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## Accountability and National Reconciliation in South Africa

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In the early 1990s, a peaceful transition in South Africa was by no means an inevitable outcome. There was a very real risk that the country would stumble down the path of bloody and prolonged conflict, as has been the experience of so many nations struggling to overcome internal divisions. With the eyes of the world on this country ... the people of South Africa initiated the Truth and Reconciliation Commission, eschewing revenge and violence in favor of truth and forgiveness and, ultimately, the reconstruction of our country. As a result, South Africa today stands as a model of merciful justice; of what can be achieved when enemies choose dialogue over violence.

—Archbishop Desmond Tutu, TRC chairperson (2007: 6–7)

Beyond highlighting the status of the South African Truth and Reconciliation Commission (TRC) as a global model of transitional justice, the excerpt above points to the difficult context in which the commission was established and the compromises and heroic discourse that enabled the country’s ‘transition moment’ to occur. An attempt to look deeper into the “merciful justice” arrived at in South Africa, this article examines the TRC’s approach to accountability and reconciliation—both central to the commission’s goals and the field of transitional justice—in addressing the violations of the apartheid era. It also examines the commission’s impact in terms of accountability and reconciliation during its lifetime and, importantly, since it closed its doors more than a decade ago.

Launched in response to a negotiated settlement and amid diverse understandings of truth, justice and reconciliation, the TRC charted a middle course between Nuremberg-style prosecutions and the ‘blanket amnesties’ granted in a number of transitional contexts. The stalemate between the apartheid government and liberation movements, as well as international pressure culminating in sanctions that appeared to exacerbate the country’s economic woes, demonstrated the need for

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political transition, but the influence and significant resources of the regime's security forces posed the risk that the transition could be stalled, undermined or entirely derailed.

With the apartheid government and its military and police calling for a blanket amnesty, "supported by some in the international community, local media and business circles" (De Lange 2000: 22), the debate over the degree of impunity acceptable to all parties resulted in the last-minute addition of a postscript to the 1993 interim constitution that provided for amnesty in general terms while stating that "the pursuit of national unity, the well being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society."

This compromise, a constitutional requirement that obliged the government to provide amnesty but also to advance reconciliation, gave rise to a novel form of truth commission based on conditionality. As mandated by the Promotion of National Unity and Reconciliation Act of 1995, the TRC would grant amnesty to perpetrators, regardless of their political affiliation, in exchange for full disclosure regarding the crimes in their applications, which they had to prove were politically motivated and 'proportional' to their objectives. The gamble was that perpetrators faced with the 'carrot' of amnesty in return for disclosure and the 'stick' of likely prosecution would choose the amnesty application.<sup>1</sup> At the same time, the commission would offer victims the opportunity to talk about and put on record what happened to them. The TRC consisted of the Amnesty Committee, the Human Rights Violations Committee and the Reparation and Rehabilitation Committee, assisted by an investigation unit and a research unit.

Although it did not define reconciliation clearly and had an implicit approach to accountability, the TRC's understanding was that eliciting the 'truth' of apartheid-era violations would give rise to accountability along with reconciliation, both individual and collective. As discussed in detail below, the TRC aimed to ensure individual accountability through the disclosure of perpetrators' crimes and identities, along with the public shaming and promise of apology this entails, as well as eventual prosecutions of perpetrators who did not apply for amnesty, based on evidence gathered during the proceedings. Collective accountability would rest largely on building a sense of responsibility in the South African public for the systemic political and socioeconomic violations of apartheid. This would be linked to the TRC's work of drawing a "bright line" between past and present by underlining the apartheid state's accountability for these violations and the responsibility of the democratic government to address their legacies (Daly 2008: 39).

The TRC's reconciliation agenda, meanwhile, hinged on victim participation. It appears that victims were meant to embody individual reconciliation as well as to model collective reconciliation, while also helping to create an authoritative record that would counter the denialism of apartheid and prompt self-reflection and attitude change in the South African public. A significant aspect of this approach was also drawing the "bright line" after the apartheid regime and promoting nation building after transition. It drew on the interim constitution's exhortation 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 victimisation."

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<sup>1</sup> The 'stick' was given some weight by a few trials of apartheid officials that occurred during the TRC's proceedings, particularly the successful prosecution of police colonel and death squad commander Eugene de Kock (Simpson 2002: 228).

It is important to note that in addition to the compromise on amnesty, the negotiated settlement included a 'sunset clause' that guaranteed the jobs of the apartheid regime's civil service, including the security forces, for five years after transition. The TRC was therefore instituted to address accountability and reconciliation in the liminal space between the settlement and the anticipated transformation of the civil service and deepening of institutional reform begun with the interim constitution. In addition to its other aims, the commission was a way of keeping the discourse and operationalisation of post-transition justice and social transformation out of the hands of state structures that might have sought to undermine the process and the legitimacy of the new government (see De Lange 2000; Simpson 2002).

The expectation was that a new generation of civil servants, along with a more representative executive, legislature and, importantly, judiciary, would build on the work of the TRC using the principles enshrined in the progressive 1996 constitution and assisted by a set of new independent 'state institutions supporting constitutional democracy'<sup>2</sup> as well as by civil society. An exploration of the extent of accountability and reconciliation arrived at to date in South Africa thus calls for a look not only at the impact of the TRC but also at the role played by state and other structures after 1994. This article suggests that accountability and reconciliation have been limited, although the responsibility for this may lie more with choices made after the TRC was established than with the commission's work itself.

While all the forms and degrees of accountability and reconciliation cannot be captured here, particularly given the vast literature on the South African transition, this article is an attempt to engage with some of the points that appear particularly relevant in public and scholarly discourse on the topics. The following sections examine the degree to which the assumptions that drove the TRC's accountability strategy have held up in the nearly twenty years since the transition, followed by a similar look at its reconciliation agenda.

### **The TRC's Accountability Agenda**

Accountability can be broadly grouped into its restorative forms, which focus on addressing the needs of victims and communities with the aim of repairing harms done and reconstructing social relations, and its retributive forms, which prioritise punishing perpetrators and reducing impunity. While the term was not foregrounded in the TRC's discourse to the extent that 'reconciliation' was, the TRC, like many truth commissions, aimed to advance restorative and retributive accountability on the individual, collective and state levels.

Individual accountability lay largely in the truth telling and public shaming attendant to the conditional amnesty (Simpson 2002). By disclosing their crimes, applicants revealed their identities and the details of their acts to the public, as well as how their individual actions contributed to a broader pattern of violations committed by the security forces and liberation movements. Through disclosure, individuals identified themselves as perpetrators, in theory exposing themselves to

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<sup>2</sup> Known as the Chapter 9 institutions according to their place in the 1996 constitution, these are the Public Protector, the Auditor-General, the Electoral Commission, the Human Rights Commission, the Commission for Gender Equality and the Commission for the Protection of the Rights of Cultural, Religious and Linguistic Communities.

rejection not only from broader society but also from groups that previously might have supported their actions through not knowing the extent of the crimes or justifying them in the absence (or silencing) of an alternative narrative. Finally, while the TRC did not require that amnesty applicants apologise for their crimes or seek forgiveness from victims, this was an implicit aim, based on the notion that apology communicates an acceptance of responsibility and is a form of symbolic reparation that gives closure and promotes healing (Saunders 2011).

Another, more classically retributive, aspect of the TRC's individual accountability agenda was the work of its investigation unit, which was charged with proactively investigating individual human rights violations in addition to reactively investigating the claims of victims and amnesty applicants. These investigations, along with the work of the research unit and findings of the committees, were used not only in the writing of the commission's final report but also in the gathering of evidence for eventual prosecutions—the 'stick' meant to push perpetrators towards testifying before the commission (Newham 1995). In addition, the TRC had the powers of subpoena and search and seizure. Although trial and punishment were not central goals of the commission itself, the TRC was laying the groundwork for post-transition state institutions to meet this agenda.

In relation to collective accountability, the TRC's aims were largely implicit. The commission interpreted its mandate narrowly, focusing chiefly on individual participation in systematic violations of civil and political rights linked to bodily integrity. Its most overt efforts at promoting collective accountability were the two- to three-day institutional hearings held to explore the depth of collaboration with the apartheid regime of institutions or groups as diverse as business and labour, the legal profession, the health sector, the media, religious communities, political parties, prisons and the armed forces. Still, these hearings were part of a broader effort to identify the historical and structural underpinnings of apartheid and ways in which broader South African society, particularly white people, participated in and contributed to systemic abuses, as discussed to some extent in the final report. The TRC's various public hearings, widely attended by media outlets, were intended to promote public engagement with the commission and participants' revelations (Chapman 2008).

Finally, the TRC's aim of highlighting the accountability of the apartheid state was apparent throughout the process and manifest in the final report's strong condemnation of the former regime and its systemic violations in and beyond South Africa. As noted above, the TRC process served to draw a "bright line" between the past and the present, "demonstrating the sins of the previous regime so that a new government can occupy the moral high ground" that also grants it legitimacy (Daly 2008: 39). This bright line, along with constitutional and institutional reform and the Chapter 9 institutions, communicated the intention that the new government would not engage in the abuses and impunity that characterised the past.

The TRC also underlined state accountability through its recommendations for reparations to victims, which obligation by law rests with the new government. This acknowledgement of victims' suffering pointed to both collective and state accountability, particularly as part of the government budget, funded by taxpayers, would be dedicated to paying for symbolic and material reparations. Since those granted amnesty were given indemnity from not only criminal prosecutions but also civil claims, reparations were also to be given in lieu of damages that might have been paid by perpetrators to victims in the event of successful civil suits. South Africa did not undergo formal vetting and lustration, a process aimed at taking individuals who collaborated with the former

regime out of positions of power, particularly in government (thus bridging individual and state accountability), relying instead on the eventual reform of the civil service and other institutions.

### **Accountability in South Africa to Date**

Laid out in this way, the TRC's accountability agenda appears to have rested heavily on an anticipated transformation of state and society that would come with the democratic dispensation. The commission's own attempts to ensure accountability lay largely in public shaming on the one hand and awareness raising, or 'conscientisation,' on the other, through truth recovery and acknowledgement of past violations and their legacies. The TRC stressed the restorative aspects of the process over the retributive, although the latter was present in the proceedings, as well as symbolic gestures based on shame, recognition, apology, forgiveness. Although the impact of this approach is difficult to quantify, a look at the degree of individual, collective and state accountability achieved to date in South Africa, taking into account the effects of the TRC and the intended follow-up of the state and other entities, suggests that it has been fairly limited.

### **Individual Accountability**

In terms of individual accountability, the TRC received 7,116 applications for amnesty, but the Amnesty Committee did not consider the large majority of these applications because they did not meet its admissibility criteria for various reasons. Of those considered by the committee, 362 applicants were denied amnesty, while 1,167 were granted full amnesty and 145 were granted amnesty for some but not all acts. While the amnesty hearings elicited hours of testimony and new information, the number of applicants heard publicly and thus exposed to public shaming was small compared to the number of violations that occurred over the time span covered by the TRC (1960 to 1994), a fact highlighted by the much larger number of submissions from victims—over 22,000—and the near lack of overlap between these submissions and the amnesty applications (Sarkin-Hughes 2004).

Furthermore, fewer than 300 of the individuals whose applications were considered by the committee were members of the apartheid security forces and nearly all of these were low- or mid-ranking functionaries (Van der Merwe and Chapman 2008). This means that a mere handful of high-level actors in the apartheid regime participated in the TRC process and its accountability agenda. Most decided that testifying before the commission would be riskier than undergoing a trial, with its greater protections for the accused, and gambled that prosecutions would simply not occur in the majority of cases (Sarkin-Hughes 2004). Those who did apply have complained about the way the TRC portrayed their motivations and actions or their superiors did not provide adequate support, but those who were granted amnesty seem to have suffered from personal indignation more than from public shaming or rejection by their communities (see Van der Merwe and Lamb 2009).

As regards individual apologies, a number of amnesty applicants requested to meet with victims or their families, either to acknowledge victims' suffering or explicitly to apologise for their crimes. While these efforts are important, it has become clear that victims were largely ambivalent about such attempts during the TRC proceedings (Simpson 2002). In some instances, offers of apology turned out to be last-minute attempts to stave off prosecution, as in the cases of apartheid-era Police Colonel Gideon Nieuwoudt and former Minister of Law and Order Adriaan Vlok, neither of

whom was prepared to take responsibility for violations, despite their overtures (Saunders 2011: 128–129).

Since the closing of the TRC, occasional meetings have occurred between individual perpetrators and victims, such as that in 2009 between Stefaans Coetzee, imprisoned for his role in the bombing of a busy shopping mall on Christmas Eve in 1996, and one of the victims, Olga Mazingwane, which has since become a heady story of acceptance of responsibility and reconciliation that is heavily drawn on by government officials (see Correctional Services 2013, but also Worcester Hope and Reconciliation Process 2012).

While the threat of prosecutions was used by the TRC, few trials dealing with apartheid-era violations have occurred and even fewer have been successful. The TRC gave several hundred files to the National Prosecuting Authority (NPA) with evidence it perceived to be substantial enough to warrant further investigation and trial (Sarkin-Hughes 2004; Van der Merwe and Chapman 2008). After establishing a Priority Crimes Litigation Unit in 2003 to prosecute high-level crimes, including those addressed by the TRC, the NPA in 2005 announced a new strategy that gave it full discretion to grant offenders immunity from prosecution, which could have amounted to a *de facto* amnesty process. This policy was challenged in court in 2007 and eventually ruled to be unconstitutional. Even without this official policy, the NPA has chosen to pursue only a handful of apartheid-related prosecutions since the end of the TRC.

In addition, in 2002, then President Thabo Mbeki pardoned 33 individuals imprisoned for allegedly political reasons, the majority of whom had been denied amnesty by the TRC. In 2007, Mbeki initiated a ‘special dispensation’ process that allowed individuals who had not approached the TRC but were imprisoned for politically motivated crimes committed before 1999 to apply for pardon. This *de facto* amnesty was challenged by a coalition of South African civil society organisations, including the national victims’ association, Khulumani Support Group, on the basis that it was not transparent and violated victims’ right to participate in the process—a claim upheld by the Constitutional Court in 2010. Despite the ruling and significant opposition, current President Jacob Zuma has made moves to continue with the pardons process (Khulumani 2012). It is worth noting that Stefaans Coetzee is one of the 149 applicants in this process, and one of only a few who have received support from some of the victims of their crimes.

The government’s willingness to consider granting pardons for apartheid-era crimes behind closed doors combined with the NPA’s reluctance to bring cases to trial—which may be motivated by the political sensitivity of selecting cases as much as dearth of evidence—indicates that the TRC’s confidence in the post-transition state’s willingness to fulfil the commission’s accountability agenda (and promise to victims) was misplaced.

### ***Collective Accountability***

Moving on to collective accountability, it is clear that a large number of South Africans consistently tuned in to the TRC via radio broadcasts of the hearings as well as news updates and Sunday summaries of the proceedings on television, with the audience numbering in the tens of thousands

(McEachern 2002).<sup>3</sup> While the TRC managed to reach a large and diverse audience, a look at attitudes measured around the time of the TRC suggests that the majority of South Africans viewed the crimes disclosed largely in individual terms, as opposed to systemic or collective ones, and that the process may not have significantly changed attitudes of one race group towards another through engagement and awareness raising.

Although the TRC, with its restorative agenda and public hearings, was geared towards demonstrating how the apartheid system worked and was supported in various ways by South African society, its narrow focus on gross human rights violations led to the widespread conception that the abuses were the work of individual ‘bad apples’ (Mamdani 2000). It has also been suggested that white South Africans perceived themselves to be under threat with the TRC’s revelations, coming as they did after the negotiated settlement and its promises of forgiveness and the ‘rainbow nation’ (Van der Merwe and Chapman 2008: 262). As noted by a researcher in a 1998 article,

Most of the ‘ordinary’ South African whites I have spoken to in malls and shopping centers, in tea rooms and in public gardens, in office buildings and in hospitals, in private homes and large farm estates ... worry about “witch-hunting, scapegoating, and persecution.” Indeed, it seems that a great many white people in South Africa still fail to get the point behind the TRC. (Scheper-Hughes 1998)

A survey from the same year returned the finding that 54 percent of white respondents thought the TRC failed to promote peace and reconciliation (in Van der Merwe and Chapman 2008: 260).

This all suggests an active interest in the TRC mixed with defensiveness, a shrinking away from collective accountability, particularly on the part of the main beneficiaries of apartheid—white South Africans. This appeared to be the case with the TRC’s institutional hearings, as well, some of which had a significant number of participants from different groups and institutions while others, such as the legal profession and business and labour hearings, had major participation gaps. While some took on individual and collective responsibility, the majority was “more inclined to be defensive and to seek to justify their roles” (Chapman 2008: 178), despite assurances that the hearings would not be used to establish individual responsibility.

Albeit with exceptions, resistance to collective accountability appears to have continued, if not strengthened, in the years since the TRC. Debates concerning white South Africans’ awareness of and acceptance of responsibility for the benefits they accrued through apartheid (and colonialism) at the expense of the vast majority of their compatriots have remained intense in public discourse. An example is Archbishop Tutu’s statement in 2011 that he hoped white South Africans would themselves “agitate” for a small “wealth tax” given the privileges granted them by apartheid, a proposal initially put forward by the TRC in its final report and rejected by government. Tutu’s statement drew many public responses, mainly ranging from ambivalence to accusations of racism

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<sup>3</sup> For extensive footage from the television broadcasts and additional information on the TRC and the media, see the South African History Archive’s and South African Broadcasting Corporation’s website “Truth Commission Special Report,” <http://sabctrc.saha.org.za/home.htm>.

(SAPA 2011). Regarding these exchanges, a 2011 report on a countrywide survey of attitudes on reconciliation noted,

The subtext of this debate was one in which acknowledgement, shared responsibility and culpability, and redress for the broad and lasting social and economic consequences of apartheid were treated as completely unpalatable, and this sentiment was captured well by a participant in a qualitative focus group on reconciliation conducted earlier this year: “Reconciliation according to my understanding is that media put white people there to apologise.” / “For being white.” / “To say sorry for the years of apartheid and I am sick and tired of that shit, sorry for that.” (Lefko-Everett et al. 2011: 9–10)

Such attitudes regarding collective accountability and their relationship to reconciliation will be discussed further below.

### ***State Accountability***

The TRC stressed the general need for the South African state to be held accountable for its policies and actions, although it concentrated in particular on the accountability of the apartheid state in planning and condoning gross human rights violations as well as larger structural oppression. As noted above, however, its focus on individual accountability during the proceedings created the narrative of a few ‘bad apples’ committing the violations, with research findings in 2001 indicating that “43 percent of whites and 41 percent of Africans believed that ‘Abuses of apartheid were due to evil individuals, not state institutions themselves.’ And only 28 percent and 35 percent, respectively, thought this was false” (cited in Van der Merwe and Chapman 2008: 267).

In addition to the TRC’s focus on individual violations, this perspective may have to do with the egalitarian approach of the commission regarding the responsibility of perpetrators from the apartheid regime and liberation movements, as well as the comparatively small number and low rank of applicants aligned with the regime. It may also have to do with the overrepresentation of white victims at the victims’ hearings.

The findings above are somewhat difficult to align with more recent public discourse regarding the apartheid state, the dominant tone of which is condemnation. A 2012 survey report, for example, indicates that 83.8 percent of South Africans agree that apartheid was a crime against humanity (as declared by the United Nations in 1973) and 81.1 percent agree that the “apartheid government wrongly oppressed the majority of South Africans.” The same report notes, however, that South Africans between 16 and 24 years old, particularly white South Africans, are more likely to disagree with these statements than adults (Lefko-Everett 2012: 37), which brings into question the extent to which the TRC and post-transition efforts by government and other institutions to underline the apartheid state’s accountability have succeeded.

A question may be whether this is linked to the extent that a “bright line” indeed exists between the apartheid state and the post-transition democratic state. As encapsulated in Nelson Mandela’s inaugural address on May 9, 1994, in which he stated, “Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another,” the new government came to power with the promise that it would break with the abuses and impunity of the past.

In recent years, the state has been accused of “creeping authoritarianism,” mainly based on arguments that the police is increasingly being used to quell dissent—particularly in light of the 2011 killing of protestor Andries Tatane by police (and their subsequent acquittal), the massacre of striking miners at Marikana in 2012 (and subsequent revelations that the police has hidden evidence from the commission established to investigate the killings) and the police killing of a 17-year-old girl during a housing protest in Durban in 2013—as well as that the government has become less transparent, with the advent of the Protection of State Information Bill and the state’s reluctance to reveal various information to the public (see Smith 2012; Patel 2013; Pillay 2012). In addition to debates regarding state accountability for recent alleged violations of civil and political rights, an ongoing public discussion regarding the state’s role in perpetuating the widespread socioeconomic marginalisation of apartheid has become increasingly polemical, as will be discussed below.

Besides questions regarding the democratic state’s broader accountability to citizens, questions have been raised concerning the state’s commitment to the TRC’s accountability agenda since the commission’s closing. These particularly concern the state’s attitude towards its obligation to provide reparations to victims, the most overt ongoing expression of state accountability. After an absence of in-depth discussion on how reparations would look during the drafting of the National Unity and Reconciliation Act and later dismissive comments by officials regarding “opportunists” seeking reparations for participating in the struggle against apartheid, the democratic government paid out reparations to victims who had registered with the TRC as part of a programme that followed only a fraction of the commission’s recommendations on reparations (Makhalemele 2004; Colvin 2006).

Khulumani, with its allies in the South African Coalition for Transitional Justice, has been advocating for individual reparations more in line with the TRC’s recommendations that would also benefit a larger group of victims—as many did not have the opportunity to register with the TRC—in addition to provisions for collective reparations, specifically with the more than R1 billion (about US\$100 million) remaining in the President’s Fund earmarked for reparations. The government has been unresponsive to these efforts, indeed recently signalling that it would instead spend some, if not all, of the funds on infrastructure improvements in selected municipalities, without appropriate consultation with victims (Khulumani 2013). The degree of the state’s disregard is somewhat baffling, particularly given the TRC’s focus on victims as well as the compromise on perpetrator accountability that victims were required to make by the commission and the new government in order to facilitate the negotiated transition. After all, Chairman Tutu noted in a 1997 television interview,

If the security forces had thought that they were going to be up for the high jump we would not have had a negotiated settlement, that is the price that had to be paid, and yes, the victims and survivors are probably asked a second time and to be willing—if this high price had not been paid this country would have gone up in flames. (Quoted in Hamber and Wilson 2002: 17)

Perhaps the state’s post-TRC lack of interest in victims (in essence a ‘third time’ for victims?) should not be so surprising, however. A 2012 book of “conversations in transition” on “past and contemporary realities facing South Africans” with major figures in the liberation struggle, the transition and current political life, published so “that readers will gain a slightly deeper insight into

the matrix of identities, forces, fears and hopes that underpin the South African story” (Villa-Vicencio and Soko 2012: 9), makes a bare handful of references to either victims or reparations. The contributions and stories of the individuals interviewed for the book are meaningful; still, there is no escaping the question of how apartheid-era victims, so central to the TRC’s accountability and reconciliation agendas, could be at the forefront of the minds of state officials and the general public today if they are hardly acknowledged in such narratives.

These reflections on accountability towards victims may be a good point at which to explore aspects of the TRC’s reconciliation agenda, and how these have held up in the years since the political transition.

### **The TRC’s Reconciliation Agenda**

Although it underpinned the TRC’s work, reconciliation was not clearly defined by the commission, just as it was not defined in the interim constitution or in the Promotion of National Unity and Reconciliation Act. It has been noted that the commission’s early aspirations to being “the embodiment of reconciliation between race groups and historical enemies” by the end of the process were toned down to serving as a base for ongoing reconciliation efforts by state and society (Van der Merwe and Chapman 2008: 254). Although the commissioners were vague on their aims and had diverse ideas regarding how to go about reconciling South Africans, the TRC pursued its mandate of advancing individual and collective reconciliation.

The TRC’s notion of individual reconciliation rested heavily on victim participation. The commission suggested that by telling their stories through private testimony and public hearings, hearing the truth from perpetrators, receiving public acknowledgement of their suffering and obtaining symbolic and material reparations from the state, victims of apartheid-era violations would receive a degree of closure regarding their trauma and loss, which would enable them to begin the process of healing (Boraine 2000; Hamber and Wilson 2002). In addition to asserting that “revealing is healing” (a slogan displayed at its hearings), the TRC, particularly Chairperson Tutu but also other commissioners, focused strongly on forgiveness, suggesting that it is part of as well as necessary to *ubuntu* and reconciliation (Saunders 2011).

It seems that the individual forgiveness of victims at the TRC, particularly those considered ‘representative’ enough to participate in the public hearings, was meant to serve as the symbolic forgiveness of the vast majority of South Africans subjected to decades (building on centuries) of systemic political and socioeconomic violations, as well as symbolic gestures of goodwill by the newly embattled and fearful beneficiaries of apartheid. Individual reconciliation was thereby intimately linked with national reconciliation, particularly among race groups—a “merciful justice” (Tutu 2007: 7) that would allow the divided society to ‘move on,’ together.

The collective reconciliation intended by the TRC was based on the notion that by generating an authoritative record of the past, official truth-telling mechanisms shift responsibility for past crimes from an identity group to individual perpetrators, create a common public memory that impedes divisive rhetoric on past events, open new spaces for constructive discussion of the past and in effect give citizens permission to ‘move on’ and, in South Africa, become the promised ‘rainbow nation’ (Hayner 2010; Popkin and Roht-Arriaza 1995).

Aimed as many of its proceedings were at the general public, through the media, the TRC appears to have conceived of its role in collective reconciliation largely as promoting national reconciliation—indeed, creating a foundation for nation building—as opposed to, for example, assisting with community reconciliation in specific localities divided by apartheid and the liberation struggle (see Van der Merwe and Chapman 2008). By showing in the light of day the horrors of apartheid violations, the TRC was to work broadly against the denialism that characterised apartheid and galvanise change through individual and collective self-reflection and identification with the ‘other.’

Another significant element of the TRC’s role in terms of collective reconciliation was establishing the “bright line” between the previous regime and the new government (Daly 2008). The commission significantly built the post-transition government’s legitimacy within the country and internationally, signalling that a new trust could be placed in its institutions and policies. The understanding was that the state, along with other institutions and civil society, would continue the reconciliation work of the TRC, particularly in addressing not just the divisions caused by civil and political violations but also, importantly, the profound inequities of generations of socioeconomic violations.

### **Reconciliation in South Africa to Date**

Much like its accountability agenda, the TRC’s reconciliation agenda relied on ongoing follow-up from the state and other entities. The commission’s own aims regarding reconciliation, if looked at as laid out above, appear mostly to have been attitude change through the humanisation of individuals belonging to ‘other’ groups and a kind of modelling of positive behaviour by commissioners and participants—particularly victims—that would contribute to the newly legitimised state’s nation-building efforts. The TRC certainly succeeded in legitimising the new government and in generating a powerful discourse that enshrined reconciliation (vaguely defined) and mutual forgiveness, feeding the post-transition state’s claims of building a ‘rainbow nation.’ As with the public shaming and conscientisation through which it promoted accountability, however, the TRC’s success in effecting or contributing to attitude change individually or collectively, especially in the long term, appears limited.

Reconciliation can range from (more or less) peaceful co-existence all the way to proactive trust building and friendship, with degrees of mutual respect and cooperation in between (see Matthews 2010). A look at reconciliation in South Africa suggests that it has been fairly shallow to date, based largely on co-existence and respect but with limited intermingling of groups divided by apartheid and colonialism before it.

### **Individual Reconciliation**

With its focus on victims, the TRC gathered the testimonies of over 22,000 individuals and selected about 10 percent of these victims to testify at public hearings held across the country. It has been noted that victims had diverse priorities in approaching the commission, which also changed with time and in reaction to the process (Simpson 2008), but nonetheless the majority of victims were left ambivalent or dissatisfied with their experience with the TRC. Given the commission’s investigative, resource and time constraints, it often could not deliver more details concerning their case than victims already knew. This disappointment was compounded by a sense that going before the TRC

did not give most a longer-term sense of closure or well-being, indeed at times resulting in greater frustration and pain than before the process (Hamber et al. 2000; Picker 2005).

Despite the TRC's strong discourse on forgiveness, most victims suggested that the TRC did not meet their requirements for making forgiveness possible. Most did not see or meet 'their' perpetrators face to face, receive an apology, find out the information they needed to know or see the reparations granted by government as sufficient (Van der Merwe and Chapman 2008). Although victims often expected the TRC to facilitate dialogue between them and perpetrators, the commission largely did not play this role. Victims and perpetrators met in a few cases during the TRC, and this continues to occur from time to time through civil society efforts, as noted above with the case of Stefaans Coetzee and Olga Mazingwane, and other participants in the Worcester Hope and Reconciliation Process. A number of civil society groups have promoted dialogue between victims and perpetrators, as well as members of communities that were in conflict or kept separate during apartheid (see, e.g., Kayser 2000; Greenbaum 2006).

Today, the vast majority of victims are still engaged in the struggle for reparations and acknowledgement while living in socioeconomic circumstances similar to those they knew under apartheid (HRMC 2012). As more of their fellows become ill and, indeed, pass away as a result of apartheid-era violations and the hardships of everyday life, a couple of victims have privately expressed to this author the sense that people and the state are waiting for them to die so that they do not have to 'deal with' victims anymore and can 'move on.' It cannot be said that anything beyond shallow reconciliation has been effected between the majority of victims and either individual perpetrators or the collective of South African society and state, particularly given the limited accountability arrived at in the country.

It has been noted that while the TRC highlighted the importance of victims in the process, it in fact put what it perceived as the collective or national interest before victims' interests. Had the process been for victims and about individual reconciliation, the commissioners might have allowed victims more room to voice their anger, desire for revenge and other complex feelings, instead of suppressing them by procedural and discursive means (Simpson 2008; Hamber and Wilson 2002). Had it been about victims, the state after the TRC would have been compelled at least to establish a reparations programme that met the needs and demands of the wider community of apartheid-era victims. Concerns voiced by commentators in 2000 appear now to have been warranted:

A danger exists that the survivors interviewed here may feel that it was their suffering (and their testimony) that helped contribute to greater collective awareness and national reconciliation. This may be flattering, but without any concrete gains, they may end up feeling that they were merely pawns in a national process over which they had little say. (Hamber et al. 2000: 19)

### ***Collective Reconciliation***

The excerpt above regarding what Archbishop Tutu referred to as the "high price" victims paid for other South Africans (in Hamber and Wilson 2002: 17) is particularly striking when looked at in light of data from a 2012 report indicating that 29.5 percent of white respondents between ages 16 and 24 disagreed with the statement that government should continue to support apartheid victims, while only 1.3 percent of the same respondents disagreed with the statement that the TRC

succeeded in bringing about reconciliation (Lefko-Everett 2012: 38). This raises questions regarding the degree of conscientisation and attitude change the TRC gave rise to in the long term. It also suggests that collective reconciliation has been fairly shallow to date.

It has been argued that the main beneficiaries of apartheid do not question their privilege, having “retreated to a comfortable position of personal nonculpability” and perceiving reconciliation to mean that “blacks should forget about South Africa’s fractured past and move on” (Mbembe 2008: 9). This argument is borne out by reactions to a campaign launched in 2000, as the TRC was winding up its work, and another launched more than a decade later, in 2013. The first was the Home for All Campaign, which included a declaration acknowledging the responsibility of most white South Africans in supporting apartheid and a commitment to redressing the legacies of apartheid, along with mechanisms for contributing funds and skills to development and reconciliation. This campaign was not only sidelined but also treated with outright hostility by major public figures and ordinary citizens, with one white South African stating in an opinion survey that it was “liberal, sanctimonious, holier-than-thou %\*&t” (quoted in Matthews 2010: 9).

The other campaign is Red October, launched in September 2013, calling for an end to the “oppression of and violence against White South Africans” and focused on the alleged corruption of the government and injustice of its black economic empowerment and affirmative action policies, as well as killings of whites, particularly farm owners. Centred on several small protests in cities in South Africa and a few abroad, the campaign has a mainly Afrikaans-speaking base. While it has been met largely with dismissive humour in the media, the campaign attracted more than 12,000 followers on its Facebook page and 22,538 signatures on a supporting petition on its website within just one month (Hess 2013).

A look at recent statistics shows that white South Africans in fact continue to be far better off than black South Africans. According to the South African Institute of Race Relations, in 2012, black South Africans on average could expect to receive 13 cents in income for every rand received by white South Africans (up from 12 cents in 1994), while facing an unemployment rate of 29%, compared to the white South African rate of 5.7%. In addition, young white South Africans are entering adulthood with better prospects, given that nearly 100 percent graduate from high school and 60 percent are enrolled in higher education, compared to 50 percent and 14 percent, respectively, of black South Africans, not to mention the gaps in the quality of education (Cronje 2013). Whites also enjoy the historical privileges of proximity to economic centres and access to employment through social networks (IBRD/WB 2012). As regards murder rates, statistics from 2009 show that only 1.8 percent of homicide cases nationwide concerned white victims although whites make up 8.85 percent of the population, in addition to findings that most violent crimes are committed by “friends or loved ones,” not strangers from outside a community (Brodie 2013).

One more set of findings may place these statistics and the two campaigns in perspective. A 2012 survey that asked whether black South Africans are still poor today as a result of the lasting effects of apartheid found that only 50.6 percent of white respondents agreed that this is the case, as opposed to 82 percent of black respondents. In addition, young white South Africans were significantly less likely to agree than adult white South Africans (Lefko-Everett 2012: 37). It appears that the main beneficiaries of apartheid do not in their significant majority question their privilege or appreciate the compromises made, particularly by victims, to enable the political transition,

especially with the passing of time. This does not suggest anything beyond shallow reconciliation, particularly in light of a statement made by an apartheid-era victim in 2005:

90% or 99% of the white community has not asked for forgiveness. They haven't. So how can I go and reconcile, let alone the perpetrators. There cannot be no discussing of reconciliation in the country unless people in Camp's Bay and people in Bishops Court [wealthy, mostly white areas of Cape Town] go to the people Nyanga and Gugulethu and Langa and Mitchell's Plain and Mannenberg and say "Your taxes was used, now I am going to plough back into this community". That is reconciliation. Otherwise, it is just talk, just cheap talk. The only people who are reconciling here are the disadvantaged. (Quoted in Picker 2005: 9)

From this viewpoint, the TRC may have succeeded in giving South Africans permission to 'move on' but not necessarily in raising awareness of collective accountability, specifically among beneficiaries, and its relationship to reconciliation. One reason for this may be that, as noted above, the TRC focused on individual civil and political rights violations, which brought public attention to the acts of a few 'bad apples' as opposed to the apartheid state's systemic political and socioeconomic oppression and the way it was carried out and supported at all levels of society. As much as this may have allowed the perception that the political transition and the commission had done away with the 'bad apples' and that the rest of the country could now get on with life without guilt, given the larger work and discourse of the TRC it does not seem enough of an explanation.

The TRC anticipated that its work would be continued by the state and other entities, based on a progressive constitution and significant institutional reforms. The question is whether the vision of accountability and reconciliation propagated by the commission has been enacted and deepened since its closing.

Amid claims of addressing the structural oppression of apartheid, the new government came to power with a fairly redistributive agenda. By 1996, however, it had adopted a highly orthodox neoliberal macroeconomic framework. While the state today provides billions of rands in social grants and assistance, its social policy is decoupled from its economic policy, which is based on a growth strategy that primarily benefits South Africans with high levels of education and skills (Seekings and Nattrass 2006). Although many individuals have seen their economic situation improve, the country's high inequality has only increased since the transition, with the vast majority of the population continuing to be excluded from mainstream economic life as a result of comparatively low education and skill levels, as well as other historical and structural factors, such as living far from economic centres (see Leibbrandt et al. 2010; IBRD/WB 2012). These factors have been further entrenched by the macroeconomic policy.

The post-transition state's role in the continuing socioeconomic marginalisation of the majority, particularly in light of the intimations of increasingly violent suppression of dissent and lack of transparency noted above, makes the "bright line" drawn by the TRC between past and present appear somewhat faded and blurred today. Although the post-transition government adopted a progressive constitution that is one of few worldwide to enshrine social, economic and cultural rights, in practice the executive and legislature have been slow to enable the implementation of those rights. The judiciary, particularly the Constitutional Court, has largely chosen to avoid confrontations with the executive—which may explain the small number of cases regarding socioeconomic rights brought before the courts since the transition—while the Chapter 9

institutions, specifically the Human Rights Commission, continue to monitor government compliance despite the expectation that their recommendations will often be ignored (see McLean 2009; Langford and Kahanovitz 2010; CLC 2007).

South Africa's vibrant civil society has attempted to address the country's rising inequality and influence the policies that underpin it. Interestingly, however, this has not been a goal of the collection of civil society organisations that were central to the formation of the TRC process and continue to advocate for greater state accountability towards victims. While Khulumani has agitated for the need not only for reparations but also for deeper social transformation, its allies have opted for a conservative approach and chosen not to support the victims' association in its broader agenda. As one civil society veteran has noted, "the transitional justice debates [in South Africa] were led by a very small group of NGOs" (Pigou 2011: 508). These organisations not only prioritised political transition with a focus on addressing civil and political rights violations in the 1990s but also have maintained these priorities since, although the rhetoric was that "real change" would come after the transition (see, e.g., Madlingozi 2010).

This very brief discussion of the continuing socioeconomic inequality in South Africa suggests that a widespread sense of collective accountability and duty to promote collective reconciliation has not been arrived at not just because the TRC did not succeed in adequately conscientising the public but also because the state and other entities, including civil society organisations actively engaged in public discussions on accountability and reconciliation, have signalled that the social transformation that would be a manifestation of both is simply not a priority. The message is that transformation on a large scale is an aspiration, not an obligation.

Nearly 20 years after the political transition, the social and political landscape appears to be shifting, with public discourse centring on the intensification in the number and violence of public protests and strikes in the country, the launch of the suggestively named Economic Freedom Fighters party in October 2013 (at the site of the Marikana massacre), the government's recently released National Development Plan's aim "to eliminate poverty and reduce inequality by 2030" and so forth. Debates on inequality have become increasingly polemical and may be a sign of a new phase in South Africa's transition.

## Conclusion

This discussion of the accountability and reconciliation arrived at in South Africa since the political transition in the mid-1990s has suggested that the TRC's success in attaining both goals was limited during its lifetime. However, as Archbishop Tutu has noted, it is "easy, with the distance of time, to take for granted the achievements of the TRC and to forget just where this country was when the Commission first began its arduous task" (Tutu 2007: 6). Established as it was in the liminal period between the negotiated settlement and the anticipated transformation of the state that would foster a wider social transformation, the TRC made compromises aimed at enabling a peaceful political transition, generating a powerful discourse regarding broad national reconciliation based on co-existence, particularly among race groups, and boosting the legitimacy of the new government in the service of nation building and future social justice.

As regards its accountability agenda, the TRC in the end drew comparatively few perpetrators, particularly members of apartheid structures, to expose themselves to public shaming. Its implicit

aims of eliciting perpetrator apologies were not met to a significant degree, particularly as apologies were in several cases viewed as a way of avoiding prosecution and overall ambivalently received by victims, with some exceptions. The TRC did attract a large and diverse audience through the media, mobilising a powerful discourse of national reconciliation based on awareness of collective accountability for apartheid. Research suggests, however, that while South Africans were drawn to the commission, many, especially beneficiaries of the regime, adopted a defensive stance regarding their personal responsibility for apartheid oppression, instead opting for the view that apartheid crimes were the work of individual 'bad apples,' which perception was encouraged by the commission's own focus on civil and political violations relating to bodily integrity.

The TRC's powerful discourse on reconciliation attracted the participation of thousands of victims, whose testimony raised awareness in the TRC's audience and whose forgiveness (either implicit in their appearance before a commission that emphasised forgiveness or explicit in their words and gestures, among those who appeared in public hearings) modelled reconciliatory behaviour for their fellow citizens. The majority of victims were disappointed with their experience of the TRC, suggesting that the commission did not meet their requirements for reconciliation given lack of new information, of dialogue with perpetrators and apology, of the promised closure. In addition, while victims gave up their claim to seeing many perpetrators prosecuted or to receiving reparations from perpetrators through civil suits by participating in the TRC's conditional amnesty process, research during and after the TRC suggests that the collective reconciliation meant to come out of this sacrifice has been limited.

A central factor in the shallowness of the individual and collective reconciliation arrived at in South Africa is the retreat of most beneficiaries of apartheid into the "comfortable position of personal nonculpability" (Mbembe 2008: 9). While some of the explanation for this may lie in the TRC's narrow interpretation of its mandate, much of the reason lies in messaging by the democratic state, as well as powerful governmental and nongovernmental institutions, that social transformation is not an obligation in the aftermath of the TRC. In response to the "high price" paid by victims, the state has pursued only a handful of prosecutions for apartheid-era crimes, in addition to repeatedly attempting to grant pardons for such crimes without transparency or victim participation. In addition, the state has not only provided inadequate reparations to TRC-registered victims but also been dismissive of repeated attempts to secure proper reparations for the broader group of victims.

Most victims today face a similar socioeconomic situation as they did under apartheid. Like the vast majority of South Africa's population, they are largely excluded from the country's mainstream economic life as a result of low levels of education and skills within their families, their geographic location and social networks that are not tapped into the mainstream economy. The state, through its economic policy and inhibitions within government institutions regarding implementing social, economic and cultural rights, has entrenched rather than lifted the weight of socioeconomic inequality in the country. Meanwhile, the civil society organisations central to the design of the TRC and its agenda have largely chosen not to challenge the state on these issues, even when the possibility has been raised by the national victims' association.

It has been argued that this 'unfinished business' of the TRC is a reflection of the limitations and political character of the transitional justice field itself, particularly as applied in a context such as South Africa (Powell 2010; Kagoro 2012). Among a number of tensions that characterise transitional

justice, one that is relevant to South Africa is the tension between the field's dual agendas of promoting accountability and redress on the one hand and facilitating democratization and nation building on the other (Teitel 2003). Another is that between the field's potential for addressing socioeconomic roots of conflict in the process of acknowledging the legacies of past abuses and its dependence on the discourse of the human rights movement, which historically has focused on civil and political rights while sidelining economic, social and cultural rights (Gready 2010). In navigating these tensions, among others, the TRC adopted an expansive approach to accountability and reconciliation with the conditional amnesty and the discourse it developed, while the democratic state adopted a narrow approach that capitalised on the nation building that came with the 'transition moment' while following up on few of the promises of accountability and reconciliation raised by the TRC's discourse.

As noted above, civil society in South Africa continues to work towards transitional justice, victims continue to struggle for reparations and the public continues its discussion of what accountability and reconciliation might mean and look like, particularly as regards addressing the socioeconomic inequalities of apartheid and colonialism before it. As other contexts have shown—with Argentina as a particular example—transition is not an event embodied by a (quasi-)legal mechanism but rather an ongoing process that depends on continuing engagement, questioning of discourses, institutions and policies, as well as small and large innovations in the practice of local transitional justice. For this reason, a discussion of South Africa's transition cannot end with an evaluation of the TRC; rather, it must include analysis of what has come since it closed its doors, and what may yet come.

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