatment of non-white Africans. In 1946, the National Party of South Africa produced the Sauer Report. This Report made recommendations for the government that included "the rigorous segregation of the Coloured People, the consolidation of the African reserves, the removal of missionary control of African education, and the abolition of the Natives Representative Council and the representation of Africans in Parliament" (Thompson, 2000: 186). This policy was termed 'Apartheid' and became a formalized system of racism that officially governed South Africa until 1994.

- The *Group Areas Act* of 1950. This Act required that areas be declared for the exclusive use of one particular racial group. People were required to live in an area designated for their classification group.
- The *Black (Bantu) Authorities Act* of 1951. This Act established tribal, regional and territorial authorities in the reserves.
- The *Blacks (Abolition of Passes and Co-ordination of Documents) Act* of 1952. This Act repealed previous related laws and required that all black persons in all provinces carry a reference book, or pass, at all times. The pass included a photograph, details of the individual's place of origin, his/her employment record, tax payments, and history of involvement with the police. This was also known as the Pass Law.
- The *Reservation of Separate Amenities Act* of 1953, which required that public facilities and transport were reserved for particular racial groups.
- The *Blacks Resettlement Act* of 1954, which established a Resettlement Board which removed blacks from townships.
- The *Unlawful Organisations Act* of 1960. This Act declared organisations threatening public order or the safety of the public to be unlawful, and resulted in the designation of the ANC and the Pan-Africanist Congress (PAC) as unlawful.
- The *Bantu Homelands Citizenship Act* of 1970 required that all black persons become citizens of a self-governing territorial authority.

The National Party remained in power throughout most of the 20<sup>th</sup> century; however, it was unable to retain this power. The non-white population intensified its resistance, expanding into physical retaliation. Military force was utilized to control

uprisings however many variables factored into South Africa's move to a democratic society in which the National Party eventually lost control of the government (Worden 1994).

Economics were one aspect of the changing South Africa: Technological advances changed the needs of the nation's industries and required semi-skilled workers (Worden 1994). The white populace now relied on the non-white population as a source of labour.

Labour and urban resistance in the mid-1970s resulted in the government "encouraging the development of a black middle class and attempting to win over township residents from African nationalist or radical sympathies" (Worden 1994:122). Internationally, the threat of sanctions and changing governments in bordering states were also significant in the National Party's decline in power (Worden 1994). Faced with this combination of domestic and international pressures, the National Party initiated negotiations with the other political groups to put an end to the civil unrest.

Government and business interests changed to reflect this growth of the agriculture industry. Conservative supporters of the National Party interpreted these actions as a move away from support for white rule and many transferred their support to the right-wing Conservative Party (Worden 1994).



In 1991, the ruling National Party officially began discussions regarding the new South Africa at the Convention for a Democratic South Africa (CODESA) with the ANC and other South African parties (Mandela 1995). The leaders of the National Party, the ANC, the PAC, Inkatha and the Conservative Party were all involved in the development of the interim constitution, which was accepted November 1993, and negotiated the terms by which white minority rule would end with the first democratic election set for April 27, 1994.<sup>14</sup> One of the key results of this successful negotiation was the creation of the *Promotion of National Unity and Reconciliation Act (PNURA)*, which established the Truth and Reconciliation Commission as a means to help the nation heal from its past. In February 1990, South African President Wilhelm de Klerk announced that he was removing the ban on anti-apartheid political groups, including the ANC.<sup>15</sup> By 1991, all remaining apartheid legislation had been lifted.<sup>16</sup> On May 10, 1994, Nelson Mandela was inaugurated as President of South Africa following the first democratic election in South Africa's history. For the first time in its history, the entire population was able to vote in their leaders, and the ANC won by a large majority.

The *PNURA* provided the framework and mandate for the Truth and Reconciliation Commission. Among its major tasks was to define who would be included as 'victims' for the purposes of the SATRC. Victims were to include persons who had suffered a "physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights" (*PNURA* 1995). These harms were to result

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<sup>14</sup> [http://www.southafrica.info/ess\\_info/sa\\_glance/history/919552.htm](http://www.southafrica.info/ess_info/sa_glance/history/919552.htm), October 21, 2006

<sup>15</sup> <http://www.bbc.co.uk> February 2, 1990.

<sup>16</sup> <http://www.bbc.co.uk> February 2, 1990.

from: a gross violation of human rights or an act associated with a political objective for which amnesty has been granted; intervening to assist persons described above who were in distress or to prevent victimization of such persons; or the loss of relatives or dependants to such crimes (1(1)(xix)). The *Act* defined 'gross violations of human rights' as meaning

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)).

Although this created a clear mandate for the Commission, the SATRC was criticized for its restricted focus (Mamdani 2001). The Commission was unable to include the thousands, perhaps millions, who were victims of apartheid's less overt harms such as those who were unable to support their families because of the *Pass Laws*, families torn apart by the *Population Registration and Group Areas Acts*, and the humiliations endured because of the *Reservation and Separate Amenities Act*. Despite acknowledging that these individuals were victims of apartheid's policies, the Commission required a clear definition of what to include on their agenda, or their already large task would be unmanageable.

The SATRC's mandate was restricted to acts that occurred between March 1, 1960 and May 10, 1994. On March 21 1960, thousands of people were peacefully demonstrating against the 'Pass Laws'. Police had been informed days earlier of the non-violent 5-day protest that would occur yet their response suggested they were not prepared for the protest. The police opened fire, wounding 186 and killing 67

individuals (SATRC Final Report vol. 1), the majority of whom were shot in the back. This event is now known as the Sharpeville Massacre. It led to demonstrations across the country and more violence and death (Gobodo-Madikizela 2004). In September 1960, 224 civil claims for damages were served to the Minister of Justice and one month later he declared that he would introduce legislation to indemnify the government and its officials against claims resulting from actions taken in that demonstration (SATRC Final Report vol. 1). The *Indemnity Act* of 1961 was subsequently passed (Gobodo-Madikizela 2004). As mentioned above, May 10, 1994 marked the commencement of the first democratically-elected government. Events and harms committed prior to the Sharpeville Massacre and following the inauguration of Nelson Mandela as President of South Africa were excluded from the SATRC's mandate.

The SATRC received over 50 000 reports of gross violations of human rights that occurred during the 34 years under its mandate. Over 21 000 persons came forward to share their stories, and nearly 20 000 amnesty applications were received from perpetrators. It was the SATRC's responsibility to receive these applications and determine which cases qualified for amnesty. The victim hearings were created to provide victims a venue in which to share their experiences and to express their grief and suffering that had resulted from the acts perpetrated against them. To assist in this emotionally-difficult experience, translators and transcribers were employed to allow those testifying to speak in one of South Africa's 11 official languages<sup>17</sup>.

Speaking their own languages, victims were able to express themselves in the manner

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<sup>17</sup> Polish was also included as a language for use, though it was not one of the official languages.

that they felt most comfortable, with support from friends, family, counsellors (provided by the SATRC), and the SATRC commissioners. This testimony provides a rich source of human emotions and experiences that can be used as data for analysis and helps to define the SATRC as a historically significant event.

### **The Development of the SATRC**

Volume 1 of the Truth and Reconciliation Commission Final Report outlines the rationale for basing the development of the SATRC process on the needs of victims.<sup>18</sup>

As the government-sponsored apartheid policies were being dismantled and the nation moved towards a democratically-elected government, the SATRC was established as part of an effort to ensure a “smooth transition” (Verdoolaege 2003:2). Verdoolaege (2003:2) emphasizes the significance of the SATRC, describing it as “the bridge between a deeply divided past of suffering and injustice and a future founded upon human rights, democracy and equality ... [I]t is clear that this particular commission was unique because of this particular historical context.”

The SATRC took the approach that it was necessary to balance a victim focus with the due process rights of alleged perpetrators (SATRC Final Report vol. 1).

Believing legal proceedings would be too harrowing for victims and the truth would not come out in its entirety (SATRC Final Report vol. 1), the leaders from various political groups in South Africa negotiated an end to apartheid, which included the development of the SATRC. This negotiation however was not without its compromises on both sides. Though the black population comprised the majority, the

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<sup>18</sup> Unless otherwise noted, it is from this document that the following information is taken.

military and civil service were controlled by the white populace. A change in power required compromises or civil war may have resulted. The amnesty component was one part of the negotiation process that has been criticized. This will be discussed in more detail later in this chapter.

According to the Truth and Reconciliation Final Report, to 'forget' what happened by ignoring the past atrocities would deny victims' experiences, whereas to acknowledge that these incidents occurred is to provide affirmation (SATRC Final Report vol. 1). Dealing with the past required knowledge of what happened, and it was believed that this would not be achieved through standard legal investigations and proceedings (SATRC Final Report vol. 1). The developers of the SATRC considered other efforts to expose the truths following government transitions. World War II-era Nazi crimes led to the formation of the International Military Tribunal at Nuremberg as well as a prolonged effort to bring Nazi leaders to justice, which continues to this day (Tutu 1999). In Argentina, government abuses were exposed through a truth commission but many hurdles had to be overcome, including the lack of assistance from the military regime, which both perpetrated the abuses and granted itself amnesty (Hayner 2002). In Guatemala, the truth commission was restricted from naming individuals responsible for acts perpetrated against the Guatemalan people (Hayner 2002).

The SATRC recognized that the financial cost and time necessary to investigate and prosecute those accused of gross violations of human rights would be astronomical

(Tutu 1999). The evidence necessary to satisfy criminal court criteria for a prosecution would be difficult to find; many witnesses were no longer alive and much evidence had been destroyed by the very state that had perpetrated the deeds (Tutu 1999). Those who were alive would have to overcome the fear of retaliation and/or reprisal from family and community members when testifying.

The interim Constitution of 1993, and the *Promotion of National Unity and Reconciliation Act* of 1995 (*PNURA*), which established the framework for the SATRC, explain that South Africa's past is characterized by conflict and suffering due to injustices. The future of South Africa was founded on the recognition that "all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms" (Interim Constitution 1993:1). However, it was recognized that pursuing national unity requires some form of reconciliation among the nation's peoples. In moving forward, the country's leaders and the nation must address the wrongs that occurred in the nation's history. With the move to a democratic South Africa, it was acknowledged that "there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization" (*PNURA* 1995). The principle of *ubuntu* combined with the experiences of past commissions (Vora and Vora 2004), solidified the Government's decision to establish the SATRC and offer amnesty in exchange for truth.

### *How the SATRC Operated*

The SATRC was comprised of 17 commissioners, including a chairperson and vice-chairperson. The commissioners were allocated to one of three committees: the Human Rights Violations Committee, the Amnesty Committee and the Reparation and Rehabilitation Committee. Additionally, one member, Mr. Dumisa Ntsebeza, was appointed as head of the Investigation Unit, the tasks of which included helping to verify the statements of victims who testified at hearings across the country, organizing the logistics involved with the hearings (such as transporting of witnesses), and gathering evidence and preparing questions for special hearings (SATRC Final Report vol. 1).

The Human Rights Violations Committee (HRVC) held five types of hearings. First, victim hearings, which examined individual experiences and are the focus of this research (SATRC Final Report vol. 1). Second, event hearings were held to focus on specific events where gross violations of human rights occurred (SATRC Final Report vol. 1). Third, special hearings were used to “identify patterns of abuse experienced by individuals and groups” and were held on topics such as children and youth, women, and compulsory national service (conscription) (SATRC Final Report vol. 1:39). Fourth, institutional hearings received evidence from “professions, institutions and organizations about the role they had played in committing, resisting or facilitating human rights abuse” such as the media and judiciary (SATRC Final Report vol. 1:40). Finally, hearings were held to provide political parties the opportunity to share their views on the conflicts of the past and their roles in the

conflicts (SATRC Final Report vol. 1). The HRVC was comprised of Archbishop Desmond Tutu (Chairperson), Mr. Mynand Malan (Vice-Chairperson), Ms. Yasmin Sooka (Vice-Chairperson), Dr. Alex Boraine, Ms. Mary Burton, the Reverend Bongani Finca, Mr. Richard Lyster, and Dr. Fazel Randera<sup>19</sup>.

The victims' hearings were held throughout the country and the Committee had to select which victims would be invited to testify in public because there was not enough time to allow all applicants this opportunity (SATRC Final Report vol. 1). As a result, in concluding if someone was a victim under the SATRC's mandate, the HRVC did not distinguish between those victims that testified publicly and those that did not (SATRC Final Report vol. 1). The victims' hearings tended to last three to five days and included testimony from twenty to sixty victims (SATRC Final Report vol. 1). The hearings were afforded much media attention, including print, radio and television. 'Briefers' with training in mental health care were utilized to ensure victims received support as needed, and efforts were made to provide counselling services following testifying, though the SATRC recognized this to be inadequate (SATRC Final Report vol. 1).

The Amnesty Committee was responsible for determining who would receive amnesty for his/her role in committing gross violations of human rights. It was composed of Advocate Chris de Jager, Ms. Sisi Khampepe, and Advocate Denzil

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<sup>19</sup> An additional ten persons were appointed as Human Rights Violations committee members. They include: Dr. Russell Ally; Ms. June Crichton; Mr. Mdu Dlamini; Ms. Virginia Gcabashe; Ms. Pumla Gobodo-Madikizela; Mr. Ilan Lax; Mr. Hugh Lewin; Ms. Judith 'Tiny' Maya; Ms. Motho Mosuhli; Advocate Ntsikilelo Sandi; and, Ms. Joyce Seroke (ch 10, par 3).



Potgieter. The amnesty process began with an individual written application for amnesty. The Investigation Unit and Research Department reviewed all applications and classified them based on whether the applicant worked in support of the previous system, worked to overthrow the state, or was a member of the white right wing (SATRC Final Report vol. 1). Testimony given at the amnesty hearings was also used in considering an application for amnesty, and this information was often deemed to be richer and more detailed than the information in the written application (SATRC Final Report vol. 1). Following the conclusion of the hearing, the Committee determined whether or not to grant the application for amnesty (SATRC Final Report vol. 1).

The Reparation and Rehabilitation Committee had numerous tasks assigned to it. It was responsible for gathering evidence related to victims as well as making recommendations to the President on appropriate measures for reparation and rehabilitation, including urgent interim measures to assist victims (SATRC Final Report vol. 1). An additional task was to make recommendations that would create institutions supportive of a fair society as well as recommendations to prevent future violations (SATRC Final Report vol. 1). Finally, this Committee considered matters the Commission and other committees referred to it (SATRC Final Report vol. 1).

The Reparation and Rehabilitation Committee included Ms. Hlengiwe Mkhize (Chairperson), Dr. Wendy Orr (Vice-chairperson), the Revered Dr. Khoza Mgojo, Dr. Mapule F. Ramashala, and Ms. Glenda Wildschut. The Committee produced a strategy for the provision of networking activities, psycho-social support programmes

and follow-up workshops for witnesses, information management, policy development, and Commission-related business activities (SATRC Final Report vol. 1).

The publicity of the hearings was deemed by observers to be one of the SATRC's strengths (SATRC Final Report vol. 1; Tutu 1997; Verdooage 2003; Ross 2003).

This public acknowledgment is said to restore dignity to victims and gives perpetrators the opportunity to come to terms with their pasts (SATRC Final Report vol. 1). "What is critical is that these facts be fully and publicly acknowledged. Acknowledgment is an affirmation that a person's pain is real and worthy of attention; it is thus central to the restoration of the dignity of victims" (SATRC Final Report vol. 1:114). The public arena offered by the SATRC also provided individuals across South Africa, and indeed, in the international community, an opportunity to witness both victim and offender statements, and deal with their own roles, either as victims, offenders, and/or bystanders, in the same history. Pumla Gobodo-Madikizela (2004), a South African psychologist who served on the SATRC's Human Rights Violations Committee (HRVC), confesses to her own guilt as she celebrated in the killing of a man. While serving on the HRVC, she heard the victim's widow testify and felt guilt and pain both because she was physically present and emotionally supportive of the acts that led to this man's murder.

Volume 1, Chapter 5 (SATRC Final Report vol. 1:128) states that *PNURA*'s principles "constituted the essence of the Commission's commitment to restorative

justice”. These principles were thus fundamental to the development and operation of the SATRC. This is demonstrated in the extensive efforts that were made to solicit input from communities, including victims, offenders and organizations. The Commission’s victims hearings provided victims with a forum in which they could relate their personal stories; victims were able to publicly unburden themselves and share their grief with their country and receive public recognition that they had indeed been wronged (SATRC Final Report vol 1). As well, the amnesty process played a role in the reparation and rehabilitation process overall by providing victims with truthful accounts of what happened (SATRC Final Report vol. 1). Without these accounts, families were left never knowing what had happened to people who simply disappeared, and were unable to achieve closure.

The recommendations on reparations are seen to be wider in scope and more holistic than those traditionally awarded in civil claims and include symbolic reparations, such as public and official acknowledgment through living memorials, days of remembrance, and monuments (SATRC Final Report vol. 1). Additionally, assistance was provided to families for official and dignified (re)burials of activists who were killed and buried in secret by security forces (SATRC Final Report vol. 1). In this manner, and others, the SATRC sought to “emphasise the importance of placing individual reparations within a wider social and political context” (SATRC Final Report vol. 1: 129). Hugo van der Merwe (forthcoming) acknowledges however that the Commission was unable to fulfill some requests, such as the request from Mr. Ndebele, a victim testifying at Piet Retief, that the perpetrators come to the

community where they killed people and ask forgiveness from the people they directly affected instead of doing so at a location away from the victims of their offences.<sup>20</sup>

#### *A Brief Overview of the Amnesty Component*

Following government decisions to lift the ban on political groups such as the ANC, political leaders from all sides met to negotiate the Interim Constitution with the goal of transitioning from apartheid to a democratic South Africa. It was agreed that perpetrators of gross violations of human rights, as defined in the 1995 PNURA, could be granted amnesty for their offences. To qualify, these individuals must have applied for amnesty through the SATRC within the time frames allotted, their offences must have met the criteria defined in the PNURA, which included having been associated with political objectives, and the perpetrator must disclose as truthful and complete an account as possible for the SATRC.

Though there has been much controversy around the amnesty negotiation, it was seen as a necessary compromise. No political group could afford risking an uprising, such as might have happened given that the white minority was in control of the civil service, including the army. Vora and Vora (2004:302) wrote that the leaders of apartheid were “[s]cared of revenge” and as such “the first democratic elections [were] only possible if amnesty was granted.” The following quote provides some perspective.

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<sup>20</sup> Survivor testimony at human rights violation hearing in Piet Retief on May 21, 1997.

[O]f the 50,000 white officers on the former apartheid police force, 47,000 of them remain. This is the result of a dubious deal struck in the final hours of pre-election negotiations, in which the new government promised to retain white civil servants in their jobs [a compromise] intended to buy peace with whites. (Goodman 1999:174)

Realistically, “the anti-apartheid forces did not and could not defeat the apartheid military machine. They were stuck with bargaining for their freedom” (Goodman 1999:175). Father Mike Lapsley, who lost both hands and an eye in a letter bomb while exiled in Zimbabwe, observed that “[i]t is clear to me that the alternative that we had as a country was civil war that would consume us all” (Goodman 1999:175).

Gobodo-Madikizela (2002:10) however is of the opinion that the amnesty condition “had less to do with power dynamics in the relationship between the former apartheid government and the ANC than with South Africa’s attempt to build social cohesion and to restore peace instead of revenge.”

The amnesty process, part of the negotiation in South Africa’s transition from an apartheid-governed state to a democratic government, has received much criticism as well as support. Simpson (2002:237) comments that though “the criterion of full disclosure may work to justify a conditional amnesty as a matter of legal principle, in practice it was virtually meaningless, as there was no consistent notion of what full disclosure constituted in any particular case.”

In the end, the negotiation is seen by some to be a success (Simpson 2002) whereas for others it remains a dismal failure (Mamdani 2002; 2001) despite its necessity for a

“peaceful transition from a repressive regime to a democracy” (van de Vijver 2001:138).

### **A Look Ahead**

In chapter two, I introduce restorative justice (RJ) theory and its history, identifying the values, practices and outcomes that are key components to RJ theory. Criticisms of the theory will also be briefly presented. Chapter three discusses discourse analysis, the methodology utilized in this thesis. In chapter four, the SATRC’s founding documents are analyzed to assess if they contain key RJ values. In chapter five, victims’ hearings are studied to determine if the treatment of those testifying reflected RJ practices. Chapter six assesses the secondary literature to ascertain whether RJ outcomes were attained. In chapter seven, I provide a summary of the findings, as well as briefly review theoretical criticisms of applying RJ theory to the SATRC. I also make recommendations for future research and provide a brief discussion of the applicability of RJ theory in reconciliation efforts on a national level.

## Chapter 2

### Theory of Restorative Justice and the Truth and Reconciliation Commission

In discussing the SATRC, many have described it as restorative justice (Minow 1998; Tutu 2000; Simpson 2002; Braithwaite 2003; Shapland 2003; Daye 2004). However, before exploring the accuracy of such claims it is necessary to examine the theory of restorative justice. This chapter begins with a theoretical and historical overview of restorative justice. This will be followed by a discussion of three central components of restorative justice: values, practices and outcomes. The chapter concludes with a review of criticisms of restorative justice theory.

#### Restorative Justice Theory

The criminal justice system most North Americans are familiar with is adversarial and described as punitive in its approach to dispute resolution (Braithwaite and Strang 2001; Zehr 2005). Its retributive approach treats an offence as a violation against the State and attempts to deliver a punishment that 'fits the crime'. In contrast, restorative justice emphasizes healing and understands crime as an act committed by a perpetrator that affects many people. Restorative justice reframes our notions of crime and justice, redefining these concepts so they are understood through a specific moral framework (Pavlich 2005).

The goal of restorative justice is to restore those affected by the wrongful act(s) committed. This involves restoring the broken relationships, healing, and reconciling.

According to this view, further harm inflicted in the form of a jail sentence or fine paid to the State does not repair the harm inflicted. Rather, innovative and creative efforts involving all parties affected by the harm can be implemented to offer a sense of healing, or closure, to the victim. From the outset, the offender, victim and community should all be a part of the process to find solutions that promote reparation, reconciliation, and reassurance (Zehr 2005). "Crime undermines a community's sense of wholeness," so by including them in the process, the full range of the impact of the crime can be understood and the situation restored (Zehr 2005:188).

Crimes and violations create obligations that must be met. The primary obligation belongs to the person who committed the violation; however, other obligations do result. Communities and victims have obligations too: to provide an environment of safety, forgive (though not necessarily forget) and reintegrate offenders back into the community to provide them a healthy and safe environment (Zehr 2005:202).

Though its roots are often attributed to the practices of many specific cultures and to periods dating back thousands of years (Zehr 2005), the theory of restorative justice has only recently emerged in mainstream North American society as a valid alternative (or addition) to the current criminal justice system. Its emergence, and the various forms its application can take, requires that the theory and programs that rely on it undergo continuous and rigorous review and analysis. It deserves to be discussed critically, to draw out and build upon its strengths, and to enable lessons



learned from its past applications to inform future efforts to implement its principles. It is also important that the critical literature be examined so that we do not take the restorative justice values, practices and outcomes as unmitigated goods. Although the primary question addressed in this thesis is whether or not the SATRC embodies restorative justice values, processes and outcomes, a broader question to consider is whether justice is met when restorative practices are applied to apartheid crimes.

The roots of RJ theory are traced to various cultural and religious groups throughout history. The theory experienced a resurgence in the latter half of the 20<sup>th</sup> century and this has resulted in calls for the application of RJ theory in various arenas around the world.

### **Restorative Justice in History**

Restorative justice has been described broadly both as a social movement (Johnstone 2003) and an approach to solving problems (Marshall 2003). It is often advocated as a method of resolving disputes and handling matters that would typically be dealt with in the criminal justice system (Zehr 2005) and has been used to resolve both individual and collective conflicts.

The roots of restorative justice theory have been attributed to numerous historical sources. The literature on the subject makes reference to religious and cultural beliefs, as well as periods of history in which approaches used to deal with

wrongdoings appear restorative in nature. A brief overview of some of these approaches is presented below.

Societies without a formal system of authority and that rely on a single leader are referred to as acephalous. These are typically smaller, cooperative groups of people, held together by strong bonds which minimize the potential for trouble (Weitekamp 2003). Weitekamp (2003) reports that in such societies harm was handled by the collective in an effort to return the group to normal life. Resolution was typically achieved through blood revenge, retribution, ritual satisfaction or restitution, the latter being the most common (Weitekamp 2003). The use of restitution however does not negate the use of violence. As Nader and Combs-Schilling (in Sylvester 2003) note, restitution was one strategy among many, along with retaliation, raids and property seizures.

Historically, restitution provided satisfaction on various levels. By providing compensation, blood feuds were avoided and the wrongdoer appeased the victim's desire for revenge by offering mild "self-humiliation" (Schafer in Sylvester 2003:471). The literature does not claim that all aspects of restitution were restorative in nature. In some respects it was not restorative at all, such as the self-humiliation, which was intended to serve as a deterrent to others (Sylvester 2003).

#### *Biblical societies*

The Biblical concept *shalom* "refers to a condition of 'all rightness,' of things being

as they should be, in various dimensions” (Zehr 2005:130). These dimensions include physical well-being, living in right relationship with each other and with God, and living in a condition of honesty and moral integrity (Zehr 2005). Biblical justice is therefore rooted in a vision of shalom where the focus is on addressing what is needed to make things right. In the Old Testament, for example, the “eye for an eye” philosophy “was intended as much to balance power as to exact revenge” and was considered a form of compensation as well as retribution (Zehr 2005:103).

### *The middle ages*

During the middle ages, courts tended to operate within the ideals of community justice (Zehr 2005). The Laws of Ethelbert of Kent are examples of the use of community-justice approaches and the use of restitution to avoid blood feuding (Sylvester 2003). The compensation system the Laws of Ethelbert of Kent developed specified calculations of the injuries sustained and the amount that needed to be repaid to offset the harm (i.e. 6 shillings for each front tooth and 4 shillings for the ones beside them, and all other teeth were worth 1 shilling) (Sylvester 2003). Despite the focus on community involvement and victim-centeredness, Sylvester (2003) argues that not all restitution is restorative. The social context of the time period in question must be considered. Sylvester (2003) notes that restitution could be interpreted as a form of debt-slavery, which was used as an alternative to imprisonment. Although this may be viewed as punishment, it may also be seen to include elements of restoration, as offenders were able to reside in the community,

pay off the debt that resulted from the harm they caused, and move on when the debt was paid.

### *Indigenous societies*

Many indigenous peoples view wrongdoing differently than non-indigenous populations, seeing it as “misbehaviour which requires teaching or an illness which requires healing” (Ross 2003:125). The Navajo follow a process whereby the individual who is wronged makes a demand both for compensation and to return the relationship to its rightful state (Yazzie and Zion 2003). A respected community leader may be approached for assistance and s/he will call together those people involved for peacemaking (Yazzie and Zion 2003). The process of peacemaking involves all who were affected by the dispute because what affects their family also affects them as individuals (Yazzie and Zion 2003).

The Maori system of justice involves family and community members confronting the offender (Consedine 2003). It has been incorporated into traditional justice operations in some parts of New Zealand and is now associated with Braithwaite’s notion of reintegrative shaming (Consedine 2003). This practice involves shame as the principal component of the punishment (Consedine 2003). Braithwaite (1989) explores the theory behind this practice, concluding that social approval is important and something people do not like to lose. He adds that “shaming and repentance build consciences which internally deter criminal behavior even in the absence of any external shaming associated with an offense. Shaming brings into existence two very

different kinds of punishers – social disapproval and pangs of conscience”

(Braithwaite 1989:75).

### *Tribal societies*

Some African tribes have a concept known as *ubuntu* which was used in the development of the interim South African Constitution (1993). Though difficult to translate properly into Western languages, it is a description of human quality that is desirable. If someone has *ubuntu*, s/he is

generous... hospitable... friendly and caring and compassionate. You share what you have... A person with *ubuntu* is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are... In the spirit of *ubuntu*, the central concern is the healing of breaches, the redressing of imbalances, the restoration of broken relationship, a seeking to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he has injured by his offense. (Tutu 1999:31; 54-5)

Braithwaite (2002:5) summarizes *ubuntu* as “the idea that our humanity is relationally tied to the humanity of those we live with.” The concept is not necessarily clear, but its relationship to restorative relationships is. When a relationship is harmed, the *ubuntu* approach is to work with all involved to make the situation right again. This is restorative in nature.

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In earlier times, crime was commonly seen as a wrong between people, not an act committed against the state. Laws were not abstract and moral concepts, rather the

focus was on the harm and the resultant obligation it created (Zehr 2005).

Settlements to 'right the wrong' often resulted, and family or friends were often involved to assist the offender in meeting such obligations. Courts were not always involved in disputes. Church and community leaders often assisted in the negotiation of settlements.

History in general is often simplified to render it usable for the intended audience. This holds true for the history of restorative justice. The intent of this overview is to provide the reader with a synopsis of the application of restorative justice concepts throughout history. The origins of restorative justice require further research by historians but are not the purpose of this thesis.

It is important to note that in the traditions described above, people lived close together and were reliant on one another for survival. This is not the case in modern society, as industry and technology have resulted in people being more self-reliant and therefore less interdependent than in the past. Whether restorative justice approaches can operate with success in modern societies is a question researchers continue to explore. Though it is not the intention of this thesis to answer this question, it will be considered in relation to its specific application in South Africa.

In sum, RJ is a philosophy that engages all parties affected by harm to repair the damage. It is victim-centered because it espouses the belief that the victim has a right to have his or her voice heard and acknowledged. The intent of RJ is not to seek

revenge, rather it is to heal the harm that was inflicted. In this thesis, RJ theory will be discussed in terms of the values which outline the central tenets of the theory, practices through which the values are actualized and outcomes, that are the result of the implementation of the values and practices.

### **Restorative Values, Practices and Outcomes**

RJ values, practices and outcomes are closely connected and overlap and influence one another. As they are intertwined, it is sometimes difficult to precisely discern which aspect is being discussed.

Due to this complexity, the three elements are treated as being discrete for the purpose of this thesis to allow for clearer coding in the discourse analysis. Each value, practice and outcome is defined below so there is a clear analytical distinction between each element.

#### Restorative Values

Restorative values are the foundation, acting as a guide for the implementation of the theory. How a program is implemented and carried out is dependent on the values that structure its development.

Numerous values have been put forward as important to the development of RJ initiatives. The literature reveals that there is no consensus on exactly which values are critical to the theory's application. Braithwaite (2003), for example, argues that if

the greatest concern is to ensure that procedural safeguards are met, then it is necessary that some values be accorded greater emphasis than others.

For the purpose of this thesis, seven values have been selected to guide the research process and to help to determine the practices and outcomes that will be examined in the testimonies and in the secondary literature. These values are healing, democracy, acknowledgement, apology, forgiveness, social support, and making amends. They have been selected because they are frequently cited as primary principles in the RJ literature (Zehr 2005; Johnstone 2003; Braithwaite and Strang 2001). This thesis intends to examine to what extent these values are present in the foundational documents of the SATRC.

### *Healing*

Healing is an abstract value that is difficult to define, as it is a personal experience. It refers to feeling a sense of closure with respect to and acceptance of what has occurred (Zehr 2005). Many other RJ values overlap with healing, such as apology and forgiveness, and these values are sometimes viewed as important steps toward the outcome of healing.

One cannot be told that they are healed from emotional pain; it is a conclusion that must be reached on one's own. Where one person may feel that healing has been reached when empowered to confront the offender, or by demonstrating that s/he is



able to overcome an obstacle put before him/her, another person may not consider him/herself to be healed (Zehr 2005).

The paths to healing are many and vary with the individual's needs. To be true to the value of healing it is necessary that restorative justice encounters create space for individuals to pursue their unique healing needs.

### *Democracy*

Applying the principle of democracy to restorative justice initiatives implies that everyone has an equal opportunity to voice their perspective in public decision-making. In a restorative justice framework, this means that everyone affected by the act, including the offender, the victim and community members, is provided the opportunity to speak and be a fully contributing part of the restorative process (Van Ness and Strong 1997). The process is no longer between the offender and the State, where the victim is merely a bystander in the process (Acorn 2004); rather, the victim is now an integral part of the procedure from the very start.

### *Acknowledgement*

Acknowledgment refers to the feeling that one's position has been heard and that it is recognized as valid and worthy of action. Morrison (2001) touches on this value in the context of bullying in schools. In her analysis, acknowledging the act that occurred and the pain that resulted legitimizes a victim's feelings of harm. This in itself can be healing for the victim. Minow (1998) also stresses the importance of

acknowledgement as an aspect of healing. It provides the individual and society with the opportunity to face the truth, accept it and deal with it appropriately (Minow 1998). It also provides those hearing the testimony with the opportunity to accept the truth, whereas prior to doing so they may have been in denial or unable to accept the claim(s) being made (Minow 1998).

### *Apology*

Though an apology cannot undo what has been done, an apology may be seen to resolve a conflict by restoring “an antecedent moral order by expunging or eradicating the harmful effects of past actions” (Tavuchis 1991:5). It is a gesture one makes, recalling that the offensive act occurred (Tavuchis 1991). In compliance with the group’s social norms, the individual takes responsibility and acknowledges the need to abide by the (sometimes unspoken) rules; the apology is a “form of self-punishment” in this regard as the individual needs to “retell, relive, and seek forgiveness” (Tavuchis 1991:8). The act may be done willingly or at the urging of others but regardless, the apology “has the power to rehabilitate the individual and restore social harmony” (Tavuchis 1991:9).

Zehr (2005) speaks to the principle of apology and the beneficial impact it can have on all participants, but specifically for the victim and offender. Research supports the view that the majority of victims in a restorative-based program want to receive an apology from the offender (Strang 2003). Strang (2003) discusses the intent of the apology, noting that forgiveness is not expected to arise immediately in a restorative

encounter. An apology “is most often the end result of a series of interactions between victims and offenders signaling various stages of emotional restoration that the parties experience” (Strang 2003:289).

### *Forgiveness*

The literature reveals a plethora of perspectives on how to define forgiveness. For this thesis, a simple definition will be employed. Forgiveness means letting go of the negative feelings that were created by the act. To forgive someone does not necessarily mean to forget what happened. Just as a true apology means sincere effort in avoiding the reoccurrence of the harmful act, true forgiveness means changing one’s attitude and perspective of the offender and the act. Forgiveness is described as releasing someone from the anger and resentment that may otherwise prevent him/her from healing (Gehm 2003).

Forgiveness is a potential response to an apology, though Zehr (2005) makes the point that neither act is dependent on the other for its occurrence. For a victim to be able to forgive an offender for the harm that was caused, the individual is “no longer letting that offense and offender dominate [and] [w]ithout this experience of forgiveness ... the violation takes over our consciousness, our lives ... Real forgiveness, then, is an act of empowerment and healing” (Zehr 2005:47). Gehm (2003) discusses the significance forgiveness can have not only for the offender, but also for the victim him/herself.

### *Social Support*

The principle of social support is derived from the idea that to change one needs support from their community and others with whom they feel closely connected (Morrison 2001; Braithwaite 2003). It is important, then, that offenders receive support from people with whom they live and work, since these are the individuals who possess the ability to help them change (Zehr 2005). Braithwaite (1990) speaks to this in his theory of reintegrative shaming. The effects of isolation from one's community can be devastating. In reintegrative shaming, rather than reject the person entirely, the act is rejected and the person is seen as someone who needs assistance in making changes (Braithwaite 1990). Following the rejection of the act, the offender who is willing to make changes to his/her life is welcomed back to a supportive environment in which people will continue to challenge and assist the individual.

The victim and community also require social support. Recovering from victimization and the pain of victimization can be a difficult journey, and it may be necessary that victims be supported throughout the healing process. As each individual experiences this process in his/her own manner, this process could take moments or years.

### *Making Amends*

As Zehr (2005:196) describes it, "crime creates obligations". Making right a wrong is the central tenet of 'justice' (Zehr 2005). Taking responsibility for this obligation cannot be forced upon the offender, however, and this includes forcing a perpetrator

to meet with a victim (Zehr 2005). Where possible, making amends is ideal; however, numerous challenges arise. System delays occur, offenders are sometimes never identified, offenders may also have needs to be met, and sometimes the needs of the community and/or victim are simply beyond the capabilities of an offender, even if s/he is willing to be part of the process (Zehr 2005; Van Ness and Strong 1997).

According to some restorative justice advocates, it is important that, where possible, offenders take responsibility for their actions and seek to 'make right the wrong' (Zehr 2005). The often symbolic act of reparation (Johnston 2003) is important because it provides the offender with a way of showing that s/he has taken responsibility and has looked at him/herself critically and acknowledged that this behaviour is wrong and needs to be corrected. It is also important because the perpetrator must have some self-awareness and must take responsibility for his or her wrongs and receive some closure for them (Zehr 2005). This closure might require acknowledging that s/he is capable of restoring harm and deserves to not be defined by the act that caused the harm (Zehr 2005).

### Restorative Practices

Where values are the foundation for the theory, restorative practices are the implementation of those values. Each value may be put into practice in a number of ways; therefore, practices often reflect more than one RJ value.

In examining the testimonies, it will be necessary to consider how individualized the experience of the values may be. As each person is unique and shaped by his/her experiences, s/he will respond in a manner that reflects his/her own journey. Some practices are discussed below; however, this is not intended to be an exhaustive list of possible practices that may have been implemented during the hearings.

The practices that are discussed include empowering participants, taking turns speaking, uncoerced dialogue, face-to-face interaction, recognition of one's position, validation that what occurred was wrong, confession, and participation of family and friends (including community members).

### *Empowerment*

Empowerment is defined as to enable, or "promote the self-actualization or influence of" a person<sup>21</sup>. The practice of empowerment is connected to many values, including healing, democracy, acknowledgment and social support. As such, numerous practices may impact a victim's empowerment.

Needs unique to the individual will determine what process(es) will help empower him/her. It may result from hearing the truth, being able to confront the offender, obtaining services or support to meet your needs, a feeling that your community is once again secure, understanding what happened and why it happened to you, feeling heard, and/or receiving some form of compensation. The objective in this work is to

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<sup>21</sup> <http://www.merriam-webster.com>, October 24, 2007.

isolate moments in the SATRC that can be identified as clear attempts to empower participants.

*Taking Turns Speaking, Uncoerced Dialogue and Face-to-Face Interaction*

These practices are connected to the values of democracy and healing. The practice of democracy is experienced through any number of strategies that provide all participants a voice. This may include each person taking turns speaking, providing a venue where dialogue is uncoerced, and offering face-to-face interaction between all participants.

Some programs based on restorative justice principles operate like a sharing circle where all participants sit in a circle and pass a feather from person to person; whoever is holding the feather is the speaker. All participants are offered the feather in turn, and the feather can be passed around the circle many times until everyone has said all that they want to say. Other variants involve a mediator who is trained to ensure that all participants are provided equal opportunities to speak. Although a restorative justice practice may follow a pre-determined method of taking turns to speak, this process may be described as uncoerced dialogue, whereby all individuals are able to express themselves freely without being rushed.

Of additional importance here is the process of having a face-to-face encounter with the perpetrator. This can be an empowering and powerful process for both victim and offender, because it attaches a human face to the victim and perpetrator in a safe and

supportive environment removed from the offence. It is the intent of this thesis to identify examples within the SATRC that exemplify practices which provide participants with opportunities to speak freely in an uncoerced and face-to-face manner.

### *Recognition and Validation*

These practices are connected to the values of acknowledgement, healing, forgiveness, social support and making amends. Acknowledgment of the harm caused can be a powerful and healing part of restorative justice (Zehr 2005; Daye 2004). Having people recognize and validate one's perspective helps reaffirm that these feelings are normal and okay to have under the circumstances. Knowing that people are taking these concerns seriously and there is support is an important part of restorative-based programs.

According to RJ theory, all participants deserve to have their perspectives recognized. Validation may be enough to bring closure and help victims feel as though amends have been made. Additionally, a victim may be more open to forgiving the offender(s) if s/he believes his/her perspective has been heard. This thesis will attempt to provide specific examples from the SATRC's victim hearings in which those testifying are recognized and validated.

### *Confession*



The practice of confession is affiliated with the values of apology, healing, acknowledgment and making amends. Though a sincere apology for one's role in bringing harm to another cannot be mandated in a restorative atmosphere, a full confession of one's role in committing harm is expected.

The act of confession, however, is not simple. It requires a level of self-awareness, humility, and acknowledgement that harm was done to another. To confess one's role in harming someone is to admit to one's mindset at the time of the event. Though it does not require that the offender verbalize "I am sorry", the process of confessing one's actions and motives suggests that the individual is engaged in a process of self-awareness.

A victim or community may express a desire to hear someone take responsibility as a step towards making amends. This may not result in an apology, but a confession may meet this desire. Furthermore, by providing perpetrators with a venue to speak honestly about what happened with the knowledge that those present want to find a way to prevent what happened rather than to punish, confession is encouraged.

This thesis will highlight moments where those testifying speak to their sentiments around confession.

#### *Participation of Family, Friends and Community*

This practice is associated with values such as social support, acknowledgment and democracy. The involvement of supports may include family and friends as well as community organizations and volunteer support groups. Their participation can assist in restoring material, psychological and social needs a victim faces after harm has occurred (Marshall 2003). There are many ways supports can assist victims, including counseling, violence prevention training (Marshall 2003), safe houses (Marshall 2003), and support through the process of confronting an offender. Offering all parties affected by the act a venue to speak to the harm that resulted is connected to the value of democracy.

Including supports and community members in restorative encounters is a way of demonstrating a rejection of the harm that was done while showing support for the victim and reintegration of the offender. Support from community and friends and family helps the victim and offender to heal and may in fact be critical to the successful reintegration of both victim and offender (Zehr 2005; Christie 1977; Braithwaite, 2003). Determining if social supports have been successfully implemented may be measured by a participant's sense of support s/he felt throughout the process.

It is the intent of this work to recognize moments from the SATRC in which various supports were offered or recognized.

### Restorative Outcomes

It is important to determine what the outcomes of the restorative justice encounter are. These outcomes may be revealed in a number of ways, as each person experiences the practices uniquely. This is particularly true as outcomes are often connected to more than one practice or value. It is this distinctive experience that makes measurement of the outcomes a difficult task.

The outcomes that will be discussed here include victim satisfaction, dialogue creation, atonement, forgiveness, reconciliation, sense of support from others, acts of contrition, and expressing no desire for revenge. This information will be sought primarily from secondary sources but also in the transcripts where possible.

#### *Victim Satisfaction*

Victim satisfaction is an outcome that may be indicative of the realization of many values, including acknowledgment and healing. Braithwaite (1994:4) states that “[t]he more people actually experience restorative programs, the more support for them rises ... [they are] more satisfied that justice has been done, that the process has been fair, [and are] more optimistic that the outcome will do something to prevent future crime.” This outcome may be revealed if the victim speaks to it in the hearing, or if the secondary literature addresses victim satisfaction within the SATRC.

#### *Dialogue Creation*

It might be concluded that dialogue has been created if the offender and victim speak with equal opportunities to listen and be heard. This outcome determines whether all

participants were able to share their perspectives and respond to one another. It is affiliated with numerous values, including acknowledgment, social support, democracy and healing.

### *Atonement*

Atonement is an outcome that is connected with the values making amends, healing, acknowledgement and apology. Acts of reparation may contribute to healing; however, the outcome of atonement may be symbolic. Atonement may be as simple as believing an apology was made. It may be related to the value of acknowledgement if the victim is of the opinion that being heard was enough to provide closure. As with all of the practices discussed, atonement is also potentially linked to the value of healing.

To provide an example, an offender may assist the victim in replacing something that was stolen or damaged, or provide aid to meet the victim's needs. Being involved in the process to make amends may also contribute to the healing for both parties, providing victims the sense that the offenders are apologizing by their actions.

It is the intent of this work to provide examples of atonement practices that resulted from the SATRC. These outcomes will be explored in both the testimonies and the secondary literature.

### *Forgiveness*

Zehr (2005) describes the act of forgiveness as critical for a victim to be empowered and healed; however, forgiveness is connected to the value of making amends, as well.

Some victims may never be able to verbalize forgiveness, whereas others may need to speak these words to feel they can put the incident behind them. The experience of is sometimes so overwhelming it becomes a defining feature of a person's life.

Forgiving the offender may allow him/her to move forward and no longer see this event and its repercussions as central to who s/he is. This work will isolate moments in the SATRC and in the secondary literature where forgiveness is identified as having been achieved.

### *Reconciliation*

The values of acknowledgment, apology, forgiveness, social support or making amends may be connected with the outcome of reconciliation. An individual may express that s/he is willing to reconcile on some level with the offender(s). This outcome may be difficult to measure unless the victim speaks to it at the hearing or if there is discussion of it in the secondary literature. It may be as small as a handshake or it may be as large as working together. Examples of contrition in the secondary literature as well as in the SATRC will be identified and discussed.

### *Sense of Support from Others*

Whether one feels supported by those around them is an outcome that may be affiliated with more than one value, including social support or healing. Victims and offenders may feel supported by others whether they are directly involved in the process or not. Regardless of whether or not their supporters speak, just the presence of someone supportive may be enough.

Similarly, social support for the offender may be critical to his/her participation in the difficult process of taking responsibility for his/her actions. As was discussed briefly above, the theory of reintegrative shaming requires that the offender be reintegrated and welcomed back into his/her community following the shaming of his/her actions. Specific examples in the secondary literature as well as the SATRC in which support from others is declared will be highlighted.

#### *Acts of Contrition*

Acts of contrition are outcomes that may be connected to any of the values of making amends, apology, acknowledgement, democracy or healing. It may occur if the offender addresses a specific issue that may be related to his/her deviant behaviour, such as receiving treatment for an addiction or completing education or job training. It may involve making some form of reparation to the victim(s). An act of contrition may enhance the victim and/or community's feelings of safety.

In some instances, the victim may not want any compensation or reparation, but is satisfied with the dialogue that was created. It may not be provided by the offender at

all, rather the state provides a form of compensation, symbolic or otherwise. Examples may include the naming of a street or erecting of a monument as official recognition; providing compensation/services for counseling; or, unearthing human remains to aid in confirming a death and provision of a proper burial. Acts of contrition in the secondary literature as well as in the SATRC will be identified and discussed.

### *No Desire for Revenge*

This is an act that requires victim self-awareness and dealing with anger and fear and taking back control over one's self (Gehm 2003). It may be expressed as "letting go of [the] desire for revenge" (Fitzgibbons in Gehm 2003:283).

Although a person may not be able to say 'I forgive you', s/he may be able to say that s/he wants to move on and let go of the hate. This may not occur immediately after confronting the offender, and will likely take much time. It is a goal and can be affiliated with the values of healing and forgiveness. This work will draw out instances in the SATRC and in the literature that speak to this concept.

## **Criticisms of Restorative Justice Theory**

### *General critiques*

Pavlich (2005) reviews the discourses of restorative justice and is critical of some apparent contradictions in its theoretical approaches. Restorative justice proponents describe it as an informal mechanism for handling disputes "distinct from criminal

justice agencies” (Pavlich 2005:11). However, “restorative justice also predicates itself on key concepts within the criminal justice system ... it is presented as a separate and autonomous entity; yet its foundational concepts derive from the very system it claims to substitute” (Pavlich 2005:14; Johnstone 2003). Because it is based on a separate ethical and ontological method emanating from community-based traditions, the entire restorative justice image is reframed as being distinct from that of the adversarial criminal justice system (Pavlich 2005). Proponents of RJ practices claim that because it is a new way of handling both crime and justice and is directed by a “different moral compass”, “its rationales and practices [are] *fundamentally* incommensurable with, and independent of, state criminal justice agencies” (Pavlich 2005:17).

Despite presenting itself as separate and unique from the retributive approach, RJ programs generally work within state criminal justice systems (Pavlich 2005). They utilize the same terminology but then reframe it to meet the restorative agenda. For example, restorative justice focuses on redefining harm and incorporating programs to address the harms to the individuals; rather than being an alternative to the state system, the restorative approach often complements it (Pavlich 2005). The facilitators and process designers bring “influential rationales and ideas ... directed to what restorative justice practice entails” which influence the practice itself (Pavlich 2005:10-11). This control of a program’s operations can be problematic if the facilitators or designers are not aware of their own biases. Such a bias might subtly direct the proceedings. For example, if a practitioner believes it is necessary for the



offender to apologize, s/he could impact the proceedings by leading the offender in that direction.

Pavlich (2005) raises a second critique of the restorative justice framework. He argues that the central role spirituality plays presents significant challenges if the theory is to have broad applicability (Wheeldon and MacAlister 2006). The values inherent in the restorative justice framework are what distinguish it from the traditional justice system with which we are most familiar. As it is more about correcting the breach of relationships and healing those affected, “justice is less about punishing people and more about achieving a presumed relational equilibrium” (Pavlich 2005:29). “[R]estorative justice processes are directed to the ‘aftermath of crime’ [and] do not actually contest the law’s right to define crime, but merely broaden it” (Pavlich 2005:35).

Pavlich (2005) also criticizes that RJ theory promotes a certain form of victimhood. In his perspective, the emphasis within some restorative practices in “preparing victims for the mediation” does not make sense if victims are “the necessary product of a criminal event” (2005:54). He continues that this “victim identity” is only further emphasized during the restorative event because the victim is encouraged to have certain expectations, behave a specific way, and become “an active, positive participant in determining how to find a resolution to the experience. This identity must have the ability – with the active help of restorative justice agents – to re-present needs generated by crime at conference/mediation, and have a good idea of what

would repair the harm done” (Pavlich 2005:57). This is in stark contrast to the intention of the experience, which is to empower victims, as RJ proponents posit (Crosland and Liebmann 2003).

Pavlich is not the only theorist to question the claims and applicability of RJ theory. Annalise Acorn (2004) has also raised a number of concerns, among them the practicality of its use. Although supportive of it in theory, Acorn is less convinced that it is appropriate and even possible to ask citizens to subscribe to the values of RJ.

Though initially intrigued by the potential of RJ, Acorn (2004) soon became skeptical of the potential for its success when she feared she could not apply it to wrong relations in her own life. Too often, she was “answering too many difficult questions about the viability of RJ with rhetorical platitudes about right-relation, mutuality, equality, and respect” (Acorn 2004:6). Feeling unable to answer the question of how to embrace restorative justice in its true application, Acorn looks to Derrida’s discussion of forgiveness.

She concludes that forgiveness is an ideal that can be reached for, but is impossible to attain in its purest sense (Acorn 2004:10). As Derrida (2001:32-3) writes it, “forgiveness forgives only the unforgiveable. One cannot, or should not forgive; there is only forgiveness, if there is any, where there is the unforgiveable.” This ideal, to be able to forgive horrible wrongs, is discounted by Derrida, stating that “one could never, in the ordinary sense of the words, found a politics or law on

forgiveness” (in Acorn 2004:11). Given this critique, it is important to keep in mind that forgiveness does not equal justice and the SATRC was not rooted in forgiveness (Acorn 2004). And neither is restorative justice theory dependent on forgiveness for justice to be met.

The notion of restorative justice is instead based on the ideas of healing and right relation, to which forgiveness can contribute (Acorn 2004). This added notion of working with the offender to heal all those impacted by the harm committed suggests a commitment to long-term effort, where the victim must give of themselves to better the person/people whose actions have caused such a great harm (Acorn 2004).

Furthermore, Acorn suggests that to take part in the restorative process, the victim must assume that the offender is able to make this dramatic change, both in terms of willingness and capability (2004).

Acorn (2004) reminds us that the idealism in restorative justice is what draws us to it. She refers to Jonathan Allen who writes that RJ confuses “aspiration with prediction”, a difficulty that results in a willingness to overextend ourselves as victim and community (in Acorn 2004:16). This could be in part due to the great desire to achieve the ability to forgive; or it could be because we buy into the enticing optimism connected to cultural change, or that which follows a success story that pulls on our heartstrings; or it could be because we are attached to the theological roots of the theory; or it could be because we believe in non-suffering, and as such, our compassion motivates us to persist in healing (Acorn 2004).

In reviewing principles of restorative justice theory, Acorn (2004) praises the good intentions inherent in the theory to bring together people in right-relation. It is this idealized notion of justice, however, that raises expectations beyond a realistic point. The restorative understanding of justice, that of right-relation, is associated with ideas of “harmony, wholeness, caring, compassion, reciprocal regard, and mutual valuation of intrinsic worth”, concepts that are also connected to an idealized notion of love (Acorn 2004:22). The two concepts of justice and love become inextricably linked, and in Acorn’s (2004:22) view, are part of the danger as “the case for restorative justice becomes tied to the age-old human hope for the convergence of love and justice.” RJ theory, however, does not allow for the reality of all potential responses.

At the core of our beings are natural human emotions that the theory of restorative justice ignores. These include contempt and disgust toward the offender, a desire for revenge, and choosing to involve oneself in the process for practical reasons (Miller in Acorn 2004; Minow 1998). The optimism in restorative justice is strong but Acorn questions whether it is enough to overcome such natural human emotions and whether all parties involved can and will be inspired and transformed as the developers and promoters of restorative justice theory believe.

Acorn (2004:122) is specifically critical of the theory’s encouragement of “compassion as an ethical achievement.” This achievement is characterized by acknowledging the real and intricate nature of the other person, the shared vision of

compassion, and the necessity to view one's self as sharing with others "a condition of vulnerability to loss and a human capacity for renewal and repair" (Acorn 2004:122). Practicing this compassion is problematic for a number of reasons. Being able to "engage the offender's compassion" may be difficult to do if the harm is not considered to be serious by the standards of another (Acorn 2004:145). Sharing emotional wounds can thus be difficult if all participants do not acknowledge the validity of the other's claim. A second reason it may be difficult to practice such compassion is if the offender does not believe the victim to be entirely blameless in the suffering s/he endured (Acorn 2004). Third, it is necessary to find common ground between the offender and victim for them to relate and empathize with one another (Acorn 2004).

These criticisms of restorative justice theory are necessary to consider in looking at the application of restorative justice in the case of the SATRC. Restorative values, practices and outcomes take various forms and their applications should not be unquestionably accepted as good. It is important that criticisms of restorative justice theory in general and of its application within the SATRC specifically be considered, analyzed and discussed to identify shortcomings of the process, areas where there is room for improvement as well as successes that can be applied in future instances.

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This chapter reviewed the background of restorative justice and its application in a number of societies throughout history. It highlighted how adaptable the theory is in practice. Following this brief overview, the RJ values, practices and outcomes that

are the focus of this thesis were defined. Despite their interconnectedness and overlaps, these variables are separated and defined to assist in the analysis of the SATRC. The chapter concludes with a review of some criticisms that have been raised against RJ theory.

## **Chapter 3 – Methodology**

In this thesis, discourse analysis is applied to the founding documents of the SATRC, victim hearings, and post-SATRC evaluations to assess whether or not the SATRC exhibited RJ values, practices and outcomes. These themes were outlined in the theoretical section of this paper.

### **Discourse Analysis**

Content analysis has been described as a method for systematically and objectively analyzing characteristics of messages (Neuendorf 2002). It examines how people interact by applying the scientific method to various modes of communication and can employ quantitative as well as qualitative approaches.

Discourse analysis is one qualitative method of conducting content analysis research and is the method that will be used in this study. It “involves ways of thinking about discourse (theoretical and metatheoretical elements) and ways of treating discourse as data (methodological elements)” (Wood and Kroger 2000:3). It looks at word use, and by connecting words to themes it establishes central themes apparent in the data (Neuendorf 2002). Discourse, as both talk and text, is a form of social practice; how we understand our world is a result of and is expressed within various systems of discourse (Wood and Kroger 2000). Thus, discourse analysis helps us examine the ways in which people make meaning out of the everyday world.

Discourse analysis is concerned with language use beyond merely the words that are employed (Stubbs 1983). The social context in which the words are spoken is of significant importance to the meaning and intent of the interaction.

Talk does not just reflect what is happening -- “it creates the social world in a continuous, ongoing way” (Wood and Kroger 2000:4). Language is a social phenomenon that develops culture and society at the same time as it is developed by culture and society (Titscher et al 2004; Kress in Wodak and Meyer 2001). The meanings individuals attach to language are important, but institutions and groups also attach values to language. These various interpretations are important, both to the development of language and its understanding.

As in all methods of content analysis, the researcher must be a “competent language user” and observer of the setting (Neuendorf 2002:6). Using a critical approach, it is important that the theoretical assumptions be clearly defined and understood before entering the analysis. The analysis itself involves examining the language and interaction and discussing the meanings and motivations behind the language used.

For the purposes of this thesis, the theoretical overview of RJ – in particular the thematization of RJ values, practices and outcomes presented in Chapter 2 – serves as a guiding framework for my discourse analysis of SATRC documents. First, restorative justice (RJ) values are explored as they are (or are not) presented in the SATRC founding documents, including government legislation in which the



framework for the SATRC was outlined. These documents are closely examined for words and themes that reflect the values identified in chapter 2: healing, democracy, acknowledgement, apology, forgiveness, social support, and making amends.

Second, the degree to which the SATRC used restorative practices is assessed through an analysis of SATRC victim testimonies during which participants were afforded the opportunity to speak publicly. The written transcripts of these testimonies were examined to locate the presence or absence of the practices defined in the previous chapter: empowering participants, taking turns speaking, uncoerced dialogue, face-to-face interaction, recognition of one's position, validation that what occurred was wrong, confession, and participation of family and friends. The sampling method used for the testimonies is explained in detail in the sampling section later in this chapter.

Third, the question of whether or not the SATRC was successful in achieving RJ goals will be explored in a review of secondary sources that evaluate the outcomes of the SATRC. This review will be based upon research and commentaries that were written during and following the SATRC. This literature will be analyzed to identify whether or not the SATRC achieved RJ outcomes: victim satisfaction, dialogue creation, atonement, forgiveness, reconciliation, sense of support from others, acts of contrition, and expression no desire for revenge.

### *Research Question*

I hypothesized that a discourse analysis of the primary and secondary literature, as well as the victims' hearings will reveal that the RJ values, practices and outcomes to be present at all stages in the SATRC. Following the analysis of the data, some discussion of the advantages and disadvantages of employing a restorative justice approach to deal with crimes of mass violence is conducted.

### *Sampling*

To offer accessibility to the hearings for all members of the populace in South Africa, hearings were held throughout the country. Testimony from every hearing is included in this analysis, as there may be variation in the response and receptiveness to the RJ approach by region. Additionally, it is important to ensure that all voices are heard, including both critics and supporters of the SATRC. To attempt to provide representation of both perspectives voiced at the hearings, a purposive sampling technique was used to ensure that a cross-section of victims who testified is presented.

This approach involved selecting every 20<sup>th</sup> testimony<sup>22</sup>. In some cases it was necessary to replace one testimony with another when the testimony was incomplete, it was solely the opening or closing statements from a Committee member, and in another instance it was replaced because it was a presentation instead of a testimony. Though there were some transcripts that suggested receptivity to the SATRC, most of the transcripts that were randomly selected were not overtly positive or negative towards the process. Therefore further transcripts were read through to ensure

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<sup>22</sup> This figure was selected randomly.

victims who were opposed to the SATRC process were included. A total of 58 transcripts were sampled.

### **Values**

In examining whether the development of the SATRC reflected restorative justice values, a thorough review of the SATRC documents was conducted. The documents analyzed included:

- a) The *Promotion of National Unity and Reconciliation Act* of 1995 (*PNURA*). This Act was established to provide a foundation for the investigation of gross violations of human rights committed during a period of South Africa's history.
- b) The *Interim Constitution of the Republic of South Africa*, Act 200 of 1993. This Constitution was created to guide the newly elected government in a new direction. As the Constitution, it established the fundamental principles by which the country would be governed. The *Interim Constitution* led to the foundation of the state's Constitution of the Republic of South Africa 1996.
- c) The *Constitution of the Republic of South Africa* 1996. The *Constitution* has been called the "birth certificate" of a new South Africa and was implemented following the implementation of the SATRC, but while it is was still in operation.

These founding documents of the SATRC were critically explored to reveal whether or not and to what extent RJ values were a prominent discourse in the Commission's development.

## Values and Practices

As discussed in chapter one, the hearings were unable to afford every victim the opportunity to speak. In addition to the limiting definition of what entailed a 'victim', the time period in which one could submit a statement and the reality that the entire nation was affected, resulted in only 21 000 individuals giving statements to the SATRC (Simpson 2002:). The Commission limited the number of people it could hear from and made an effort to have a representative sample of the submissions heard. Due to the sheer number of testimonies this comprised and the time it would require, it would not be feasible to review the entire population of testimonies in this research. As discussed earlier, a purposive sample was selected to ensure each physical location had equal representation in the analysis, and critics as well as supporters were included.

1 819 testimonials were presented at the victim hearings between April 15, 1996 and June 26, 1997. The transcripts<sup>23</sup> of these hearings are available online, separated by location<sup>24</sup> and date. Each testimony was counted as one<sup>25</sup>, and every twentieth was selected for analysis. As stated above, in some instances, a testimony was counted which was a special speaker, or an opening or closing statement. Where it was deemed appropriate, these were excluded and the following testimony was selected in its place. Also, there were a few instances where a number of individuals were testifying regarding the same event. In these events, questioning from the Committee

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<sup>23</sup> There is great variability in the length of each transcript, some being a few pages long and some exceeding fifty.

<sup>24</sup> The four regions are identified as Cape Town, Durban, East London, and Johannesburg.

<sup>25</sup> Except in one instance (EL-20.2), wherein seven statements were included as one because they were in reference to the same event and testified on the same day.

was saved for the end of the group's testimonies, therefore the entire group was included in the analysis so as to ensure questions and referring comments were not missed. The analysis included all the speakers at the hearings, including the victims and committee members.

These transcripts were critically examined to assess if the RJ practices described in the theoretical section are in fact evident at the hearings. The words of both the victims and the facilitators will be appraised to consider if they respected or violated these practices, as well as whether or not the operation of the hearings reflected RJ values.

### **Outcomes**

Much research has been done on the SATRC and its outcomes. This larger question is complex and requires much more exploration. Whereas for some it may take generations for healing to begin, in other cases the positive impacts of the SATRC may be evident almost immediately.

The secondary literature and research on the SATRC was explored. This included exploration into criticisms of the SATRC and its outcomes, as well as research into whether the needs of victims were addressed. Victim testimony may also speak to the outcomes of the SATRC.

Among the documents that will be reviewed are:

-The Truth and Reconciliation Commission: Final Report. This document was a symbol of the nation's triumph over apartheid's destructive history. It was initially presented to the President of South Africa, Nelson Mandela, on October 29, 1998 and was released in its entirety on March 21, 2003.

-Research by Richard Wilson (2001), who conducted anthropological fieldwork on the impact of the SATRC in urban African communities.

-Research by Russell Daye (2004) that explores the practicality of applying a model of political forgiveness on a national level.

-Edited volumes by observers and participants of the SATRC.

### **Limitations of Methodology**

It should be mentioned briefly that there are potential limitations to this method of research. By examining primary and secondary documents as opposed to attending and examining the hearings firsthand, some aspects of the hearings may not be fully experienced. The emotional impact of the testimony is likely to be lessened if not lost entirely, as a reader is detached from the testimony itself. In a similar manner, by being unable to fully experience the hearings, the impact from the community response is also lost. Although the setting is described in some secondary literature, it is not possible to adequately imagine the physical presence that accompanies a packed room in South Africa during the summer days. Also, without experiencing the closeness of one's neighbour and seeing and hearing how those around you respond to the testimony, the full experience will not be had. It is also true that though it may be written in the transcripts, the impact of the responses of the

facilitators and committee members may also be lost to those not able to see and/or hear it firsthand. For example Desmond Tutu, Chair of the Committee, cried during a hearing, something that was unexpected and commented on in the media extensively; a fact that highlights how out of the ordinary the hearings were (Sachs 2000). Not experiencing this 'out of the ordinary' occurrence first hand surely takes away from the emotional experience of the hearings. Nonetheless, a careful discourse analysis of the aforementioned documents allowed for an examination of the basic research question: whether or not evidence existed of the restorative character of the SATRC. However, one can assume that the emotional force of the hearings would have been felt more strongly in person.

This chapter looked at the methodology that is employed in this thesis. The methodology, discourse analysis, was described and the practicalities of employing this research process explained. The chapter concluded by discussing briefly some of the limitations of employing this methodology and relying on data that was not collected firsthand.

## Chapter 4

### Values

In examining whether the SATRC was established upon restorative justice values, it was necessary to conduct a thorough review of the founding documents of the SATRC. As discussed earlier, the following seven values were identified as fundamental to restorative justice: healing, democracy, acknowledgement, apology, forgiveness, social support, and making amends. In the South African TRC Final Report, all seven values are also presented as central to the SATRC's efforts.

It will be demonstrated that these values are most evident in one particular founding document. Although the two Constitutions that are reviewed here emphasize the importance of democracy and equal opportunity for every citizen, it is the *Promotion of National Unity and Reconciliation Act*, developed to establish the foundation of the SATRC that recognized the values most specifically.

The *Promotion of National Unity and Reconciliation Act* of 1995 (*PNURA*) was established to provide a foundation for the investigation of gross violations of human rights committed during a period of South Africa's history. Prior to its enactment however, the *Interim Constitution* of 1993 was created to guide the newly elected government. As the Constitution, it established the fundamental principles by which the country would be governed. The *Interim Constitution* led to the foundation of the



state's *Constitution of the Republic of South Africa* 1996. This document has been called the "birth certificate" of a new South Africa.

### ***Interim Constitution, 1993 and Constitution, 1996***

These two documents are very similar, the primary changes being irrelevant for the purpose of this thesis. As such, they are discussed together in the analysis below.<sup>26</sup>

They do not speak to the SATRC specifically; however, they validate the rights of the citizens and promote the value of democracy. It could be argued that the Interim and new Constitutions and the rights for all citizens embedded within them are efforts to begin healing for the victims of apartheid, and even a form of redress from the country that failed to represent and protect its citizens.

These documents were critical for the *PNURA* to be established, and thus the SATRC. Without the rights discussed in Chapter 3, and the emphases of Chapter 1, which assert that the Republic of South Africa is a democratic state that is founded on the values of human dignity and the rule of law and universal adult suffrage, the SATRC would likely not have been recognized. These chapters state the eleven official languages of South Africa and declare that all citizens shall be able to conduct any business with the government in any official language of his/her choice. These chapters paved the way for society's acceptance of the *PNURA* with the assertion that all citizens are to be afforded the rights of equality and respect and freedom therein.

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<sup>26</sup> If there is a distinction to be made between the two Constitutions, the date of the document being referred to will be included in the discussion.

The Constitution asserts that all citizens of South Africa are considered equal under law, promoting the value of democracy. The preamble in the Interim Constitution, 1993 states that “there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms”. The preamble in the 1996 Constitution continues in this manner, emphasizing the need to “recognise the injustices of our past; honour those who suffered for justice and freedom in our land; ... heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.”

Chapter 16 in the Interim Constitution is titled *National Unity and Reconciliation*. This chapter acknowledges the conflict of South Africa’s past, and recognizes that the country’s future is founded on the equality and rights as stated in the Constitution. In this chapter, the Constitution declares that “[t]he pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.” The adoption of this Constitution is the commencement of a “secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.” With an emphasis on understanding, reparation and *ubuntu*, the past can be addressed. The chapter concludes by stating that “[i]n order to advance such reconciliation and

reconstruction, amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of the conflicts of the past.” Although they did not discuss the SATRC specifically, the SATRC would not have been established without these documents laying the groundwork for it.

### ***PNURA, 1995***

The *PNURA* of 1995 established the framework for the SATRC, explaining that South Africa’s past is characterized by conflict and suffering. It cites the *Interim Constitution* of 1993 as stating that South Africa’s “future [is] founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans” and “it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred” (*PNURA, 1995*).

National unity required reconciliation among the Nation’s peoples and the reconstruction of society to reflect this unity. In moving toward a democratic South Africa, it was suggested that “there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization” (*PNURA, 1995*). This principle, combined with the examples set by past commissions that operated on a national scale in other countries (e.g., Guatemala and Argentina), justified the Government’s decision to establish the SATRC.

The *PNURA* established the need to investigate the recent past so as to present to the citizens of South Africa “as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed” (*PNURA*, 1995). Thus, healing was sought by providing victims information that might allow them a sense of closure.

### *Healing*

Although the *PNURA* does not expressly articulate the value of healing, this value is nonetheless evident in several sections that can be viewed as attempts to lay the grounds for healing to occur. For example, the hearings afforded “victims an opportunity to relate the violations they suffered” (*PNURA* 1995). This act is recognized within the restorative justice framework as being potentially of value for the victim, as it may empower him/her (Braithwaite 2002). As well, although critics have expressed opposition to the granting of amnesty to assailants, the intent, as it is laid out in the *PNURA*, was that “it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future”.

Section 3(1)(a) further established the intent of the Commission’s work with respect to healing. This was to be accomplished by “establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights ... 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”. In section 3(1)(c), the Act states that it is necessary to “make known the fate or whereabouts of victims” and restore “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”. Family and friends of people who died are offered healing in section 5(k) which instructs the Commission to “recommend to the President that steps be taken to obtain an order declaring a person to be dead.” This would offer closure to victims, allowing them to move forward with their lives knowing what has happened to their loved ones.

Though the hearings were open to the public, Section 33(1)(b) notes that if it was believed that it would be in the interest of justice or there was a likelihood that harm may result to any person as a result of the proceedings being open, they may direct that the doors be closed. This demonstrates support for victims who wish to testify but may be fearful of doing so because of overt or subtle threats they may have experienced. Placing this stipulation in the *PNURA* acknowledges the importance testifying may have for victims, and the need to accommodate this act.

### *Democracy*

The value of democracy was recognized in the preamble of the *PNURA*. Citing the Interim Constitution, South Africa’s “future [is] founded on the recognition of human

rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex.” This includes both the perpetrators and the victims. Efforts to ensure all participants were afforded democratic rights were instilled in the *PNURA*.

In section 3(1)(a), the *PNURA* explains that the Commission is responsible for investigating and holding hearings to establish “the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations”. Additionally, all persons implicated in any applications to the Commission are afforded reasonable opportunities to submit their own applications to the Commission (sections 19; 22; 30).

To encourage perpetrators to come forward and share their truths, amnesty was granted “to persons who make full disclosure of all the relevant facts” (*PNURA*, 1995). Furthermore, numerous hearings were held “affording victims an opportunity to relate the violations they suffered” (*PNURA*, 1995).

Section 19 outlines the efforts made to include victims and others who were implicated in an application and ensure they were aware of when the application would be heard and considered. Section 22 indicates that if someone was identified as a victim in an application or an amnesty hearing and did not submit his/her own application, s/he was still considered for reparations as per section 26. These steps were included in the *PNURA* to ensure that people who were victims of gross

violations of human rights, as well as people who were implicated as perpetrators of these acts, were afforded opportunities to speak publicly. All of these efforts are enshrined in legislation to ensure that everyone has an opportunity to speak and be heard. In this manner, the value of democracy was upheld in the *PNURA* through an emphasis on broad public inclusion and participation in the SATRC.

### *Acknowledgement*

It can be argued that the entire *Promotion of National Unity and Reconciliation Act* is an attempt to support the value of acknowledgment. The Act “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 for all South Africans, irrespective of colour, race, class, belief or sex” (*PNURA*, 1995). Victims are not only afforded the opportunity to publicly “relate the violations they suffered”, the Commission was tasked with “reporting to the Nation about such violations and victims” (*PNURA* 1995; section 33). Section 3(1)(c) is again referred to as it clearly states that victims are given the “opportunity to relate their own accounts of the violations of which they are the victims”. Telling the Nation about the activities that occurred after reading and hearing the individual accounts acknowledges to the individuals and to the world that the activities occurred, and they were wrong. As Minow (1998:67) notes, “[s]peaking in a setting where the experience is acknowledged can be restorative.”

The Commission's final task was established in section 3(1)(d) which states it is responsible for "compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission ... which contains recommendations of measures to prevent the future violations of human rights". Providing the world with a formal account of the injustices that were suffered was deemed a necessary acknowledgement. This is particularly the case as the abuses were often denied and "the victimized deserve the acknowledgment of their humanity and the reaffirmation of the utter wrongness of its violation" (Minow 1998:146). In Hayner's (2002:26) words, "[i]n the process of collecting testimony and publishing an official report, a commission offers an official acknowledgment of long-silenced facts."

### *Apology*

The value of apology was less clearly discussed in the *PNURA* possibly a result of the difficulty in mandating apologies. "Remorse that is demanded is remorse that is destroyed" and though the objective may be to create an atmosphere in which apologies can thrive, it should not be the objective (Braithwaite 2002:15).

Section 3(1)(b) outlines that "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" was a task for the Commission. Although this does not specify that an apology to individual victims



would be expected or asked for, the opportunity for it was there if assailants wished to offer it.

### *Forgiveness*

This value was not specifically discussed in the *PNURA*. However, Desmond Tutu, chairperson of the SATRC, titled one of his books *No Future Without Forgiveness* (1997), declaring his view that in order for South Africa to move forward in peace, the actions of the past must be forgiven. Archbishop Tutu and former President Nelson Mandela are two public examples of individuals who forgave those responsible for their maltreatment in the hopes that it may encourage the nation to move forward for the country's benefit. Minow (1998) discusses the value of forgiveness for the individual. She acknowledges that hating and blaming those responsible or the harm caused are legitimate emotions. She also acknowledges that forgiveness may not be about the perpetrator, but about the individual not wanting to be "a bitter resentful person" who spends his/her life embroiled in hate (Minow, 1998: 19).

The value of forgiveness was promoted in section 3(1) of the *PNURA* which stated that "the objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past". As indicated in Tutu's book title, transcending the conflicts and divisions of the past was often perceived to require forgiveness, moving beyond the

harm that is in the past and working to ensure that it not occur again. Though not mandated, the value of forgiveness is thus fostered.

### *Social Support*

The *PNURA* instituted a number of factors to encourage the value of social support. The hearings were promoted throughout the country and were open to the public, as discussed in section 33 of the *PNURA*. Though not specifically stated, the *PNURA* was trying to both provide support for the victims as well as create public awareness of the country's strife. Additionally, due to any number of reasons, supporters who were unable to make the trip to accompany those testifying were able to observe their family and friends through the media which broadcast the hearings on television, radio and print. For some victims, this may provide a degree of support in knowing that these people are listening and agreeing to him/her.

Further, efforts were included in the *PNURA* to ensure victims were made aware of their opportunity to seek "redress through the Commission" through various media as outlined in sections 11(d), 15(1) and 26. Section 11(f) goes on to state that efforts should be made so that victims can communicate with the Commission in the language of their choice so they feel most at ease during the difficult process. The importance that was placed on the individual's right to testify in his/her language of choice was significant because it signaled the efforts that were being made to make the victim as comfortable as possible during the emotional and difficult process of publicly testifying.

Section 11 discusses the principles the Commission was to follow when working with victims. These principles included compassionate and respectful treatment for the person's dignity, equal treatment free from discrimination for all participants, and dealing with applications from victims in a manner that is "expeditious, fair, inexpensive and accessible". All of these variables provide support to the victims by recognizing emotional needs as well as financial burdens and physical limitations to testifying.

To further support the victims, "(e) appropriate measures shall be taken to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation".

### *Making Amends*

The intent of the Commission was "the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights" and "the making of recommendations aimed at the prevention of the commission of gross violations of human rights". This was established from the beginning of the process in the preamble of the *PNURA* and elaborated on throughout.

In section 1(xiv), reparation was defined as including “any form of compensation, ex gratia payment, restitution, rehabilitation or recognition”. These are the types of amends that the Commission was created to provide. The making of amends was primarily through the State. Opportunity for individually-made reparations were fewer.

A number of possible reparations are specified in the PNURA. Section 3(1)(c) includes “establishing and making known the fate or whereabouts of victims” and “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.” Section 5(k) also allows the Commission to make the recommendation that an order be obtained declaring a person dead.

Section 3(1)(d) charges the Commission with the responsibility of “compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights”. The Commission was also able to make urgent interim measures as they deemed it appropriate, as discussed in section 25(1)(b)(i). Additionally, a fund was established from which amounts to victims for reparation would be paid (see section 42(2)).

## **Conclusion**

The 1995 *PNURA* and the Constitutions of 1993 and 1996 were enacted as part of the changing of South Africa's future. The first step was the 1993 *Interim Constitution* which established the equality of all citizens, and the rights every person was entitled to enjoy. The second step was to establish the 1995 *PNURA* which laid the groundwork for the SATRC to operate. The 1996 *Constitution* affirmed the rights that were initially entered into law in 1993, elaborating further on them.

In 1995 *PNURA*, all of the RJ values were addressed, although some more explicitly than others. In the Constitutions, the value of democracy is clearly established, and it can be argued that the value of healing was also promoted.

## Chapter 5

### Restorative Practices in the Victim Hearings

The analysis of the transcripts from the victim hearings focused on whether the RJ values were put into practice in the processes of the SATRC. As will be demonstrated in the following discussion, evidence of the practices and values of the RJ can be found in the victim hearings. The practices that were identified were: empowering participants, taking turns speaking, uncoerced dialogue, face-to-face interaction, recognition of one's position, validation that what occurred was wrong, confession, and participation of family and friends.

These eight practices will be individually discussed, with specific examples from the testimonies presented. This chapter will also discuss examples where practices were not consistent with RJ values.

#### **Empowering Participants**

Empowerment was defined in chapter 2 as promoting the "self-actualization or influence of" a person. The procedures at the hearings were designed to empower participants by allowing them opportunity to speak freely without prejudice or fear of reprisal.

Each day's hearings commenced with a prayer in remembrance of the people who died or disappeared and were being discussed that day. The chair of the committee

introduced and acknowledged those who came to speak. As each victim was introduced to testify, s/he was welcomed to the hearing process, introduced to the commissioner who would be helping present his/her case, and sworn in for testimony. S/he was then asked to begin telling his/her story.

In many transcripts, the person testifying often told his/her entire story without interruption. Thandi Memela presented her case at a hearing in Durban. Her son was murdered and family harassed by police officials known as the A-Team. The commissioners commented that her oral statement includes much more detail than was in her written submission. A commissioner explained that “[I]t would be so much more valuable if many of the other people who came and gave statements to the Truth Commission could give the sort of background that you have provided to us, rather than just telling us about the specific incident that they were involved in.”<sup>27</sup> The encouragement to speak freely gave participants the liberty to remember the details of circumstances that had occurred over 30 years ago. Although commissioners sometimes asked the victim to start at a specific point in time with an introduction to the incident, those testifying were generally able to begin their story where they felt at ease.

Being able to speak in the language of their choice was also intended to ensure those testifying were comfortable.<sup>28</sup> Throughout the transcripts, the commissioners reiterated to the audience that there are translation services being utilized and where

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<sup>27</sup> Durban, Case NN/002 (Thandi Memela) – Durban, 29 August 1996

<sup>28</sup> Johannesburg (Puleng Swarbooi and Daphney Ramokgopa) – Soweto, 23 July 1996

they can access the headphones for this free service<sup>29</sup>. Having this control over the direction of the testimony is believed to have made the victim comfortable in sharing, and to have been of value to his/her healing process because s/he was able to speak in a manner that made him/her comfortable.

In every case the victim's pain was acknowledged by the SATRC commissioners as was the value in each individual's testimony. Particularly when a victim was the last to testify for the day, a commissioner made a point of noting the importance of all testimonies regardless of where on the docket each was heard. Following the introduction of Ezekiel Matsidiso Marais to a Durban hearing, the chairperson continued by saying "[w]e are very, very glad to welcome you also, very glad to see you. Now, you've have a very long wait, and it's long in the afternoon, and you are the last witness, but your story is as important as everybody else's, and you're going to tell us what happened to you."<sup>30</sup>

Many participants brought family or friends with them who were their supports and this practice will be discussed in more detail later in this chapter. The support person was introduced and the commissioner thanked him/her for attending. This acknowledged the importance of the support person to the victim testifying. Such was the case when Phillistus Lerutla gave her testimony about the shooting she survived when in attendance at a city council meeting:

Dr Borraine: Ms Lerutla, can you hear me alright? You can? Loud and clear?

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<sup>29</sup> Johannesburg, Case 00546 (Mathibela Molpopo Johannes) – Pietersburg, 19 July 1996

<sup>30</sup> Durban (Ezekiel Matsidiso Marais) – Bloemfontein, 04 July 1996



Ms Lerutla: Yes, I can hear you.

Dr Boraine: Good. Can I welcome you very warmly as a witness before the Commission. You have somebody with you. Could you please tell us who that is?

Ms Lerutla: She is my aunt.

Dr. Boraine: I would like to welcome you very warmly as well. We are very pleased to see you and thank you very much for coming. You are going to tell us about something that happened to you. Everybody so far has told us about something that happened to someone else. So this is quite different and in a moment you are going to tell us your story.<sup>31</sup>

As this exchange shows, the victim and her supporter were both welcomed and the offence against her acknowledged. This may contribute to the empowerment of the victim because she was made as comfortable to speak as freely as possible. Having her support close by and acknowledged as important by the Committee is likely to provide her with affirmation and encouragement.

During testimony at East London, seven persons, known as the Hankey cases, spoke about their individual victimization at the same event. Following their testimonies, Commissioner Rev. Finca spoke of the value of their experiences and the need to respect their stories.

[T]he aim of the commission is to give you this chance to tell your part of the story, to tell what happened to you, so that this crowd in this hall even those who are listening to the radios should salute you. They should thank you for your contribution. Your sons did not die in vain. Their death caused us to get the freedom that we have today. We heard all your requests, we are going to follow and investigate all that we can.<sup>32</sup>

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<sup>31</sup> Johannesburg, Case JB00756 (Phyllistus Lerutla) – Pretoria, 14 August 1996

<sup>32</sup> East London (Mrs Nompbuluzo Lizzie N Mjacu D.S.S.) – Port Elizabeth, 22 May 1996

Although there were only a few instances of communication that might be deemed non-empowering in the transcripts that were sampled, incidents occurred during the Hankey cases that may be considered insensitive to the victim. During one woman's testimony about the murder of her son, she had a difficult time continuing.

Witness: Now when he was coming home there was another white man lying on his stomach, that white man now shot my son, and he could not walk anymore. They dragged him like dog, they took my son to Mr Mabukane.

Mr Sandi: Mrs Ndleleni take your time we will wait for you.

Dr A Boraine: Order please, thank you, let her gather her thoughts, it is very hard.

Mr Sandi: Mrs Ndleleni, do you think you can continue? Mrs Ndleleni, we can still continue after lunch if you feel you cannot continue. Should we continue or should we do it after lunch?

Witness: No, let us go on.

The victim expressed her desire to continue, however within the next two lines in the transcript, Dr Boraine interrupted and said that "I think that we should adjourn, and we will continue after lunch, order please." It is not possible to know what the victim's emotional state was at that time; however, from the transcript it appears that her wishes to continue were ignored. Following lunch and the resumption of the testimony, Commissioner Sandi commenced by saying that "Mrs Ndleleni, before we broke for lunch we stopped at a very painful period, I do not even like the fact that we have to start again, for you now to repeat what you have already said. Especially that part that you said, just before we left for lunch. When we parted you said, "Vuyo was shot" and he was dragged into Mr Mabukane's house. Is that so, Mama<sup>33</sup>?"<sup>34</sup>

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<sup>33</sup> The term 'Mama' is one of respect and was used throughout the hearings when speaking with mothers.

<sup>34</sup> East London (Gladys Nodabephi Ndleleni D.S.S.) – Port Elizabeth, 22 May 1996

Clearly, Commissioner Sandi recognized the emotional difficulty that would come with interrupting one's testimony, particularly at such a climactic point in the tale. He appeared to have made a sincere effort to ease the victim back into the testimony, acknowledging the difficulty she may have, and remind her of the point in the story at which she had left .

### **Taking Turns Speaking**

The practice of taking turns speaking is described in chapter 2 as offering all participants equal opportunity to speak. As was demonstrated above, those testifying were given full opportunity to speak freely. If his/her supporter had submitted a statement to the Commission prior to the hearing, s/he was also welcome to speak in turn. Following the victim's testimony, the Commissioner facilitating the testimony, also referred to in the transcripts as an 'assistant' and someone who was 'helping' the victim with the testimony, asked the victim any questions for clarification that s/he may have had. After this, the other Commissioners in attendance were allowed to ask the victim questions.

### **Uncoerced Dialogue**

Chapter 2 describes the practice of Uncoerced Dialogue as being able to express oneself freely without being rushed through. Closely connected to the discussion regarding the practice of Taking Turns Speaking, victims were given the opportunity to speak freely regarding their experiences. Direct questions were asked by the

commissioners following the testimony. Based on the transcripts, the victims testifying had opportunity to share their stories publicly. They were not forced to speak, though commissioners did press for detail if they felt it was needed. In these instances, however, the commissioners generally explained why they were asking the questions and what specifically they wanted.

Mr. Harris spoke of the killing of his niece in 1976. He indicated that when the shooting occurred, other people who are still alive were present. The commissioner asked many questions regarding whether these people were prepared to testify before the Commission or had already done so.

Dr Ally: Would you be able to give these names to the Commission and you say these people are prepared to make statements or the person who is still living in George is prepared to make a statement.

Mr Harris: I will do my best to try and get hold of this person and just to tell him to contact the Truth Commission.

Dr Ally: It is extremely important to know what really happened on that day because as you will understand it is many years ago and many of the documents are not available anymore so the more people come and tell us what exactly happened the better, it will give us a fuller picture of the events.<sup>35</sup>

In another hearing, Commissioner Boraine explains further as to the reason he is asking for information regarding the whereabouts of a person with knowledge about the disappearance of the victim's son:

I will tell you why I am asking is because even though you may not wish to go there and I respect your views it may be possible for one of the investigators of the Truth and Reconciliation Commission to call at his home and to ask him what he knows about your son and in particular what he knows what happened to him, because I think that's very important for

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<sup>35</sup> Cape Town, CT/00332 (Freddie Harris) – 19 June 1996

you to have some certainty. And also to find out if he really did die as to where exactly he was buried to see if there is any chance of bringing his bones back. So we will ask our investigative team. But if you or any member of your family have any more information about the address or the surname would you try and give that to us before the end of the day. Thank you very much.<sup>36</sup>

There are numerous examples throughout the sample of transcripts studied that indicate the victims were provided reassurance they were not being rushed and they could take all the time they needed. In Durban, one woman spoke of being present at the murder of 11 children, one of whom was her daughter.

Mrs Dlamini: When I looked around the girls were lying all over the floor. One of my daughters was lying down and she was dead. The Mtolo girl too was lying there, the Linda girl was also lying there, the Zulu girl was also lying on the floor dead, and also the other one from the Mbele family, and Ndlovu. And that one of mine had the very big wound, and I couldn't see very well.

Dr Mgojo: Take your time. We understand the painful situation you are in. We can imagine those children lying down on the ground. (Pause) After you had seen these children lying what did you see?

Mrs Dlamini: I wanted to look at the side of this man who was supposed to accompany us to the conference.

Dr Mgojo: What is the name of this man you are talking about?

Mrs Dlamini: His name is Steven Gcaba. I shouted, saying, "All the children are dead, they are finished."

Dr Mgojo: You may take your time. We know that this affects you deeply. (Pause)

Mrs Dlamini: When I came back the neighbours have already arrived. They tried to help us. We had to carry some of these children to the clinic. Some tried to contact police.<sup>37</sup>

At the conclusion of her testimony, Commissioner Mgojo told her that

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<sup>36</sup> Johannesburg, Case 799 (Mamotake Valentina Matseletsse) – Sebokeng, 07 August 1996

<sup>37</sup> Durban, Case KM/543 (Tokozile Dlamini) – Portshepstone, 13 August 1996

I would like to say that this is not a question, but I would just like to pass a comment, because your situation is different to others who came because you witnessed the dying of many children at one incident. All this it's behind your shoulder. As I look at you you look like a person who is badly affected by this. Maybe it's time for you to tell us exactly how you can be helped personally. I would like to ask you that when you leave this place you must try to find some professional help. Thank you.<sup>38</sup>

We see this patience and support offered throughout the testimonies. In East London, when the seven victims testified around the Hankey cases, it was clear from the transcripts that the victims were understandably emotional throughout their testimony.

Ms Mjijwa: He was from work and he went home. He asked me if he could get some spades because we are expecting boere today. So they left. Round about 19h00 we were told that there were "boere" that were coming at that night. These boere were with policemen and soldiers. Around 19h00 and 20h00 we saw them patrolling. During the evening we heard a sound, sounding like "zzzz" but we did not even know what was going on. In the morning Phindele came. He brought Vusumzi's caps, telling me that Vusumzi has been shot. I asked where he was shot. He just left, later then we followed.

Mr N Sandi: Please take your time, Mama. The Commission is listening, please take your time.

Chairperson: Could I suggest that the briefer gets a chair so that she can be close in case she can be of some comfort and help and if you would perhaps like a little water before you continue. Thank you.<sup>39</sup>

When Mrs Ndleleni testified she was also clearly emotional:

Mr Sandi: Mrs Ndleleni take your time we will wait for you.

Dr A Boraine: Order please, thank you, let her gather her thoughts, it is very hard.

As was discussed earlier, Mrs. Ndleleni was then asked if she would like to continue or resume after lunch.

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<sup>38</sup> Durban, Case KM/543 (Tokozile Dlamini) – Portshepstone, 13 August 1996

<sup>39</sup> East London (Ms Maziwe Kate Mjijwa D.S.S.) – Port Elizabeth, 22 May 1996

In Johannesburg, Puleng Swarbooi and Daphney Ramokgopa testified about the murders of her son and her brother, respectively. In describing how she was told about the circumstances of her son's death, Mrs. Swarbooi became emotional:

Mrs Swarbooi: They say it was looking like some kind of battle. I took those papers, I took them to the headquarters of the ANC. I gave them the information. I was telling that, you know, I am surprised that you do not communicate and tell me. This is my only child.

Interpreter: The interpretation service will go on as soon as the speaker regains composure.

Ms Seroke: Take your time, take your time, drink some water till you regain your composure.<sup>40</sup>

When Ms. Ramokgopa testified, she also needed time to compose herself.

Ms Ramokgopa: When I got back home I found my mum so sick, affected by this. They showed me those photos. They asked me show your mother that this is your brother. I looked and said, yes, this is my brother and they said, then go and show it to your mother in the bedroom. I said to my mother in the bedroom, this is truly my brother. My mum said, no, and she got worse. The situation aggravated her sickness.

Interpreter: The speaker cannot go on.

Ms Seroke: Daphne, please relax, drink some water and take your time. We know that this is painful. It is not easy to bear. Take your time. Do you feel you want to carry on now?

Ms Ramokgopa: Yes.<sup>41</sup>

Although earlier in the section on Empowerment it was noted that Ms. Memela was thanked for all the additional information she offered, another victim was told

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<sup>40</sup> Johannesburg (Puleng Swaarbooi and Daphney Ramokgopa) – Soweto, 23 July 1996

<sup>41</sup> Johannesburg (Puleng Swaarbooi and Daphney Ramokgopa) – Soweto, 23 July 1996

Kariem you are giving us a very full picture of the build-up of the boycotts and its very interesting to hear, your memory is so vivid at times but if you could just try and pull it to your experiences, your actual assaults and the things that happened to you whilst you were detained. You told us that you were detained for several periods in '85 and I think you were assaulted in '86 can you just give us those details.<sup>42</sup>

This gentle redirection, combined with the fact that he had testified for approximately 12 pages prior to the intrusion, suggests that a great effort was made to allow the subject as much time as was possible to speak before being interrupted. The Commissioners did, however, feel the need to intervene and use gentle coercion to get the information they desired.

Though there are many examples, some of which were discussed above, that support this practice by assuring victims they have much time to speak, there are also some examples where the commissioners stated that they were out of time, and wrapped up the sessions. In one instance, Commissioner Boraine concluded by saying that

And we are committed to a new transforming process, then there is some hope for all of us, but I appreciate your concern, I wish that we had time to discuss all of it, but there are people who are sitting waiting to come and tell their stories and we have given you a lot of time. So I must now ask you to leave and thank you very much indeed - **baie dankie**.<sup>43</sup>

This appeared to be after the victims were done speaking and to suggest to the committee members that they should wrap up their questions, however it is possible that this may have discouraged further questions or more comments from the victim who was testifying at the time. During the testimony of Yusuf Haffajee, regarding the death of his brother while in police custody, Commissioner Lax asked of Mr. Haffajee "if you could try and be reasonably brief if possible, rather than take a long

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<sup>42</sup> Cape Town, Case CT/07000 (Ridwaan Kariem) – George, 24 June 1996

<sup>43</sup> Cape Town, Case CT/07000 (Ridwaan Kariem) – George, 24 June 1996



time. We still have quite a number of witnesses to do. But I don't wish to curtail you in any way."<sup>44</sup>

It is also important to note here that the methodology used here only allows a look at possible coercion within the SATRC victim hearings. It is quite possible that people felt coerced to testify by outside sources, such as friends, family, media or religious figures.

### **Face-to-Face Interaction**

The practice of Face-to-Face Interactions is described in chapter 2 as the victim speaking directly to the perpetrator. In the victim hearings, those testifying did have face-to-face interactions with the committee members but not with the offender(s). That opportunity was provided at the amnesty hearings. This direct interaction did provide victims a connection with a body of people who were acknowledging their stories. An audience was also present and this may have provided victims with further affirmation that the telling of their stories was an important issue to be heard for many.

### **Recognition of One's Position**

The practice of recognizing each individual's perspective is defined in chapter 2 as acknowledgement. The victim hearings did carry out the practice of recognition of the positions of those testifying.

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<sup>44</sup> Durban (Yusuf Haffajee) – Durban, 08 May 1996

Victims were respected by the commissioners, who emphasized the importance of the audience being respectful as well. This was demonstrated at the hearings in East London that are referred to as the Hankey cases. Commissioner Sandi announced that

[t]he Chairperson, Dr Boraine, has asked that we give respect to the people in front of us now. The same respect that we have given to Bantu Bonke Holomisa because here in this Commission, all the victims are the same. The pain that is felt by these women in front of us for their children, we are supposed to respect it. We therefore ask you when you want to leave this hall, please do so when the witnesses have left their seats. Let us please have respect for their contribution.<sup>45</sup>

The commissioners also noted that the victims had waited a long time to testify, both since the incident and because of long days of testimony. They were thanked for their patience and for their willingness to speak publicly.<sup>46</sup>

The pain each person had gone through was acknowledged as being unique to that person. In one case, a young man of 21 years testified that he was accused of throwing a grenade into a crowd of people, killing his friend and injuring others. He was physically and psychologically abused until he signed a confession that implicated two others in the attack. Commissioner Sooka concluded by saying

I want to thank you for coming here today, I know that it is not easy and none of us here in this room can judge you because all of us don't know what we would have done if we had been in your shoes. We know that the pressure upon you at the time by the police who were in charge of these matters, was very-very great and yes, the fear that you might end up like your comrade must have been very-very real for you. We are very grateful that you've come forward to give your evidence and we hope that through the evidence which you have given and Mr Smiles that we are

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<sup>45</sup> East London (Maziew Kate Mjijwa, Joyce Mamzangwa Landu, Baleka Maggie Sibengile, John Dan Bosman, Gladys Nodabephi Ndeleni, Buyisile Eric Swartboo, Nompumuluzo Lizzie Mjaju) – 22 May 1996

<sup>46</sup> Cape Town, Case CT/00133 (Robert Nana Maliti) – 05 August 1996; Durban (Trifini Jokweni) – 08 May 1996; Durban (Eunice Dlomo) – 10 May 1996

able to set in motion the freeing of two people who are innocent and who have already wasted two years of their lives in prison. In a way, four lives have been destroyed because all four of you have been carrying around guilt and fears of terror – your whole lives have been ruined and you are very-very young men indeed.<sup>47</sup>

In another hearing, comments are made preceding the testimony of one individual about testimony of another who was unable to attend the hearing because of health problems. This person's hand was severely injured by a mail bomb; however, it is not noted if his absence is related to this specific health problem. A commissioner acknowledged his mother's presence, assuring her that his statement will be recorded and considered equally with the others by the SATRC. His story was briefly summarized in his absence, and his mother was again thanked for coming.<sup>48</sup> This example shows that every statement and every testimony was deemed to be of equal importance and deserved to be heard and included in the official documentation of the SATRC.

### **Validation**

Similar to the practice of Recognizing One's Position, the practice of validating the perspectives of those who were testifying did occur. As it was defined in chapter 2, validation refers to the process of having perspectives recognized. There are numerous examples within the testimonies sampled in which the commissioners validated that the victims were wronged.

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<sup>47</sup> Cape Town, Case CT/00653 (Thembinkosi Steven Ngqele) – 11 June 1996

<sup>48</sup> Cape Town, Case CT/01507/KAR (Paolos Kopung) – 09 October 1996

Some validation came in the form of simple statements, like that offered to Mrs. Dlomo, “We thank you, Mrs Dlomo. We feel the pain with you.”<sup>49</sup> In other instances, validation was provided with more discussion, as was the case with Mrs. Mbatha.

Mrs. Mbatha testified at a Cape Town hearing about the circumstances around her son’s disappearance and the beating she suffered personally. The commissioner validated her pain and experiences by stating

Thank you mamma. We have no words to give you strength or to encourage you but let us hope that the Lord will strengthen you and encourage you. May the Lord bless you and be with you mamma in all your pain, your struggles, your trials. There are two things that bring so much pain in your story, that those who have hurt you did not even consider that you are a senior person. They did not even say here is an elderly lady even though we are beating other people up, perhaps this senior person we should not. This just goes to show that they did not see black people as people. They did not differentiate between mothers and elderly people. It was just black people and in the midst of all that your son still disappears.<sup>50</sup>

In Johannesburg, Mrs. Swaarbooi and Ms. Ramokgopa testified about the disappearance of their son and brother. At the conclusion of their testimonies, their desire to have a proper burial for their family members was validated.

We as the Commission, we have heard you and that fits in with the many other voices that in an African culture the question of burial rights should be a pre-requisite to any healing or reconciliation process. We promise you that you will be with us in formulating a policy which will address this important question of reburial where it is possible and also of assisting people to get clarity about their unknown deaths. We hope your appearance before this Commission is going to be the beginning of your healing.<sup>51</sup>

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<sup>49</sup> Durban (Eunice Dlomo) – 10 May 1996

<sup>50</sup> Cape Town, Case CT/00168 (Adelina Nobelungu Mbatha) – 03 October 1996

<sup>51</sup> Johannesburg (Puleng Swaarbooi and Daphney Ramokgopa) – Soweto, 23 July 1996

The difficulties that each victim experienced were recognized by the Committee as being important. One woman was assaulted during a demonstration at the university she was attending. In response to her desire for relief from her physical pain and request to continue education, the commissioner responded with empathy for her situation:

[Y]ou know, when you go to school and try to study in your first year and meet such problems you ask yourself, is this really a school? Well that is the situation we found ourselves in, because of the past laws. We want to say the problems that you had or that your problems that you still have as you mentioned, that your thighs are not equal and that you were shocked; we will try and see what shall we do to help you Gloria Sekamoeng, so that you can further your studies like anybody else.<sup>52</sup>

During the analysis of the transcripts, at no point was the veracity of the victim's statement doubted by members of the Committee. As was touched upon earlier in this chapter, further detail was sometimes asked for, but it was explained that this was because of the need to clarify and seek specific aspects for investigations.

### **Confession**

Defined in chapter 2, confession refers to admitting to one's role in committing harm. Victims were provided opportunity in their testimony and during questioning to state their own role in political activities, however, it never appeared accusatory if they were questioned. Some victims did not readily share this information whereas others did.

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<sup>52</sup> Johannesburg (Gloria Sekamoeng) – Mmabatho, 08 July 1996

There appeared to be no judgment from the committee if the victim did share his/her political agenda. In fact, in the case of Thandi Memela whose son was murdered, the commissioners commented to her that “it must feel very good to be able to stand here today and to be able to openly say, you know, ‘I was helping people to leave the country in order to fight for the liberation of our country.’”<sup>53</sup>

Individuals who did confess to their own activities did not describe their activities as wrongdoing, nor did the committee members suggest this. They were introduced merely as part of a story, as was the case of the political activist who stated that “I was involved in para-military groups, and the political objectives we wished to achieve - I don't think I at this stage want to elaborate on that. I would at a later stage elaborate more extensively on that in terms of indemnity or amnesty application..”<sup>54</sup>

The commissioner merely responded with a “Thanks” and the story proceeded.

Ms. Fana described the story of her son's death, explaining that “[t]he reason is that their gate at school was locked and so they went on strike for that. All the students were involved because they did not like this that the gate of school was locked.”<sup>55</sup>

His role as activist in the boycott was not justification for his death by officials.

In Johannesburg, Mrs. Mamotake Valentina Matselsetsele's son was a member of the PAC. This participation was relevant to her struggle to find details about his death

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<sup>53</sup> Durban, Case NN/002 (Thandi Memela) – 29 August 1996

<sup>54</sup> Durban, Case MR/146 (Leonard Veenendal) – 12 September 1996

<sup>55</sup> East London (Mantombi Gladys Fana) – Queenstown, 23 July 1996

because it was the PAC who was holding back the information she needed.<sup>56</sup> His involvement and role with the PAC was never questioned however, as it was not relevant for the victim hearings.

Mrs. Mahlangu testified in Johannesburg about the execution of her son following his trial for murder. He was convicted under the Sabotage Act with the charge that he trained in Angola as a guerilla and returned to the country with Russian-made weapons and a handgrenade. He and an accomplice killed two men at a warehouse. Though the evidence showed that it was his accomplice who fired the shots, her son Solomon was convicted and the shooter was declared unfit to stand trial. Attempts to appeal the decision on grounds that vital testimony had not been allowed as evidence were refused. As a tribute to her son, the ANC established a school to educate students who fled South Africa prior to finishing their education. This school was named the Solomon Mahlangu School in his memory. The testimony was not an investigation into his wrongdoings.<sup>57</sup>

In one instance, the victim testifying was offered the opportunity to speak to accusations that were made regarding her behaviour. Specifically, community members had implicated her in the selling of 'dagga'<sup>58</sup>, or drugs.

Mr Malan: And then, just again, and this is not an accusation, it is simply to be fair and open to you because you may not get an opportunity to come back. In one of the other statements there is again reference to these suspicions and one of the witnesses that may be giving evidence,

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<sup>56</sup> Johannesburg, Case 799 (Mamotake Valentina Maseletse) – Sebokeng, 07 August 1996

<sup>57</sup> Johannesburg, Case GO/0182 (Martha Yebona Mahlangu) – Johannesburg, 03 May 1996

<sup>58</sup> Dagga is slang for drugs, and specifically cannabis, in South Africa. It is a Dutch pronunciation of the Khoisan word, dachah.

testimony refers to you and says that you were, sort of suspected of peddling drugs, selling dagga. Were you ever involved and you do not have to answer it, but if you want to comment on this you are welcome to. It is not an accusation, but if it is said later and we did not give you the opportunity now to talk about, we would be unfair towards you.

Mrs Skhosana: ... today I want them to cleanse me and send police to my house to come and take out this dagga that they allege that I sell. I want them to go now and go and call the police, send them to my house to go and take out this dagga that they allege I sell because these people that allege that I sell dagga, those are the people that are supposedly, that must have taken the dagga to my house. That is why they can say that because I have got nothing more to say to them. I do not beg them for anything anymore. They are the ones that are embarrassing me and saying bad things about me so I am saying now that they must come, they must take the police and send them to my house today and take out this dagga that they allege I have at my place.

Mr Malan: Mrs Skhosana, thank you very much. I know it is difficult for you to respond to these, but again I want to say that we need to bear in mind that everyone is suspecting everyone and until we get to the bottom of the story, these suspicions will simply continue and we hope that bringing some of these accusations and suspicions into the open, will already start a process of getting to the bottom of the story, of understanding of each other and, hopefully also, to healing and reconciliation, but thank you from my part.<sup>59</sup>

Though the perpetrators were not present at these hearings, victims did speak to their desire to hear the perpetrators admit what they had done. Many said they just wanted to know the truth. The opportunity for this was at the amnesty hearings.

During the East London hearings, Nancy Xatula requested that the death of her son be investigated.

I am sure Mtamo received orders from somebody. I would like who ordered him to kill Leo. I would also like the reason and they should give us a valid reason. Why were they not prosecuted? I am also interested to know about our Government, this present Government. How could really

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<sup>59</sup> Johannesburg, Case JB00490 (Johanna Vilie Skhosana) – Pretoria, 14 August 1996



our Government, whom we respect very much, could really honour the perpetrators. It is very strange that the people who were Constables are now high ranking officials. Why cannot justice be done? We want those people to come and ask for forgiveness from us. These people were persecutors. They say they have repented. How could that happen? Who encouraged them to repent? We would like the Commission to make investigations about these promotions.<sup>60</sup>

Mrs. Xatula also wanted to know what happened to the bodies of the children who died alongside her son, Leo, because she felt that there were families out there who had no knowledge of the whereabouts of their children.

Requests like these were not uncommon in the transcripts and they will be discussed further in Chapter 6.

### **Participation of Family and Friends**

Many people brought family and friends and they were always recognized and thanked for their presence and support. This practice was defined in chapter 2 as the involvement of supports, including family, friends, community organizations and volunteer support groups. Some examples of this involvement have been provided throughout this chapter and a few more will be provided here.

Ezekiel Matsidiso Marais testified at a Durban hearing with his mother present, and she was welcomed with Mr. Marais<sup>61</sup>. Tokozile Dlamini, testifying at a Durban hearing, was also present with his mother and both were welcomed<sup>62</sup>. Mrs. Mahlangu brought her grandson with her to testify at a Johannesburg hearing. The

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<sup>60</sup> East London, Case EC0242/96 (Nancy Xatula) – Umtata, 20 June 1996

<sup>61</sup> Durban (Ezekiel Matsidiso Marais) – Bloemfontein, 04 July 1996

<sup>62</sup> Durban, Case KM/543 (Tokozile Dlamini) – Port Shepstone, 13 August 1996

commissioner welcomed her, stating that “I understand that your grandson is with you and we would like to welcome him very much as well.”<sup>63</sup> At the beginning of Mr. Haffajee’s testimony regarding his brother’s murder, Commissioner Boraine welcomed him, stating “Well, let me say how marvellous it is to have somebody next to you, and it’s not an easy time and as we’ve said before, to have a family member is very, very important for all witnesses.”<sup>64</sup>

Supports were not however allowed to speak unless they had also submitted a statement. Such was the case with Gloria Sekamoeng. She testified about the police assault on her while attending a demonstration at university. Ms. Sekamoeng described her physical injuries, being unable to speak or walk, stating she “was just like a baby. I couldn’t eat myself, I was fed. I was even taken to the toilet, because I couldn’t do anything on my own.” At this point in her testimony, Ms. Sekamoeng continued “I would request my mother to carry on, because I can’t carry on anymore. She might give a better explanation.” The commissioner replied “Gloria I would love for your mother to speak but I am afraid that we don’t have a statement from your mother so we have to stay with your statement. Is that ok?” She responded that it was ok, and it was clarified that if any further information was required, they could take a statement from her mother at a later stage.<sup>65</sup>

### **General Comments on the Hearings**

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<sup>63</sup> Johannesburg, Case GO/0182 (Martha Yebona Mahlangu) – Johannesburg, 03 May 1996

<sup>64</sup> Durban (Yusuf Haffajee) – Durban, 08 May 1996

<sup>65</sup> Johannesburg (Gloria Sekamoeng) – Mmabatho, 08 July 1996

After reading through the sample of transcripts, a number of comments are noted as general observations.

### *Secondary Injuries*

It was interesting to read that many people spoke of the physical ailments they suffered after a loved one was killed. Their physical suffering was understood to be directly related to the loss of their family member or friend.

### *Story-Telling*

In some statements there was confusion in the story-telling, particularly about timelines and who certain people were. It is of interest, however, that some narratives offered particularly vivid descriptions, highlighting for those listening the aspects of the situation that stood out and remain in their memory. For example, in the testimony of Mrs. Mdlankomo whose son was killed, she acknowledged her struggle to remember details. "Please, Truth Commission, you can please apologise, I do not know the proper sequence of this incidents, because I am mentally affected because of the harassment that I received. I may make some mistakes." She continued however, saying later that

I can state that we were harassed. I would just like to say that there was a day when it was a rainy day, they came with two big dogs, you could see that outside there were a lot of people, I think it was the police, they had heavy coats on. The two dogs were brought inside, they came and rushed into Ligwa's room. These dogs shook the water from their bodies."<sup>66</sup>

Clearly the details of the incident that rainy day were of importance to Mrs.

Mdlankomo and she was allowed time to speak about it.

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<sup>66</sup> East London (Thandiwe M Mdlankomo) – Port Elizabeth, 26 July 1996

### *Oral vs. Written Statements*

It is also important to note that although a lot of detail may be given at the hearings, a lot of information may not be stated because it is in the written statement that was recorded prior to the hearing. Victims were permitted to choose to speak of the things that they wanted to emphasize. Excluding some information does not necessarily mean that it is not important to that person, but perhaps it is not the primary issue for him/her at that time. The testimonies represent a snapshot of where people are at in terms of their recovery from the violence they suffered. The SATRC covers a great period of time and people recover from their wounds with unpredictability.

### *Translation Services*

There were some aspects in the transcripts which suggest not all victims were treated equal. For example, in some cases it appeared that the people testifying were not treated as gently as those who had testified prior.

While reading the testimony of Rose Denio Mashiya, the reader has the impression of experiencing an interrogation. Despite sensitive comments throughout, including encouragement to “[t]ake your time, Mama. We know that you are telling us about the painful story. It’s painful to many people”, Mrs. Mashiya was asked questions throughout the testimony.<sup>67</sup> This may be due to impatience on the part of the commissioner, or it may have been a necessity because the victim was having a difficult time giving her testimony.

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<sup>67</sup> Durban, Case FS/MP/01 (Rose Mashiya) – Welkom, 08 October 1996

Though warm welcomes and introductions were common at most hearings, some testimonies were lacking this feature. When Zixolisile Matthews Maseti began his testimony at an East London hearing, he was not welcomed. He was sworn in and questions began immediately.<sup>68</sup> The same occurred with Gloria Sekamoeng.<sup>69</sup>

In all of these instances, it is necessary to note that the translation services were not direct translation. It is possible that the translation to English missed some of the details that would otherwise indicate sensitivity to the victim. Additionally, when a tape needed to be changed, the testimony did not always stop as well. Introductions may have been missed when this was occurring. Furthermore, it is likely that each commissioner had his/her own manner in which to lead the discussion and this may account for some differences.

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In this chapter I reviewed a sample of transcripts from the victim hearings held throughout South Africa. It is demonstrated that the values presented in Chapter 2 and described in Chapter 4 were put into practice in the actual hearings, though Face-to-Face Interaction was limited to the victim and committee members. The interaction between victims and offenders has more applicability in the amnesty hearings, which is not being directly researched in this thesis. Chapter 6 will explore whether the SATRC was successful in achieving its desired outcomes.

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<sup>68</sup> East London (Zixolisile Matthews Maseti) – Vitenhage, 27 August 1996

<sup>69</sup> Johannesburg (Gloria Sekamoeng) – Mmabatha, 08 July 1996

## Chapter 6

### Outcomes

This chapter explores the victims' hearings and secondary literature to assess whether or not the outcomes that were identified in chapter 2 were achieved. These outcomes are victim satisfaction, dialogue creation, atonement, forgiveness, reconciliation, a sense of support from others, acts of contrition and no expression of a desire for revenge. These outcomes are difficult to generalize as each victim's experiences are unique to that person.

In the sample of testimonies analyzed from the Human Rights Violations hearings, only a few of the outcomes appear to have been achieved. This is not surprising, however, as the majority of the outcomes require time for their impact to be felt. Additionally, since they were immersed in the process of remembering, the victims were less likely to speak of outcomes at the hearing. Following the victims' hearings and the SATRC's completion, there has been some research into and much commentary upon the impact of the SATRC. As will be discussed below, it is argued that some outcomes have been successfully achieved, at least in part, while others have not. In addition, some desired outcomes have remained almost entirely unaddressed in the evaluative literature.

It should also be noted with respect to outcomes that there is some dissatisfaction with the restorative values espoused by the SATRC. This chapter concludes with a short section discussing these criticisms.

### **Victim Satisfaction**

Each individual victim came to the SATRC with his/her own agenda and desires (Wilson 2005) and his/her satisfaction, or lack thereof, may be expressed in his/her own way. Allen (1999:316) points out that it has not been clearly demonstrated that “truth commissions secure the benefits of healing, catharsis, disclosure of the truth, national reconciliation and so forth.” As such, he suggests that it is not possible to make general claims about the outcomes that may result for individuals who participate in a truth commission, including overall satisfaction (Allen 1999). Allen (1999), as well as Llewellyn and Howse (1999), suggest that if the individual perceives justice as an acknowledgement of his/her experiences that provides validation that s/he deserves to have the wrong righted, then victim satisfaction with the SATRC should be high, as it appears that the SATRC did provide such recognition and validation for the victims. However, as is discussed below, despite efforts to acknowledge victim suffering, there are examples of both victim satisfaction and dissatisfaction with the SATRC.

#### *Dissatisfaction*

For some participants, their involvement in the victims’ hearings did not bring closure. Some participants described feeling that their situation was worse, which

was the case for the family of Eustice 'Bimbo' Madikela, who was killed in a planned attack in which his friend Zando Musi survived.

We really did not want to know. There had been no communication with Zando until he came by with Reggie [Morobe]<sup>70</sup> and told his story. My mother died of heartbreak just before the TRC hearings. I attended the hearings with my father. We were the only two from our family. The hearings just made us feel worse. My father died just afterwards. He was always talking about his son, even in his sleep. (Wilson 2005:149)

Peter 'Ntshingo' Matabane died in the same attack. His sister agreed with the Madikela family.

I just want to forget about it, you know. I just want to get on with my life. I was very negative, I didn't think we could do anything about it, I didn't think we could have a court case. I am working in the day and studying for a degree at night. I want to be left alone but it keeps coming up again and again ... The only reason I went to the hearings was for Zando. (Wilson 2005:149)

The case of Thandi Shezi was presented in Bill Moyers' 1999 documentary, "Facing the Truth", and was further described by Dube (2002).<sup>71</sup> Ms. Shezi told no one about the sexual assaults she endured until she spoke at the victims' hearing. She concluded

[y]es, going to the TRC was a victory. It was a victory in that I found the courage to confront my rape. It gave me a platform to share my grief. It made me talk. Hopefully, I will heal in time. But going before the TRC also feels like I exposed myself to more abuse. It feels like I was abused all over again. With the TRC, it felt like all they wanted was my story. I

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<sup>70</sup> Reggie Morobe was a journalist who attempted to bring the participants together for a face-to-face meeting.

<sup>71</sup> Taken into custody and interrogated for information as to whereabouts of others members of the Umkhonto we Sizwe (MK), acid water was poured on Ms. Shezi and she suffered electrocution. After enduring this, Ms. Shezi was raped repeatedly by numerous security personnel. She said that she survived by putting her spirit out of her body in a corner of the cell, watching what they were doing to her body. "By doing this she could then imagine that it was not she herself but a stranger suffering this ignominy. With tears in her eyes, she told Moyers that she had not yet gone back to that room to fetch her soul and that it was still sitting in the corner where she had left it" (Tutu, 1997: 141). The first time she told her story was at the SATRC's victim hearing regarding her case.



felt used. There was no support system to help me heal. From the very day of my presentation, I cursed ever going before the TRC. Immediately after I told my story, I was crying hysterically, when my TRC debriefer came around, patted me on the back, and asked why I was crying. I was angry. Hurt. How could this woman say such a thing? She didn't think I had a right to cry? Up until then, I had not cried over my ordeal. I needed this moment to shed my tears. My colleagues ... were angry, and it took ... the Commissioner, to stop us from beating up the debriefer. (Dube 2002:128)

Some victims who attended the amnesty hearings were dissatisfied because of the way victims were treated by the perpetrators. Henry Yazir, for example, suffered a brutal interrogation by police officials. He described the treatment of victims by their abusers as constituting "a continuation of their torture" (Daye 2004:100). Mr. Yazir resolved not to participate in any more amnesty proceedings because "I realized that the amnesty process was hampering my own efforts to deal with the trauma of capture, detention and the obligation to watch a comrade and friend die in front of me as a result of the police opening fire with guns and hand grenades" (Daye 2004:100). In discussing the positives and negatives of both the SATRC and his personal testimony, Mr. Yazir (2000:166) observes that the SATRC "trivialized the lived experience of oppression and exploitation" and "too often played down the full extent of human suffering."

### *Partial Satisfaction*

Other participants described their involvement in the victims' hearing as a positive experience; however, the rest of the SATRC process was not. In trying to determine who was responsible for the murder of her son, Sicelo Dlomo, Mrs. Dlomo expressed her happiness after testifying at the victims' hearing (Pigou 2002). But over a year

passed and there was no further information. The SATRC was not keeping in touch with the victims or even providing general communication and this made things worse for the victims (Pigou 2002).

Duma Khumalo was wrongly sentenced to death for a murder he did not commit. His sentence was commuted and he was eventually released from prison; however, he wanted his name cleared. Mr. Khumalo met with the prosecutor of his case, a man who was now a judge. Although he expressed surprise at the man's humility, "[a]ll in all, the TRC was a dismal and disillusioning experience for Duma. It had no powers to order a retrial, and could neither remove the stigma of murder nor help him to support his family" (Mathosoba 2002:139). For Mr. Khumalo, satisfaction was not to be found in circumstances that were irreversible, such as the stigma of being convicted a murderer, or very difficult to change, such as being unable to support his family.

Pigou (2002) acknowledges that there are some who felt the SATRC provided adequate information. But, at times, this information

proved unacceptable to the victims themselves, who believed they had not been told the whole truth. They still did not know exactly what had happened. More importantly, they did not know why. For people like these, the TRC did not provide the balm its authors intended, but actually exacerbated their grief. (Pigou 2002:97)

It becomes clear that victim satisfaction with the SATRC process cannot be understood based solely upon the victims' hearings. For some, offers of amnesty were warranted because they encouraged the disclosure of truth and were a factor in

helping the country move forward from its past (Daye 2004). Others felt amnesty was reasonable for those who made a full disclosure and showed remorse, but not for those who showed no regret and disclosed as little as they could (Daye 2004). Then there were others who thought the entire amnesty process was flawed.

[They] were angry that they could not prosecute or sue those who had harmed them or taken loved ones from them. Yazir Henry, for one, felt that the amnesty hearings prolonged and intensified the pain of victims while giving offenders a gift of clemency – surely an unjust configuration. On the other hand, some victims did report that the revisiting of pain during amnesty hearings advanced their healing process. (Daye 2004:115)

Vora and Vora (2004) administered a questionnaire with a small sample of University students to assess how members of South Africa's population perceived the SATRC. The study included three ethnic groups and the responses were categorized according to Xhosa, Afrikaner and English respondents. The authors concluded that of the three groups, the Xhosa participants felt the SATRC was most successful. This conclusion was made because the Afrikaners expressed negativity towards the impact of the SATRC on South Africa's society, as well towards the legitimacy of the SATRC. The English respondents also negatively perceived the SATRC's effect on South African society, as well as on the effectiveness of the Commission in bringing about reconciliation. The Xhosa, on the other hand, saw the SATRC as relatively effective on both of these variables.

### *Satisfaction*

Some survivors did express their satisfaction with aspects of the SATRC process. In his book, Tutu (1997) quotes Beth Savage who suffered life-threatening injuries as an

innocent bystander in an attack at a golf club. Despite her trauma, she stated that, because of her participation in the SATRC, “I honestly feel richer. I think it’s been a really enriching experience for me and a growing curve, and I think it’s given me the ability to relate to other people who may be going through trauma” (Tutu 1997:146).

Goodman (1999:180) concluded that “[v]ictims by and large feel affirmed by the truth process.” He provided the example of Father Mike Lapsley who had told his story to audiences around the world. Father Lapsley said that telling the SATRC about the letter bomb that took his hands and one eye was different because

I felt that my own story was becoming a permanent part of the story of the people of South Africa. The fact that [the TRC] is an official commission set up by the state, and the way in which the commission acknowledged the truth about what happened to me in a dignified way had a lot of importance to me. (Goodman 1999:180)

Goodman (1999) then described a small gathering that met on the eleventh anniversary of the killing of the Gugulethu Seven. Cynthia Ngewu, a mother whose son was murdered in this event, said “I want to thank the Truth Commission because although it has opened up wounds, through that process we were able to know the truth ... Now we know the perpetrators. I am asking God to forgive those people” (Goodman 1999:181). In response, a black man in the crowd shouted, “Long live the TRC” (Goodman 1999:181)!

Daye (2004) observes that it is positive that victims did not have to undergo the critical scrutiny and cross examination that would be present in a trial. For this reason, the victims’ hearings likely facilitated a greater degree of victim satisfaction

than would have been experienced had South Africa proceeded with trials instead of amnesty and victims' hearings. However, it can also be argued that proceeding with trials would have resulted in some satisfaction for those who were opposed to the amnesty process. Of course, there is no way to adequately meet every person's agendas and desires.

The outcome of Victim Satisfaction is affiliated with numerous values. If a victim is not satisfied with one aspect of the process, then overall satisfaction will likely not be met. This is particularly the case if the victim is dissatisfied with an aspect s/he deems integral to the process. The individual cases provided above are examples of the range of emotions and demonstrate the degrees of satisfaction and dissatisfaction that victims had with the SATRC.

### **Dialogue Creation**

Creating dialogue refers to providing opportunities for all participants in the process to speak with one another. At the victim hearings, the victims were the only participants invited to speak; however, both victims and perpetrators were offered this opportunity at the amnesty hearings. It can be concluded that were participants open to the process, dialogue was created. The SATRC "had helped to create the space for words and not weapons" (Hunter-Gault 2000 quoted in Vora and Vora 2004).

Goodman (1999:178) concludes that the SATRC "has been far more successful than any other truth commission or tribunal at ferreting out the truth." The commissions

held in Argentina and Chile were secretive, only made the final report public, and no other commission has exposed the police and military as the SATRC has done (Goodman 1999). Hayner (in Goodman, 1999: 178) agrees that “the amount of information, the public transparency, and the details they are coming out with in South Africa is strikingly different ... Compared to truth commissions in Latin America, it’s like night and day.” It is noted, however, that the SATRC “has failed notably in extracting confessions from the top politicians responsible for administering apartheid” including former presidents F. W. de Klerk and P. W. Botha (Goodman 1999:179).

Verdoolaege (2003:1), in her study of a television representation of the SATRC, concludes that though there was some partiality and sensationalism in the program that was analyzed, “this television programme could be seen as one of the factors contributing to both the success of the TRC, and the reigning atmosphere of reconciliation in present day South Africa.” By expanding the dialogue from within the walls of the meeting rooms across the Nation, all citizens could experience and discuss the different hearings.

As is noted in the section on Victim Satisfaction, Mr. Henry identified faults and problems with the SATRC. However, he also acknowledges that “it provided a space for some people to speak, to reach out, to express their pain and to face themselves [and] ... the Nation” (Henry 2000:166).

Desmond Tutu (1997:274) acknowledges that reconciliation is a lengthy “process with ups and downs, not something accomplished overnight and certainly not by a commission, however effective. The Truth and Reconciliation Commission has only been able to a make a contribution.” For reconciliation to continue and develop, every citizen has to make it a priority (Tutu 1997). The SATRC's contribution was to create the space needed for people to start talking about the past. In this sense, dialogue creation appears to have been achieved.

### **Atonement**

Outcomes that may be deemed to comprise a nature of atonement may include acts or sentiments that are offered in response to a wrongdoing. The sample of testimonies analyzed as well as examples in the secondary literature support the view that acts of atonement were offered to victims, both by perpetrators and through recommendations made by the SATRC.

The establishment of the SATRC is an act of atonement from the government to the country. The widespread publicity ensured that “[n]o one in South Africa could ever again be able to say, ‘I did not know,’ and hope to be believed” (Tutu 1997:120). This acknowledgment on an international scale, including the establishment of a new constitution affirming the rights of all citizens, is much needed affirmation that those who suffered under apartheid's regime had been wronged.

In the course of this analysis it became clear that there is significant overlap between the outcomes of Atonement and Acts of Contrition. Therefore, Acts of Contrition will be discussed here to avoid the need to repeat points in both sections.

### **Acts of Contrition**

Acts of contrition may comprise any number of outcomes and as noted above, is closely connected to the section on Atonement. Acts of contrition are difficult outcomes to quantify. An act that may be expressed sincerely by the perpetrator may be considered to be of little (or no) value by the victim. This section will explore specific acts of contrition victims desired as well as criticisms of the efforts made to date, including knowing the truth and receiving monetary or symbolic forms of reparation.

### *Truth*

It was the observation of some that few people wanted punishment, but many wanted the truth (Goodman, 1999). Goodman (1999) interprets this to be the result of the history of the social position blacks have held in South Africa. They have never experienced justice in the way the privileged class (e.g., the white minority) has, and, as such, “[j]ustice is not an option for most black South Africans” (Goodman 1999:174). Their acceptance of this situation is one of pragmatism because ‘that is how it has been’ so it is best to adapt and have practical expectations.



The testimonies analyzed for this thesis reflect the view that numerous victims stated their sole or primary desire was to know the truth.<sup>72</sup> For some, they wanted to know how their relative died.<sup>73</sup> Others wanted details, such as where the relative was buried.<sup>74</sup> It was important for some to know who was responsible, either by ordering the murder, or carrying out the vicious assault.<sup>75</sup> Some victims stated it was important for them to know why they were targeted<sup>76</sup> and wanted to see the person who was responsible.<sup>77</sup> One woman wanted the truth to be known because she is still believed by many in her community to be responsible for the deaths of many children and she wanted to clear her name.<sup>78</sup>

Vora and Vora's 2004 study included qualitative responses, many of which spoke to the pain that often accompanies the truth. The TRC was seen as bringing “the hurt and anger back” and the acknowledgment that “[w]e all know that terrible things happened in the past, but why should we reopen old wounds and bring out anger” (Vora and Vora 2004:314)? One Xhosa respondent said that “[i]t only opens the scars that took years to heal, and in most cases, more undesired information is given that makes it more difficult for the victim’s family to grasp/forgive for that matter” (Vora and Vora 2004:315). It should be noted that these perspectives are offered not

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<sup>72</sup> Cape Town, Case CT/00168 (Adelina Nobelungu Mbatha) – 03 October 1996; Cape Town, Case CT/01507/KAR (Paolos Kopung) – 09 October 1996; Durban (Eunice Dlomo) – Durban, 10 May 1996

<sup>73</sup> East London, Case EC0016/96 (P. N. Sabatana) – 18 April 1996

<sup>74</sup> East London, Case EC0016/96 (P. N. Sabatana) – 18 April 1996

<sup>75</sup> East London (Maziew Kate Mjijwa, Joyce Mamzangwa Landu, Baleka Maggie Sibengile, John Dan Bosman, Gladys Nodabephi Ndeleni, Buyisile Eric Swartbooi, Nompumpuluzo Lizzie Mjacu) – 22 May 1996; Durban, Case NN/002 (Thandi Memela) – Durban, 29 August 1996; East London, Case EC0242/96 (Nancy Xatula) – Umtata, 20 June 1996

<sup>76</sup> East London (Bukiwe M Mpongoshe) – Port Elizabeth, 26 June 1996

<sup>77</sup> Johannesburg, Case JB00756 (Phillistus Lerutla) – Pretoria, 14 August 1996

<sup>78</sup> Johannesburg, Case JB00490 (Johanna Vilie Skhosana) – Pretoria, 14 August 1996

necessarily by people who took part in the process, but by University students who observed the proceedings in the media.

Stanley (2001:525) determines that the truth offered by the SATRC was “partial [and] the usefulness of acknowledged truth ... is shown to have been neutralized by wider concerns of social and criminal justice.” Though she perceives the SATRC to have benefited the victims in some ways, Stanley (2001:525) concludes that “[t]he truth offered by the Commission increasingly appears of limited value” particularly when compared to the crime, violence and land issues that remain outstanding problems across South Africa. Knowing the truth may be beneficial for some, but whether or not it can contribute to the resolution of these issues is unclear.

Despite the pain that most assuredly was present throughout the hearings, South Africans “know more about their past than ever before ... [the SATRC] succeeded in extracting the truth about most of the major political assassinations and massacres of the apartheid era” (Goodman 1999:172). It was Goodman's (1999:173) experience that though some families opposed the amnesty process<sup>79</sup>, the “vast majority of black South Africans with whom I have spoken about the TRC supports the truth and amnesty process.” The mother of Christopher Piet, an activist who was killed, told Goodman (1999:173) that “[t] is better to know who killed my son ... They can get the amnesty, but they mustn't go to jail. They must support the children and families

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<sup>79</sup> The Biko, Hani and Mxenge families are among the best known examples. The case of Yusuf Haffajee [Durban, 08 May 1996] was one example from the sample of testimonies that specifically spoke regarding the victims' opposition to the amnesty process. Mr. Haffajee specifically stated that his family was tempted to proceed as the Biko, Hani and Mxenge families and not take part in the SATRC process but decided against it.

of the victims.” Though these people “seemed impossibly charitable ...their sentiments were consistent with what I had heard at numerous other hearings” (Goodman 1999:173).

Gobodo-Madikizela (2002:16) clarifies that “[k]nowing the truth does not imply any promise of forgiveness on the part of the victim. But it clears the way for the victim to ‘go on’ with her or his life.” This step may be the first one on the victim’s path to healing. Forgiveness itself may never come, but “[k]nowing the truth allows conversations with oneself that were previously inaccessible” (Gobodo-Madikizela 2002:16).

### *Psychological*

The number of statements submitted to the Human Rights Violations Committee was unexpected and became overwhelming. Though it is acknowledged that the SATRC was not anticipating this degree of response, Minow (1998) rightly indicates that the SATRC should have provided a great deal more psychological assistance during and following the hearings. Daye (2004:48) speaks to the "psychological validation" that no doubt came with knowing the truth. However, this validation does not negate the repercussions of the trauma and suffering victims endured, sometimes over decades. Suffering victimization and dehumanization through torture and not knowing what happened to family members takes a psychological toll on those who endure it. The SATRC needed greater resources to properly meet the needs of those involved.

### *Monetary and Symbolic Reparations*

Further to requests for truth, many victims in the sample studied for this thesis expressed desire for financial aid,<sup>80</sup> often stating they could not afford to put their children through school.<sup>81</sup> One woman wanted a sports centre to be erected in her husband's name as recognition for his sacrifice and to provide something positive for the community;<sup>82</sup> in another case, a man requested that his brother's death to be honoured by naming a street after him.<sup>83</sup> One victim stated she wanted the perpetrators to ask for forgiveness, and also wanted the SATRC to investigate the deaths of other bodies she saw at the morgue when she identified her own relative.<sup>84</sup> One woman was caring for many children in her home when she was attacked; the children died. She wanted the perpetrators to compensate her for her burned home.<sup>85</sup> One man wanted an artificial eye,<sup>86</sup> in another case, a coffin.<sup>87</sup> There was also a request for the corpse of the family member to be returned to them so a traditional burial could be provided.<sup>88</sup> In one case, the respondent said that she did not know what she wanted.<sup>89</sup>

The Committee on Reparation and Rehabilitation made recommendations to the South African government in regards to compensation to victims; however, some,

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<sup>80</sup> Johannesburg (Andries B Kgobadi) – Mmabatho, 08 July 1996; Johannesburg, Case 00546 (Mathibela Molpopo Johannes) – Pietersburg, 19 July 1996

<sup>81</sup> Durban (Eunice Dlomo) – Durban, 10 May 1996; East London (Bukiwe M Mpongoshe) – Port Elizabeth, 26 June 1996; East London (Bisho Massacre, Remonica Myeha) – Bisho, 09 September 1996; Johannesburg (Johannes Dube) – Soweto, 23 July 1996

<sup>82</sup> East London (Bisho Massacre, Remonica Myeha) – Bisho, 09 September 1996

<sup>83</sup> Johannesburg, Case JB01023 (Godfrey Sengathedi Makola) – Pretoria, 14 August 1996

<sup>84</sup> East London, Case EC0242/96 (Nancy Xatula) – Umtata, 20 June 1996

<sup>85</sup> Johannesburg, Case JB00490 (Johanna Vilie Skhosana) – Pretoria, 14 August 1996

<sup>86</sup> Durban (Malefu Miriam Phole) – Bloemfontein, 04 July 1996

<sup>87</sup> Durban (Trifina Jokweni) – Durban 08 May 1996

<sup>88</sup> Johannesburg (Puleng Swaarbooi and Daphney Ramokgopa) – Soweto, 23 July 1996

<sup>89</sup> Johannesburg, Case GO/0182 (Martha Yebona Mahlangu) – Johannesburg, 03 May 1996

including Tutu (1997), have expressed displeasure and disappointment with the government follow-up to this report (Hayner 2002; Rassool, Witz and Minkley 2001). Amnesty International/Human Rights Watch (2003) published their concerns that included the lack of monetary reparations to victims and lack of follow-up in prosecuting those who did not receive amnesty for their offences. Additionally, there has been a “virtual lack of action in implementing proposals for symbolic reparation” (Rassool, Witz and Minkely 2001:118). Urgent interim reparations have been described as “tokenistic”, yet they too have undergone long delays before being granted to the victims (Stanley 2001:538).

In reviewing the financial obligations the reparations are to provide, “the government has already claimed that there are inadequate funds to cover payment costs” (Stanley 2001). In light of the fact that perpetrators were granted immediate amnesty, that victims have had to wait so long for meager financial acknowledgement appears flawed. As a result, survivors are feeling doubly victimized and some have raised the possibility that they may use legal mechanisms to seek redress (Sooka 2000 in Stanley 2001). Daye (2004:111) shares one man’s story who says that he “laments the failure of the government to pay out the reparations recommended by the Committee on Reparations and Rehabilitation.”

In 2003, Volume Six of the SATRC Final Report was released with an update on the progress the government had made regarding reparations to victims. The Reparation and Rehabilitation Committee (RRC) concludes that

[t]he purpose of these chapters is to re-emphasise the urgency and importance of the recommendations for reparation and rehabilitation. This section also focuses on the work undertaken by the RRC since 29 October 1998. At that time, the RRC had processed seventy applications and sent them to the President's Fund. As of 30 November 2001, when the RRC closed down, a total of 17 016 forms for UIR [urgent interim reparation] grants had been submitted to the President's Fund, of which some 16 855 payments had been made, totalling R50 million. The processing of forms and data in respect of UIR has formed the bulk of the RRC's work since October 1998. (SATRC Final Report vol. 6:93)

The government began to respond to criticisms it was taking too long to follow through on recommended reparations. The delay in response is notable however.

Goodman (1999:180-1) notes that the ANC government has suggested to companies who benefited from the apartheid regime to "give something back to the community" voluntarily, and perhaps cynically, concludes that "the poor will continue to bear the brunt of their past exploitation." This sentiment is also expressed by those who took part in the process who have stated feeling "disheartened by the lack of remorse and willingness to offer restitution on the part of whites, both those who participated in the TRC hearings and the community at large" (Daye 2004:111).

Though monetary or symbolic reparation is seen by many to be important to the healing process for the victim, an act of contrition, particularly in the form of reparation, does not mean that the issue never needs to be discussed again. Providing some form of amends, particularly a token financial gesture, does not negate the event's occurrence (Daye 2004. "As statements of actual value, they trivialize the harms" (Minow in Daye 2004:141) by implying that a debt has now been paid, and

the situation is therefore resolved. This is clearly not the case, however, and victims will continue to require psychological assistance to recover from their experiences after the financial reparations have been paid.

### **Forgiveness**

The outcome of forgiveness is considered by some to be the measuring stick with which to assess the success of the SATRC. Although there is value in forgiving those who have caused harm, this outcome alone cannot be used to determine the success of a restorative encounter because to do so places the onus of restoration on the victim (Minow 1998). Stories are shared below to provide examples of forgiveness, as well as of refusals to do so. But first, a word of caution: forgiveness may not be measurable during or closely following the SATRC's conclusion because this step may take a lifetime to make.

#### *Able to Forgive*

Gobodo-Madikizela (2002) acknowledges that though few perpetrators apologized, “the rendering of apologetic remarks, offered directly to families who had lost loved ones, laid the groundwork for the TRC hearings to engender something even more important than reams of testimony: It opened the door to the possibility of forgiveness.” As a commissioner at the victims' hearings, Dr. Gobodo-Madikizela (2002:11) describes the appearance of some victims who “seemed to be looking for reasons to forgive and how desperate some perpetrators were for forgiveness.”

The victim testimony of Robert Nana Maliti was analyzed for this thesis. Mr. Maliti was tortured by security police, and he wanted to offer his forgiveness to his perpetrators. When asked by a commissioner how he would feel if those officers remained in their positions with the police, he responded “[t]here is nothing - I would be happy if they would come back to me and we shake hands.”<sup>90</sup>

Amy Biehl was a white University student who was working in opposition to the system of apartheid in South Africa. She was beaten to death by a mob of young black men. The Biehl family has symbolized forgiveness and reconciliation. They established the Amy Biehl Foundation, in part, to develop prisoner rehabilitation programs. They supported the amnesty applications made by her killers, shaking their hands and saying “[t]he most important vehicle of reconciliation is open and honest dialogue...we are here to reconcile a human life which was taken without an opportunity for dialogue. When we are finished with this process we must move forward with linked arms.”<sup>91</sup>

The story of Beth Savage was touched on in the section on Victim Satisfaction. In regards to amnesty for her perpetrator, Ms. Savage said

It’s not important to me, but, and I’ve said this to many people, what I would really, really like, I would like to meet that man that threw that grenade in an attitude of forgiveness and hope that he could forgive me too for whatever reason. But I would very much like to meet him. (Tutu 1997:146-7)

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<sup>90</sup> Cape Town, Case CT/00133 (Robert Nana Maliti) – 05 August 1996

<sup>91</sup> [http://www.myhero.com/myhero/hero.asp?hero=a\\_biehl](http://www.myhero.com/myhero/hero.asp?hero=a_biehl) February 19, 2008.



Archbishop Tutu (1997) also shared the story of Babalwa, whose father Sicelo Mhlauli, was tortured before being killed. After supporting her mother through the victims' hearing, Babalwa quietly said “[w]e do want to forgive but we don't know whom to forgive” (Tutu 1997:149).

Hennie Smit is a white man whose eight-year-old son was killed in an explosion set by MK members in retaliation for raids on ANC bases (Edelstein 2002). Prior to the SATRC, one of the perpetrators of this attack was executed under court order. Mr. Smit went to the home of that offender to comfort his family (Edelstein 2002). Though his community criticized him heavily for this act of empathy and forgiveness, and he subsequently became an outcast, he states he does not regret his position of forgiveness (Edelstein 2002).

Two widows from the Craddock Four forgave Eugene de Kock, the head of the National Party's covert operations and commander of death squads. They explained why to Gobogo-Madikizela (2002:17) following their meeting with de Kock:

I was profoundly touched by him, especially when he said he wished he could bring our husbands back. I didn't even look at him when he was speaking to us. I don't think I looked at him, at least I don't remember looking at him in that room. Yet I felt the genuineness in his apology. I couldn't control my tears. I could hear him, but I was overwhelmed by emotion, and I was just nodding, as a way of saying yes, I forgive you. I hope that when he sees our tears, he knows that they are not only tears for our husbands, but tears for him as well.... I would like to hold him by the hands, and show him that there is a future, and that he can still change.

*Cannot Forgive*

It is necessary to acknowledge those who felt they could not forgive. This was the case for Johannes Bona, who was shot and beaten. He stated at his victims' hearing that "I feel I can never reconcile with a white man."<sup>92</sup>

In the same manner, Daye (2004) tells the story of a woman whose son was killed and husband died of heart problems that she believed were brought on by the son's death. One of the perpetrators involved in her son's murder came to her seeking forgiveness and "[s]he has refused, saying she carried a powerful hate for him" (Daye 2004:132-3).

Following the release of the SATRC Report in 1998, Wilson bought a copy and with Zindisile, a survivor he had become friends with, searched to find out who had applied for amnesty in his friend's case. The author pointed out that

[a]ccording to law, he should have been informed in writing by the TRC that amnesty applications had been made in his case, but the TRC had not fulfilled this obligation. Zandisile's immediate response was to say, 'Those people did not apply for amnesty for reconciliation, only because they knew what would happen. They would be prosecuted.' Then he asked me who I thought he should sue; the individuals who had applied for amnesty or the ministry of Safety and Security as the institution held criminally responsible. Legal retribution, not reconciliation, was uppermost in his mind. (Wilson 2005:150)

Wilson (2005:149) concluded that "[p]articipation in the TRC hearings had not, in this case, led to victims forgiving perpetrators and forsaking revenge."

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<sup>92</sup> Cape Town, Case CT/00580 (Johannes Bona) – Beaufort West, 13 August 1996

Television journalist Reggie Morobe spoke with victims who took part in the SATRC process for the South African Broadcasting Corporation's television program 'Newslines' in 1996. He asked the sisters of a victim who died if they wanted to meet the perpetrator of their brother's death, Ephraim. One sister responded that "[i]t is still unbelievable for me that he died. I am still angry. If I see Ephraim, then I would have to kill him. I hate that person" (Wilson, 2005:150). Morobe asked her how long she would carry that anger and her response was "[u]ntil justice is done. There is no death sentence now, but he should be given a life sentence. But I would prefer a death sentence" (Wilson, 2005:150). Another sister added "if you bring Ephraim in front of me, then I will kill him with my own hands. I won't forgive him. I am prepared to carry this burden with my hands" (Wilson, 2005:150).

Despite the lack of satisfaction with the reparation process, Minow (1998) offers a caution for those expecting acts of contrition or apology prior to offering forgiveness. "Making contrition a precondition for pardon simply increases the likelihood that contrition will be feigned" (Minow 1998:19). One cannot mandate an apology, and the SATRC merely provided the opportunity for victims and perpetrators to meet. Their expressions of apology or forgiveness were their own.

### **Reconciliation**

Goodman (1999:180) shares a conversation he had with Desmond Tutu in which the Archbishop "is backpedaling" on whether reconciliation will follow the exposure of so much truth. Archbishop Tutu reminds Goodman (1999:180) that the legislation

that created the SATRC is “called the *Promotion* of National Unity and Reconciliation [Act]. It doesn’t say their *achievement*. ... We as a commission can do only so much.”<sup>93</sup> This restatement of the limitations of the SATRC is an important reminder. Commissioner Mary Burton also points out that it is difficult to expect people to reconcile “when they are still as poor and disadvantaged as they’ve been in the past” (Goodman 1999:180). Despite these cautions, there are examples within the literature where victims and perpetrators have reconciled or expressed their desire to reconcile. Some examples have already been presented within this chapter and a couple of cases will be briefly discussed, as well as a discussion regarding the reasonable expectations of reconciliation.

Neville Clarence was blinded in an Air Force bombing. He shook hands with Aboobkaer Ismail who had planned the attack. Mr. Ismail said at his amnesty hearing “I believe we are becoming closer to each other, he has been to my home, had a meal together and not so long ago, we were looking at the possibility ... of actually planting a tree of reconciliation” (Stanley 2001:542). Stanley (2001:542) opines that such reconciliation has rarely happened through the SATRC, suggesting that “[m]any ‘perpetrators’ have failed to demonstrate any remorse for their actions.”

Goodman (1999) writes about a few individual examples that demonstrate the desire for reconciliation from the black community and the lack of remorse expressed by the white community. He states that

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<sup>93</sup> Emphasis in original.

while the truth process has not reduced South African whites to beating their breasts in remorse, it has made a crucial dent: implicit in their personal disavowals is an acknowledgment that apartheid happened and there were abuses. When I compare this to the total denial and ignorance that I heard from whites in the 1980s and early 1990s, I realize that, like water on a stone, the daily reports from the TRC have brought about a palpable shift in white attitudes. There is now a rough consensus about what happened in South Africa. This acknowledgement is critical. Without it, any hope of reconciliation would be dashed entirely. (Goodman 1999:177)

Similarly, at the commencement of the SATRC process, Afrikaners were surprised and concerned with the level of atrocities committed (Stanley 2001). However, they “gradually became inured and presently increasingly defensive and embittered about the TRC process” (Stanley 2001:541). Stanley (2001) concludes that this group has not developed a reconciliatory attitude, a perspective that is shared by Vora and Vora’s 2004 study. This study indicates that Afrikaner, Xhosa and English respondents to a survey had low mean scores on their perception of the legitimacy of the SATRC (Vora and Vora 2004). The authors conclude that the SATRC was “perceived to have been much less successful in bringing about reconciliation than in bringing out the truth” and it had a “social and judicial focus” but “did not have psychological and personal focus, which might have facilitated reconciliation” (Vora and Vora 2004:318).

In a Cape Town hearing, Elsie Gishi testified about the murder of her husband, Jackson Gishi. In response to what she hoped to get from the SATRC, Ms. Gishi emphasized her family’s financial and psychological needs. “I really am requesting

you. I am not satisfied. Even Samson got his eyes gouged out. These people's eyes must be gouged out.”<sup>94</sup>

It cannot be concluded that the SATRC resulted in reconciliation between all victims and their perpetrators. It can however be concluded that there were examples of reconciliation throughout the SATRC process. It can also be concluded that the process of reconciliation is a lengthy one that has been given a reasonable foothold in South Africa among its citizens and the path to reconciliation continues to this day.

### **Sense of Support from Others**

The support that victims felt from those around them could have included family at the hearings, friends at home, and SATRC staff. Examples are presented in which people felt they were supported, as well as an example of a victim who did not feel supported by the SATRC staff.

In exploring how to work with trauma victims, an important and first task is to establish safety and foster healing relationships (Daye 2004).

It cannot be said that the TRC provided lasting aid to survivors of traumatic violation in this regard. Nor did it attempt to. The commission had neither the mandate nor the resources to alter the life circumstances or the relationship web of the thousands of victims who made themselves known. Counseling services were provided to victims who testified in HRV hearings, but these services were not long term. It is possible that counselor facilitated access to longer-term services for some victims, but there was and is a dearth of such services for South Africa's poor. (Daye 2004:133)

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<sup>94</sup> Cape Town, CT/00624 (Elsie Gishi) – Heideveld, 25 April 1996

Daye acknowledges the limitations of providing services to victims testifying at Human Rights Violations hearings. Support in this manner may have come from debriefers<sup>95</sup> and the commissioners themselves who facilitated the questioning. Daye (2004:134) rightly states that “[i]t can be said that most of the testimony-givers who were asked to describe horrible events were given space to express the grief that accompanied their memories, and were given succor and empathy at the time of their testimony.” However, as was discussed in the section on Victim Satisfaction, Thandi Shezi did not feel supported by her debriefer during her victim hearing; in fact, she described a scenario in which she and her colleagues required physical intervention to prevent assaulting the debriefer (Dube 2002). It did appear however that she believed she had the support of her colleagues, who were with her through her testimony.

Noqgili Vuyelwa Lumphondwana testified at an East London victims’ hearing regarding the disappearance and murder of her husband. Following her testimony, she expressed the difficulties she has endured in trying to find the truth and have her husband’s case opened for investigation. She concluded a desire “to thank all the people who supported me during my painful experiences. Thank you very much.”<sup>96</sup> In this case, she expressed having received support generally throughout the process.

The publicity of the hearings was deemed by observers to be one of the SATRC’s strengths (SATRC Final Report vol. 1; Tutu 1997; Verdooage 2003; Ross 2003).

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<sup>95</sup> Debriefers were staff with training in mental health care. They were utilized to ensure victims received support as needed, and efforts were made to provide counselling services following testifying, though this was recognized by the TRC as having been inadequate (TRC Report, 1998, ch 6, par 34).

<sup>96</sup> East London, EC0061/96 (Noqgili Vuyelwa Lumphondwana) – Umtata, 18 June 1996

This public acknowledgment is said to restore dignity to victims and gives perpetrators the opportunity to come to terms with their pasts (SATRC Final Report vol. 1). The public arena offered by the SATRC also provided individuals across South Africa, and indeed, in the international community, an opportunity to witness and support victims.

During the victim hearings, the Human Rights Violations Committee members provided victims with support through their testimonies both in their manner of questioning and also by the acceptance of support members present during the testimony. Providing the country with a continual reminder of the hearings and their intent emphasized both the SATRC's importance to the nation and as well as its legitimacy. This acknowledgment provided victims a sense of support that their claims and feelings about the past are valid and deserve to be recognized. Although one example was provided in which a victim felt the debriefer assigned to her was not supportive, she was supported by her colleagues who were present. It can be concluded that the SATRC did provide social support to those who participated in the process.

### **Expressing No Desire for Revenge**

Revenge is often expressed in terms of 'an eye for an eye' in the retributive understanding of justice. Though there are cases in which victims wanted revenge, and some have been presented within this chapter, many participants in the victims' hearings said that they did not want this kind of justice.



The mothers at the Gugulethu 7 hearings did not want revenge in the form of the perpetrators going to jail. They wanted a practical justice through which the perpetrators of their son's deaths would be returned to their communities to take care of their families. This responsibility was seen to be of a greater value than leaving more children fatherless.

Though there is disagreement about the impact the SATRC has made to national reconciliation, Verdoolaege (2003:17) observes that "there seems to be a remarkable lack of vengeance and hatred among the South African population."

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To summarize, the SATRC was successful in achieving some of the desired outcome but not all. Moreover, some outcomes were only partially achieved.

Victim satisfaction was one outcome with varied responses. It can be concluded that though some victims were satisfied, there remained many who were not satisfied with aspects of the SATRC process. Atonement and Acts of Contrition are two outcomes the SATRC made efforts to achieve; however, the task of the SATRC was merely to provide recommendations to the South African government. Ultimately, it is the government who failed to provide adequate measures of atonement and acts of contrition.

By providing space for victims and offenders to come together and speak freely, Dialogue was created by the SATRC. Additionally, it appears that the SATRC provided victims with a Sense of Support from Others, both at the victims' hearings and through the publicity of the SATRC.

Forgiveness and Expressions of No Desire for Revenge were offered by some of the victims who testified, as were offers to Reconcile. However, these were not the common experiences, and there remain many victims of gross violations of human rights in South Africa who participated in the SATRC who were unwilling or felt unable to express either feeling. It is noted, however, that by facilitating the dialogue between victims and perpetrators and providing support for victims, the opportunity for reconciliation was initiated. This journey, which may lead to forgiveness, might be a lifelong one, but needs to begin somewhere. The South African Truth and Reconciliation Commission may be recognized as the start of the journey.

## Chapter Seven

### Conclusions

The South African Truth and Reconciliation Commission was a key part of a compromise negotiated by political groups attempting to build a bridge from the country's apartheid-driven past into a democratically-governed future. The mandate of the SATRC was to investigate gross violations of human rights that occurred in the latter half of the twentieth century, provide victims with a venue to speak publicly about the abuses they suffered, offer perpetrators the opportunity to fully disclose their accounts in exchange for amnesty for their offences, and recommend reparations for victims of such offences. The premise for the SATRC was founded in restorative justice theory, promoting the healing of individuals, as well as the country, from the history of politically-motivated violence that has been connected to apartheid.

In this thesis, I reviewed the primary documents upon which the SATRC was established to assess if RJ values were part of its foundation. I then read a sample of transcripts from the Human Rights Violations Committee, also referred to as victims' hearings, and conducted a discourse analysis to evaluate whether or not the SATRC employed RJ practices. Following this, I concluded by reviewing secondary literature on the SATRC as well as the sample of transcripts, to consider whether or not the SATRC produced RJ outcomes.

This thesis concludes that all seven values identified as central to a restorative justice encounter were part of the SATRC's foundation. These values are healing, democracy, acknowledgement, apology, forgiveness, social support and making amends.

Eight practices were identified as stemming from these values. Evidence of all practices was found in the sample of victims' hearings that was researched for this thesis. These practices are empowering participants, taking turns speaking, uncoerced dialogue, face-to-face interaction, recognition of one's position, validation, confession and participation of family and friends. This research highlights the limitations of some practices in the hearings, specifically face-to-face interaction which was limited to the victims and the members of the committee, and participation of family and friends. Supporters were able to assist the victim directly throughout the hearing; however, a support member could not speak to the committee unless s/he had previously provided to statement to the SATRC. Though there were examples in the transcripts that suggested the commissioners placed time constraints on the testimony and used subtle redirection to keep victims on topic, it appeared to the researcher that these constraints were placed only when time was a factor and the victim required some guidance. It must be acknowledged that the sterile nature of the transcripts likely affected the reader's interpretation. Overall, however, the evidence suggests that RJ practices were implemented in the hearings.

The seven RJ outcomes that were examined in the literature are victim satisfaction, dialogue creation, atonement, acts of contrition, forgiveness, reconciliation, sense of support from others and expressing no desire for revenge. There is some variability in the degree to which each outcome has or has not been achieved. Some participants expressed satisfaction with the process whereas some participants were very dissatisfied. Atonement and acts of contrition were discussed together and included the expectation and demands by victims that the truth be provided and that they receive psychological assistance during and following the proceedings, as well as monetary and symbolic reparations. Some victims expressed a desire for some of these forms of reparation; however, the secondary literature notes the lack of adequate reparative measures provided by the government to implement the recommendations of the SATRC. In some cases, victims offered forgiveness to their perpetrators though there were many cases in which forgiveness was not offered. Additionally, reconciliation and the expression of a lack of desire for revenge are outcomes that were evident in the transcripts and in the literature. Although there were instances of reconciliation between the perpetrator and the victim as well as victims stating they felt no more ill will towards their perpetrators, these did not appear to be the majority of the cases; rather, they were rare instances. Two outcomes did appear to be clearly achieved in the SATRC. Dialogue was created, offering safe venues for victims to speak about the acts perpetrated against them. Secondly, and with only one exception noted, victims were offered support throughout the victims' hearings from their personal supports, such as family and friends, members of the committee and support staff.

There is a lack of direct evidence to support the claim that RJ outcomes were achieved; however, it must be acknowledged that the majority of these outcomes are unlikely to be attained quickly. Each individual will achieve his/her satisfaction, reconciliation, or forgiveness when s/he is ready (and in some cases this might not ever happen). This is a process that cannot be given a rigid timeline. The SATRC provided a starting point for its citizens to work towards reconciliation and as was demonstrated in this thesis, RJ values and practices were indeed put in place. The goal of achieving RJ outcomes requires further work, however.

The SATRC has many features of RJ, however, it must be considered if these features are to the advantage of the SATRC or not. Some theorists have speculated as to whether or not applying a restorative justice theory to reconciliation efforts on a national level is appropriate. The discussion that follows provides a brief overview of some of these perspectives in South Africa's situation specifically, including Van der Merwe, Acorn and Mamdani. In contrast, Hayner provides an overview of Truth Commissions that have been implemented throughout African and South America. She concludes that relative to the other commissions, the SATRC had many positive aspects.

#### *Criticisms of applying restorative justice theory to the SATRC specifically*

Van der Merwe (forthcoming) offers criticisms of the application of RJ in the SATRC, suggesting that it may be viewed as "cheap reconciliation" and as

“compromising survivors’ needs for the sake of a reconciled society”. He notes that RJ theory requires that accountability be extended to include the wrongdoer making a contribution to the restoration of the well-being of their victims, but this is not a requirement to receive amnesty under the SATRC framework.<sup>97</sup>

Acorn (2004) discusses the optimism present throughout South Africa following the end of apartheid. This sense of possibility no doubt played a role in the “willingness to go along with the vision of justice offered by the Truth and Reconciliation Commission” (Acorn, 2004:17). This may be supported by van der Merwe’s (forthcoming) research of the SATRC transcripts, in which he states that the survivor’s race may have something to do with conceptions of justice, hinting at the potential for some cultures (e.g, black SA culture) to be more open/receptive to RJ. If a culture is more receptive to a restorative justice framework, it is more likely that there will be an effort at establishing ‘right relations’ when a wrong has occurred. Acorn (2004:17) suggests that the support for the SATRC was inspired, at least in part, by the anticipation of “justice that was sunny and forward-looking. Apartheid had been a long and shameful yesterday, and to focus national energy on punishing its past might destroy the possibility of the brilliant tomorrow just beyond the horizon.” This idealism, of a future “freed of the yoke of apartheid” in which culture could prosper and individual opportunity was unlimited, created “emotional pulls that render us susceptible to optimistic fantasy and aspiration” (Acorn 2004:17-8).

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<sup>97</sup> SATRC Final Report Vol 1, p. 13 points out that the SATRC did not require this done as a condition to be granted freedom.

In reality, success in any restorative encounter is highly dependent on the “character and resources of the offender” (Acorn 2004:18). The SATRC demanded that victims have faith that the perpetrators of acts against them are not only “capable of taking responsibility for their actions and making meaningful amends” but they are motivated to do so (Acorn 2004:18).

Mamdani (2001) is critical of the SATRC on a number of respects, some of which were discussed in more detail in the literature review. For example, he notes the SATRC’s failure to deal with crimes that were legal under apartheid (Mamdani, 2001). He writes, “[p]erhaps the greatest moral compromise the TRC made was to embrace the legal fetishism of apartheid. In doing so, it made little distinction between what is legal and what is legitimate, between law and right” (Mamadani 2001:60). This compromise resulted in the Commission ignoring what was distinctive about apartheid, the discriminatory practices that were built into law. In doing so, Mamdani (2001) argues that the SATRC denied the opportunity for a discussion of how to reconcile the beneficiaries of apartheid and its victims. Beneficiaries responded with outrage at the violations that occurred, but refused to take responsibility for them; victims responded in anger that their position was not respected and forgiveness not asked for (Mamdani 2001). They demanded the very thing the SATRC attempted to avert: demands for justice (Mamdani 2001).

Despite these limitations, Hayner's (2002) research demonstrates that the SATRC was an improvement on many previous truth commissions. In her research, Hayner



(2002) compared truth commissions that have been implemented in Africa and South America, reviewing 21 commissions across a number of variables. She concludes that the SATRC had numerous strengths, including its large budget, which exceeded \$35 million, a large staff of over 200, and the relatively long time period during which to conduct the hearings and produce its findings (2-3 years) (Hayner 2002:335). The SATRC, however, also extended its investigation to cover over 30 years of gross violations of human rights, which was comparable to only Guatemala and Nigeria's truth commissions (Hayner 2002). South Africa was described as having broad powers of investigation and a strong mandate, comparable only to the powers accorded in Sierra Leone's TRC (Hayner 2002). Hayner (2002:336) describes the SATRC's powers of reporting as "Strong", citing only the TRCs implemented in El Salvador and Sierra Leone as having greater strength. She clarifies this power to extend to the naming of perpetrators and making mandatory recommendations (Hayner, 2002). South Africa also limited its breadth of investigation, excluding some abuses, but was still seen as having a broad scope, though Commissions in El Salvador, Chad, Guatemala and Nigeria had broader investigative mandates (Hayner 2002).

Hayner's comparison suggests that if the decision is made to implement a truth commission, the SATRC is a good model to follow though there are areas upon which to improve. Some weaknesses were discussed earlier in this section, and include the criticism that it focussed solely on acts of gross violation of human rights and in doing so, appeared to accept apartheid as a legal policy. However, these

criticisms do not negate the strengths of the SATRC and should be considered against the goals and needs of the process. Even with the specific focus on gross human rights violations and the acceptance of South Africa's history of apartheid as an historical fact, the SATRC was a monumental undertaking. Indeed it is arguable that these limitations were necessary. Without them, it is possible that the necessary compromises from the parties involved in establishing and implementing the SATRC would not have been reached. Even with this restricted focus, the mandate of the SATRC was immense and in fact exceeded the expectations of those who were part of its development.

### **Future Research**

This thesis provides an examination of restorative values, practices and outcomes within the SATRC. Future research into this area is necessary. It would be of value to select specific cases to follow through from the victims' hearings to the amnesty hearings. This would provide a better understanding of the victim's frame of mind throughout the process, as well as provide some insight into the healing process and what role the SATRC process might have played in that process. It was often in the amnesty hearings, which were not examined in this research, that both the victim and perpetrator spoke directly to one another, therefore, this forum would provide more insight into the victim's frame of mind and the questions s/he has for the perpetrator. This type of longitudinal research would also provide qualitative insight into how a victim proceeds through the SATRC. Future research should also involve interviews with these victims and perpetrators to discuss their frame of mind now that the

hearings have been formally concluded. Follow up research would be of great value, for instance at one, five and/or ten year periods after the hearings.

It would also be of benefit for the researcher to view or listen to these hearings if they were available on video or audio. In this research, I was limited to samples of selected video provided in Bill Moyers' documentary, 'Facing the Truth'. Though it was only a small sample of the emotion experienced at the hearings, it was a necessary experience that offered me perspective on the emotion that is often lost in transcripts. As an example, when a victim needed a break during testimony, or was emotional for a period of time, there is no way of knowing this from the transcripts unless the commissioner or victim spoke to this.

As was discussed in chapter six, one victim reported that she required physical intervention by the commissioner facilitating her hearing to restrain her from assaulting her debriefer. This emotion might not have come across in the transcripts. The tone of voice, facial expressions and physical responses are only some of the emotions that cannot be appreciated with transcripts alone.

Other limitations that became apparent in conducting this research include the biases that are inherent when being an outsider observing a different culture. In this research, I approached the discourse analysis as a middle-class Caucasian woman from a medium-sized city living in a northern climate in a first world society, and I approached the transcripts with limited conception of South African society. This

includes having a limited appreciation for the racial tensions that existed pre and post 1994 and a view of South African society that has been formed primarily through the media, such as Hollywood and the news. This restricted my understanding of how communities in South Africa function, including cultural and societal aspects such as reliance on neighbours and community, transportation difficulties and what the real needs of its citizens are. Despite these limitations, discourse analysis remains valid because the themes in the transcripts are evident, regardless of my cultural perspective. Though a more in-depth knowledge of South African culture would enhance an analysis, it is not necessary for a valid analysis.

In the same vein, it was difficult to grasp what were the needs of the people testifying. Without experiencing the quality of life they experience, it is difficult to fully appreciate how desperate and dire the requests for compensation are.

### **Implications of Research**

This research has implications for reconciliation efforts that are attempted on a large, or national, scale. It provides perspective as to realistic expectations, both of perpetrators and victims. It provides direction for how to offer support and assistance for those in attendance, particularly for the victims. Specifically, the SATRC was highly respected for the publicity it was provided through all forms of media in the country. This made the SATRC's presence and intentions known to its citizens. Further, accommodations were made to allow people to participate using the language in which they were most comfortable. Additionally, psychological assistance was

important; however, efforts should have been made to provide further assistance following the hearings, particularly for victims living in rural areas.

The Canadian government has announced its intention to establish a Truth and Reconciliation Commission in response to the Residential School legacy. The Indian Residential School Truth and Reconciliation Commission's (IRSTRC) mandate is to acknowledge the harms and injustices some Aboriginal people experienced in residential schools and work towards a healthier future with "new relationships embedded in mutual recognition and respect. The truth of our common experiences will help set our spirits free and pave the way to reconciliation" (Government of Canada 2002:). The SATRC experience could be a resource for the development and implementation of the IRSTRC as it nears its commencement.

Just as South Africa developed a truth commission that reflected its specific cultural and historical needs, the Canadian Government should also seek to build a truth commission that meets specific needs. This includes the challenge of resolving Canada's colonial past and the abuses that followed.

### **Conclusion**

As a contribution to the literature on the SATRC, this thesis has succeeded in achieving its goal and has provided some direction for future research. Perhaps most importantly, however, it highlights that individuals who have experienced victimization will interpret their experiences in a manner that is uniquely theirs (Borer

2004). Attempts to address that victimization must take this individualization into account. The SATRC was successful in acknowledging the individual experience during the victims' hearings. Literature that followed the SATRC, however, uses individual experiences to emphasize the extremes including victims who were extremely satisfied and willing to reconcile, or victims who expressed their continued hate and desire for vengeance. Analysis of this literature must recognize that both extremes exist, as do many people who fit along the spectrum. Furthermore, it is important to acknowledge that where one person may perceive an attempt at reconciliation or reparation as inadequate, a second person may be completely satisfied under the same circumstances. A third person may be indifferent to the entire process. Such qualitative experiences require investments of time and emotional energy and this thesis has only offered a glimpse into the range of experiences. Despite the criticisms that have been levelled against the SATRC, it is concluded that the SATRC benefited from the RJ approach, particularly in the contribution RJ provides to understanding the individual victim's experience.

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