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**TRUTH, NATIONAL  
RECONCILIATION AND  
CULTURAL INTERVENTIONS:  
LESSONS LEARNED FROM THE  
SOUTH AFRICAN TRC**

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## ABSTRACT

The end of Apartheid marked the beginning of a South Africa that belongs to all who live in it. It was recognised by the Constitution that the pursuit of national unity required reconciliation. In response, the Truth and Reconciliation Committee (“TRC”) was established. Its central focus was to “promote unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past”.

The TRC identified at least three levels at which reconciliation needs to take place: reconciliation between victims and perpetrators; reconciliation at the community level; and reconciliation between the beneficiaries and the victims of the crime of Apartheid.

At the outset, the TRC recognised the magnitude of this exercise. Its quest for truth was viewed as a contribution to a much longer-term goal. The TRC gave its attention to uncovering the truth about gross violations of human rights. The decision was made to focus not on the effects of laws passed by the Apartheid government, but on human rights violations committed as specific political-criminal acts against specific individuals. Reconciliation at the first level (that between victims and perpetrators) was prioritised at the expense of second- and third-level reconciliation.

This begs the question of how the reconciliatory dialogue initiated by the TRC could be extended to the people that fell outside of the TRC’s purview. I argue that one of the most effective ways to pursue reconciliation at a community and national level is through cultural interventions. Often neglected as a mechanism of transitional justice, these interventions may be an integral stepping stone between the first-level individual reconciliation aspired to by a truth commission, and the broader reconciliation so indispensable after a regime of systemic human rights abuses.

# TRUTH, NATIONAL RECONCILIATION AND CULTURAL INTERVENTIONS: LESSONS LEARNED FROM THE SOUTH AFRICAN TRC

Michaela Bolton

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## Introduction

The end of the Apartheid regime marked the beginning of a “South Africa [that] belongs to all who live in it, united in our diversity”.<sup>1</sup> According to Chapter 15 of the 1993 Constitution of the Republic of South Africa, “the pursuit of national unity, the well-being of all South African citizens, and peace require reconciliation between the people of South Africa”.<sup>2</sup> In response to this imperative, the Truth and Reconciliation Commission (hereafter, “TRC”) was established through the Promotion of National Unity and Reconciliation Act.<sup>3</sup> The central focus of the TRC was to “promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past”.<sup>4</sup>

The TRC identified at least three levels at which reconciliation needs to take place.<sup>5</sup> The first level is reconciliation between victims and perpetrators. The second is reconciliation at the local community level. The third and broadest level is national unity: reconciliation between the beneficiaries and the victims of the crime of Apartheid.<sup>6</sup>

At the outset, the TRC recognised the magnitude of this exercise. It did not aim to single handedly produce reconciliation of South Africans at all three of these levels. Rather, its “quest for truth should be viewed as a contribution to a much longer-term goal and vision”.<sup>7</sup>

In an attempt to limit the task at hand, the TRC first gave its attention to investigating and uncovering the truth about gross violations of human rights.<sup>8</sup> After much internal debate, the decision was made to focus “not on the effects of laws passed by the Apartheid government”, but on human rights violations committed as specific political criminal acts against specific individuals.<sup>9</sup> In doing so, the TRC placed outside of its remit the systematic violation of human rights that Apartheid itself was.<sup>10</sup>

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<sup>1</sup> Preamble to The Constitution of South Africa (1996) (hereafter, “the Constitution”).

<sup>2</sup> The Interim Constitution of South Africa (1993) Chapter 15, “General and Transitional Provisions”: “National Unity and Reconciliation”. The 1996 Constitution confirmed the continuing validity of this section of the 1993 Constitution.

<sup>3</sup> Act 34 of 1995 (hereafter, “PNUR Act”).

<sup>4</sup> *Id.* at Section 3(1).

<sup>5</sup> Truth and Reconciliation Commission of South Africa Report (hereafter, “TRC Report”) (1998) volume 1, chapter 5 at 107-08. See also 109 at para 23, which reads: “Reconciliation is needed, not only at an individual level, nor only between individuals, but also within and between communities and the nation as a whole”.

<sup>6</sup> *Id.* “The broad challenge of reconciliation between those who benefited from the past and those who continue to be disadvantaged by past discrimination is central to the vision contained in the postamble to the interim Constitution”.

<sup>7</sup> *Id.* at 110.

<sup>8</sup> The PNUR Act *supra* note 2 explains in more detail the functions of the TRC, which were primarily to provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past.

<sup>9</sup> TRC Report *supra* note 4 at 63-4.

<sup>10</sup> Posel, D. (2002) ‘The TRC Report: what kind of history? What kind of truth?’ in Posel, and Simpson, G (eds.) in *Commissioning the past: understanding South Africa’s Truth and Reconciliation Commission* at 168-89.

This decision attracted considerable criticism.<sup>11</sup> The victims and perpetrators of specific Apartheid crimes who participated in the TRC process faced their past directly, and in so doing, may have glimpsed reconciled. The TRC did not, however, extend a voice to those who were the victims, perpetrators and bystanders of the crime of Apartheid.<sup>12</sup> Those whose everyday reality was the indignity of the routine harms of pass laws, forced removals, and institutionalized segregation went unheard. Those who benefitted from unfair discrimination and were complicit in the perpetuation of this crime were neither forced nor encouraged to face the past. As argued by political scientist Mahmood Mamdani, insofar as the TRC dealt with the crime of Apartheid, we are faced with a crime against humanity without victims or perpetrators.<sup>13</sup>

In considering this criticism, it is important to recognise that the TRC was established in a climate of political compromise, and was limited by temporal, financial and political constraints. The reasonableness of the TRC's decision, however, is less important than its effect on reconciliation. Reconciliation at the second (community) and third (national) levels – deemed necessary by the TRC – was largely beyond the TRC's capacity to deliver.

This begs the question of how the reconciliation-through-truth dialogue initiated by the TRC could be extended to the people that fell outside of the TRC's purview. This paper will argue that one of the most effective ways to pursue reconciliation at a community and national level is through cultural interventions. Often neglected as a mechanism of transitional justice, museums, art exhibitions, theatre productions and memory sites may be an integral stepping stone between the first-level individual reconciliation aspired to by a truth commission, and the broader reconciliation so indispensable after a regime of systemic human rights abuses.

To illustrate the power of these interventions to continue the reconciliatory process begun by the TRC, this paper will examine two South African examples: *A Human Being Died Last Night*, a play by Pumla Gobodo-Madikizela, and the District Six Museum. Given the South African TRC's position as a celebrated example of a truth commission, models based upon it would do well to appreciate its limitations, and the wider reach truth commissions could have if paired with cultural interventions. Precisely how this pairing should be structured is context dependent, but could take the form of support, recommendations and/or reparations.

## **PART A: RECONCILIATION**

### **Reconciliation and dialogue: a psycho-social perspective**

For Charles Villa-Vicencio, National Research Director of the TRC, at the heart of reconciliation is the willingness to work together in the common pursuit of a solution not yet in hand.<sup>14</sup> The concept has its etymological root in the Latin word “concilium”: the meeting of

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<sup>11</sup> For a full discussion of this criticism, see Asmal, K., Asmal, L. and Roberts, R. (1996) *Reconciliation through truth: A reckoning of Apartheid's criminal governance*, and Mamdani, M. (1996) 'Reconciliation without justice' 46 *South African Review of Books* at 3-5, and Mamdani, M. (2000) 'The Truth According to the TRC' in Amadiume, I. and An-Na'im, A. (eds.) *The Politics of Memory: Truth Healing and Social Justice* at 176-83. For a very recent iteration of this criticism, see Msimang, S. (2017) 'All Is Not Forgiven: South Africa and the Scars of Apartheid' 1 *Foreign Affairs* 97, available at <https://www.foreignaffairs.com/articles/south-africa/2017-12-12/all-not-forgiven>.

<sup>12</sup> Christodoulidis, E. and Veitch, S. (2008) 'Reconciliation as surrender: configurations of responsibility and memory' in Du Bois, F. and Pedain, A. (eds.) *Justice and Reconciliation in Post-Apartheid South Africa* at 10.

<sup>13</sup> Christodoulidis, E. (1999) 'The Irrationality of Merciful Legal Judgement: Exclusionary Reasoning and the Question of the Particular' 18 *Law & Philosophy* at 225.

<sup>14</sup> Villa-Vicencio, C. (2004) 'Reconciliation' in Villa-Vicencio, C. and Doxtader, E. (eds.) *Pieces of the Puzzle: Keywords on Reconciliation and Transitional Justice* at 2.

antagonists to settle their disputes.<sup>15</sup> Psychologically, reconciliation has been described as having its roots in the deep human impulse to know peace, and dispel feelings of alienation.<sup>16</sup> Its necessary preconditions are restraint, compromise, empathy and perseverance towards a shared vision.<sup>17</sup> In ancient Greece, to reconcile was to find the words that could “turn enmity into friendship”.<sup>18</sup> The concept is imbued with a characteristically African approach by a Dinka elder commenting on the Sudanese conflict: “reconciliation begins by agreeing to sit under the tree with your enemy to find a way . . . to address the conflict”.<sup>19</sup>

For the political philosopher John Paul Lederach, reconciliation occupies the space between four paradigms: truth, mercy, peace and justice.<sup>20</sup> This has been synthesised into the South African context by South African historian Andries Odendaal, who argues that the need for truth against the background of Apartheid’s lies and distortions cannot be overstated.<sup>21</sup> But the revealing of this truth, and the dealing with this truth, cannot take a peace-damaging form. If justice alone were to take its course, in the words of Desmond Tutu, the country would be reduced to ashes.<sup>22</sup> Rather, reconciliation requires a willingness of people to engage in a dialogue whose goal is social cohesion despite the differences that exist between them.<sup>23</sup>

Reconciliation, it seems, cannot be disentangled from the notion of opening channels of communication and prioritizing focused dialogue. Simply put by Villa-Vicencio, “reconciliation is about talking”.<sup>24</sup> Through discussion, reconciliation allows past evils to be turned from, but neither ignores nor excuses them.<sup>25</sup> Implicit in the concept of reconciliation is two sides coming together and surrendering something: fear, guilt, anger, hatred.<sup>26</sup> It is concerned with creating the forums in which people have their voices heard with a view, first, to a consideration of what “enemies” might have in common and secondly, how this mutual understanding may be used to “invent new ways of existing together”.<sup>27</sup> Reconciliation places the past at the forefront of discussion as “commensurate” to overcoming the divisions that have ravaged it.<sup>28</sup> For Pumla Gobodo-Madikizela, “facing the past – acknowledgement of past wrongs by perpetrators, bystanders and beneficiaries alike – is the touchstone of reconciliation”.<sup>29</sup>

The psycho-social perspective on the nexus between truth and reconciliation has found traction in legal literature. According to Pablo de Greiff, UN Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence, “in the aftermath of repression or conflict, the

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<sup>15</sup> Merriam-Webster Dictionary, available at <http://www.merriamwebster.com/dictionary/reconcile>.

<sup>16</sup> Villa-Vicencio, C. *supra* note 13 at 3.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> Ambassador Joseph, J. A. (2006) Speech entitled ‘Ethics and diplomacy: What I learned from Nelson Mandela’ at Clinton School of Public Service University of Arkansas, available at [http://clpv.sanford.duke.edu/documents/Clinton\\_School\\_of\\_Public\\_Service.pdf](http://clpv.sanford.duke.edu/documents/Clinton_School_of_Public_Service.pdf).

<sup>20</sup> Lederach, J. (1997) *Building Peace: Sustainable Reconciliation in Divided Societies* at 29.

<sup>21</sup> Odendaal, A. (1997) ‘For All its Flaws: The TRC as a Peacebuilding Tool’ 6 *Track Two* at 4.

<sup>22</sup> *The Independent*, 22 August 1996, cited in Hamber, B. and Kibble, S. (1999) ‘From Truth to Transformation: The Truth and Reconciliation Commission in South Africa’ in *Catholic Institute for International Relations Report*, available at <http://www.csvr.org.za/publications/1714-from-truth-to-transformation-the-truth-and-reconciliation-commission-in-south-africa.html>.

<sup>23</sup> Gibson, J. L. (2004) *Overcoming Apartheid: Can Truth Reconcile A Divided Nation?* at 4-5.

<sup>24</sup> Villa-Vicencio, C. *supra* note 13 at 4.

<sup>25</sup> For a full discussion of reconciliation, forgiveness and dialogue, see Shriver Jr., D. W. (1995) *An Ethic for Enemies: Forgiveness in Politics*.

<sup>26</sup> de Vos, P. (17 December 2013) ‘Mandela legacy: Reconciliation – a process, not a once-off event’ *Daily Maverick*, available at <http://www.dailymaverick.co.za/opinionista/2013-12-17-mandela-legacy-reconciliation-a-process-not-a-once-off-event/#.VGnvoouUfok>.

<sup>27</sup> Villa-Vicencio, C. *supra* note 13 at 6.

<sup>28</sup> Christodoulidis, E. and Veitch, S. *supra* note 11 at 10.

<sup>29</sup> Gobodo-Madikizela, P. (25 January 2010) ‘Towards an anatomy of violence’ *Mail & Guardian*, available at <http://mg.co.za/article/2010-01-15-towards-an-anatomy-of-violence>.

right to truth should be understood to require States to establish institutions, mechanisms and procedures that are enabled to lead to the revelation of the truth, which is seen as a process to seek information and facts about what has actually taken place, to contribute to the fight against impunity, to the reinstatement of the rule of law, and ultimately to reconciliation”.<sup>30</sup> Put simply, reconciliation is impossible without honest, truthful, empathetic dialogue.

## **PART B: THE TRC**

### **Reconciliation and the TRC**

The understanding of reconciliation through truth and dialogue calls to mind the South African TRC. Reconciliation is curiously undefined in its otherwise elaborate constitutive Act, the Promotion of National Unity and Reconciliation (“PNUR”) Act.<sup>31</sup> In its report, the TRC acknowledged that the way in which reconciliation was understood was a point of contention during its time of operation.<sup>32</sup> Reconciliation was recognised by the TRC as both a process and as a goal in itself.<sup>33</sup> Importantly, the TRC’s narrative suggests that reconciliation may take place on at least three distinct levels.<sup>34</sup> The first concerns closure, forgiveness and healing between individual perpetrators of Apartheid crimes and their individual victims. The second concerns reconciliation between and within communities. The third concerns the broadest type of reconciliation that takes place between people throughout the country who benefitted from the past, and those who suffered from it. It is interesting to note that even the TRC, which dealt so intimately with victims and perpetrators, was aware that the third level of reconciliation is that which is most necessary for the success of the Constitution’s vision of a united and diverse South African society.<sup>35</sup>

#### **First level reconciliation**

Whether or not one is of the view that the TRC achieved its objectives, it must – at the very least – be accepted that it facilitated an engagement through dialogue about a traumatic past. For those who participated in the hearings, the TRC enabled the possibility of reconciliation by revealing a truth, and demanding a response. Victims and perpetrators were engaged in a direct dialogue about the atrocities in which they were involved, and bore witness to each other’s humanity. This direct witnessing gave “a sense of individuation and humanity”, and drew attention to the fact that “the deeds being narrated were done by *people to other people*”.<sup>36</sup> In this way, the TRC facilitated empathy through dialogue: the seeing of oneself in the other, and the other in oneself.<sup>37</sup> The victims and perpetrators of specific Apartheid crimes who participated in the TRC process faced their past directly, and in so doing, may have taken steps towards reconciliation.

There are many individual success stories to be told of victims of gross human rights abuses reconciling with perpetrators through TRC hearings. The example of Pearl Faku, mother of one of

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<sup>30</sup> See UN Human Rights Council (2013) *Report of the Special Rapporteur on the Promotion of Truth, justice, reparation and guarantees of non-recurrence (Pablo de Greiff) (Special Rapporteur)*, A/HRC/24/42 (2013).

<sup>31</sup> Act 34 of 1995.

<sup>32</sup> TRC Report *supra* note 4 at 106.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 107-08. See also Christodoulidis, E. and Veitch, S. *supra* note 11 at 9-11.

<sup>35</sup> TRC Report *supra* note 4 at 350-51.

<sup>36</sup> Cole, C. M. (2010) *Performing South Africa’s Truth Commission: Stages of Transition* at 92.

<sup>37</sup> *Id.*

the men killed in the Motherwell bombings orchestrated by Eugene de Kock, is particularly touching.<sup>38</sup> Recounting her encounter with De Kock at the TRC, Faku is reported to have said:

*“I was profoundly touched by him . . . I felt the genuineness in his apology . . . I was overwhelmed by emotion, and I was just nodding, as a way of saying ‘Yes, I forgive you.’ . . . I would like to hold him by the hand, and show him there is a future, and that he can still change”.*<sup>39</sup>

Amy Biehl’s story is another remarkable success story emanating from the TRC.<sup>40</sup> In 1993, American Fulbright scholar Amy Biehl dropped off three colleagues in Guguletu. She was attacked in her car, surrounded, stoned and stabbed. She died as a result of her injuries. One of the men convicted of killing Biehl expressed at his amnesty hearing that he felt “sorry and very downhearted”, and that he “realized [he] had beaten someone who should not have been beaten”. He asked forgiveness from his victim’s family and friends.

Biehl’s parents participated in the TRC hearings. Her father’s response evidences the power that the TRC wielded in facilitating reconciliation:

*“Amy would have embraced your Truth and Reconciliation process. We are present this morning to honour it and to offer our sincere friendship. We are all here, in a sense, to consider a committed human life which was taken without opportunity for dialogue. When this process is concluded we must link arms and move forward together”.*

Through confrontational dialogue, those involved in the TRC hearings participated in a “deeply engaging, profoundly affecting, brilliant, difficult, dark, intense process”, and many have glimpsed reconciliation.<sup>41</sup> By offering a public space for complaints and for the recounting of suffering, the commission certainly gave rise to a shared catharsis.<sup>42</sup> The results of interviews conducted by the Centre for the Study of Violence and Reconciliation reveal that the process of “unleashing” stories and uncovering hidden trauma is considered a positive contribution.<sup>43</sup> The ability to speak out, in front of a respectful institutional body, was viewed as a foundation from which reconciliation could flourish.<sup>44</sup> For the participants in the TRC hearings, exploration of the truth through dialogue may indeed have facilitated at least the possibility of reconciliation.

## **Reconciliation beyond the participants in the TRC**

The TRC was more publicized than any of its predecessor truth commissions.<sup>45</sup> Most of the hearings were public and were held across the South Africa’s nine provinces in places such as

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<sup>38</sup> Recounted in Stover, E. and Weinstein, H. M. (eds.) (2004) *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* at 311.

<sup>39</sup> *Id.*

<sup>40</sup> See the full transcript of the TRC’s amnesty hearing of Manqina, Nofemela, Ntamo, and Peni held at Cape Town on 8 July 1997, available at [http://www.justice.gov.za/trc/amntrans%5Ccapetown/capetown\\_biehl01.htm](http://www.justice.gov.za/trc/amntrans%5Ccapetown/capetown_biehl01.htm).

<sup>41</sup> Sachs, A. (2005) ‘Memorandum Submitted to Select Committee on Northern Ireland: Truth and Reconciliation in South Africa: Four Kinds of Truth’ *Affairs*, available at <http://www.parliament.thestationeryoffice.co.uk/pa/cm200405/cmselect/cmniaf/303/303we05.htm>.

<sup>42</sup> Ricoeur, P. (2004) *Memory, History, Forgetting* at 483-484.

<sup>43</sup> See Van der Merwe, H., Dewhirst, P. and Hamber, B. (1999) ‘Non-governmental organisations and the Truth and Reconciliation Commission: An impact assessment’. *Politikon*, 26 (1), 55-79.

<sup>44</sup> *Ibid.*

<sup>45</sup> Ross, F. (2003) *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* at 35.



town halls, schools, and churches.<sup>46</sup> Public interest in the TRC was notably high. The *TRC Special Report*, a weekly news program that reported on the activities of the TRC, had an audience of between 1.1 and 1.3 million people per week in the first year of its broadcast.<sup>47</sup> In the first months of the TRC process, white South Africans switched to the Special Report nearly as often as to the English news bulletin at 8 p.m.<sup>48</sup> Similarly, black viewers watched the program at the same rate they did the Xhosa, Zulu, Venda, Ndebele and SeSotho news.<sup>49</sup> The hearings were also widely broadcasted by radio stations.<sup>50</sup> According to Alex Boraine, the media disseminated the TRC hearings across racial, literacy and urban/rural divides.<sup>51</sup>

By casting these testimonies into the public, the TRC made it impossible to deny that certain atrocities occurred in the past. The TRC came to damning conclusions about the Apartheid system, including declaring that Apartheid was a crime against humanity; that the Apartheid state sought to “protect the power and privilege of a white minority”; that racism was the “motivating core of the South African political order” and that black citizens were demonized as the “enemy” to create a climate that enabled gross violations of human rights.<sup>52</sup> These truths were forced into the national narrative. If it is true that “all that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse”, the TRC made significant steps toward achieving its goal.<sup>53</sup> The TRC’s major accomplishment, according to Richard Goldstone, the South African judge who went on to become the first prosecutor of both the Rwanda and former Yugoslavia United Nations International Criminal Tribunals, is that no one now can deny the worst manifestations of Apartheid.<sup>54</sup>

### **Criticism of the TRC: a crime against humanity without victims or perpetrators**

Despite these crucial accomplishments that went beyond the direct participants of the TRC, its success at facilitating reconciliation at the second and third levels of reconciliation is questionable. As a forum for dialogue, it focused on the violations of life and physical integrity of specific political crimes.<sup>55</sup> The TRC did not, however, extend a voice to those who were the victims, perpetrators and bystanders of the crime of Apartheid.<sup>56</sup> Those who fell outside of the ambit of the TRC’s hearings did not benefit from the potentially reconciliatory effect of dialogue and confrontation of the other.

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<sup>46</sup> ‘Public Hearings: Platforms of Truth, Dignity, and Catharsis’ (23 March 2017) ICTJ, available at <https://www.ictj.org/news/public-hearings-platforms-truth-dignity>.

<sup>47</sup> Theissen, G (1999) ‘Common past, divided truth: The Truth and Reconciliation Commission in South African public opinion’ (1999) Paper presented at the “Commissioning the Past” Conference hosted by Centre for the Study of Violence and Reconciliation & the WITS History Workshop University of Witwatersrand, Johannesburg, 11-14 June 1999.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> During the mid-1990s, South African Broadcasting Corporation (SABC) radio stations had an audience of 3.3 million Zulu-speaking listeners, 1.6 million Xhosa speakers, 1.5 million SeSotho speakers, 1 million SeTswana speakers, 700,000 Afrikaans speakers, 450,000 English speakers, and 116,000 Venda speakers. See TRC Report *supra* note 4 at 357.

<sup>51</sup> Boraine, A. (2000) *A Country Unmasked: Inside South Africa’s Truth and Reconciliation Commission* at 89.

<sup>52</sup> TRC Report *supra* note 4 at 222.

<sup>53</sup> Ignatieff, M. (1996) ‘Articles of Faith’ in *Index on Censorship 5/96*, available at [http://www.oneworld.org/index\\_oc/issue596/ignatieffT.html](http://www.oneworld.org/index_oc/issue596/ignatieffT.html).

<sup>54</sup> Goldstone, R. J. (2000) *For Humanity: Reflections of a War Crimes Investigator* at 116.

<sup>55</sup> Mamdani, M. *supra* note 10 at 3-5.

<sup>56</sup> Christodoulidis, E. and Veitch, S. *supra* note 11 at 10. at 10.

The TRC limited the object of its inquiry to “gross violations of human rights” through the “killing, abduction, torture, or severe ill treatment of any person”.<sup>57</sup> In doing so, it placed outside of its mandate the victims of the numerous abuses associated with the systematic racial and economic discrimination that underpinned Apartheid. This obscured a distinctive characteristic of Apartheid: that it was a system based on group oppression. The TRC “individualised” the horrors of Apartheid at the expense of paying the attention due to its systemic and collective evils against non-whites. The crime against humanity that was the Apartheid system became the “backdrop” rather than a central focus of its enquiry.<sup>58</sup> As articulated by Rosemary Nagy, Apartheid “featured as the context to crime rather than the crime itself”.<sup>59</sup>

The forced removal of millions from land declared by the government to be “white areas” was not a “gross human rights violation” as defined. An investigation by The Surplus People Project documented that 3.5 million persons had been forcibly moved by South African authorities between 1960 and 1983 as part of the project to create ethnic homelands.<sup>60</sup> The TRC accepted this estimate and acknowledged the “collective expulsions, forced migration, bulldozing, gutting, [and] seizure of homes” that black South African endured.<sup>61</sup> After noting that forced removals were an assault on the rights and dignity of millions of South Africans, the TRC stated that the victims and perpetrators of these violations could find no place in its processes.<sup>62</sup>

For the same definitional reason, the indignity inflicted on non-whites by Apartheid’s pass laws fell outside of the scope of the TRC. These laws were developed to restrict and regulate the movement of black South Africans, to control their employment, and to exclude their presence in white areas.<sup>63</sup> Millions of black people were arrested for breaching the pass laws while trying to secure work. The “painful and degrading” process of the pass laws and influx control regulations “inflicted deep humiliation on the tens of thousands who were on the receiving end”.<sup>64</sup>

“Amongst its many crimes”, the TRC Report itself notes, “perhaps [Apartheid’s] greatest was its power to humiliate, to denigrate and to remove the self-confidence, self-esteem and dignity of its millions of victims”.<sup>65</sup> The victims of systematic crimes directed at non-whites did not speak their truths in the TRC, nor did they confront their perpetrators. White beneficiaries of Apartheid, through their exclusion from the TRC hearings, were never forced to confront their roles in the system. As concluded by Mamdani, “the TRC set aside the distinctive violence of Apartheid, the violence that targeted entire groups and that was central to realizing its political agenda”.<sup>66</sup>

For the sake of completeness, it would be incorrect to imply that the TRC dealt exclusively with individual victims of specific gross human rights violations. In 1997, a group of

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<sup>57</sup> Section 1(1)(ix) of the PNUR Act.

<sup>58</sup> Posel, D. (2002) ‘The TRC Report: what kind of history? What kind of truth?’ *supra* note 9 at 168.

<sup>59</sup> Nagy, R. (2004) ‘Violence, Amnesty and Transitional Law: “Private” Acts and “Public” Truth in South Africa’ 1 *African Journal of Legal Studies* at 1.

<sup>60</sup> Platzky, L. and Walker, C. (1985) *The Surplus People: Forced Removals in South Africa*. Johannesburg: Ravan Press.

<sup>61</sup> TRC Report *supra* note 4 at 34.

<sup>62</sup> *Id.* at 65.

<sup>63</sup> Durbach, A. (2017) ‘Cultural Heritage as Transformation: A Study of Four Sites from Post-Apartheid South Africa’ in Durbach, A. and Lixinski, L. (eds.) *Heritage, Culture and Rights: Challenging Legal Discourses* 205-26 at 221, available at <http://www.nylslawreview.com/wpcontent/uploads/sites/16/2014/11/Durbach.pdf>.

<sup>64</sup> TRC Report *supra* note 4 at 61-2.

<sup>65</sup> *Id.* at 62.

<sup>66</sup> Mamdani, M. (2015) ‘Beyond Nuremberg: The Historical Significance of the Post-Apartheid Transition in South Africa’ 43(1) *Politics & Society* 61-67.

nongovernmental organizations called for the TRC to address the broader socio-economic violations administered by the Apartheid system.<sup>67</sup> In response, the TRC organised a series of “institutional hearings” that explored the role of influential sectors of the Apartheid system, such as the judiciary, the media, the church, and business in committing, resisting or facilitating human rights abuses.<sup>68</sup> Although an innovative step in the history of truth commissions, the focus of these hearings was somewhat cursory.<sup>69</sup> They aimed to highlight the involvement of specific sectors in the injustice of Apartheid, rather than to engage these groups in the reconciliatory process in which the individual victims and perpetrators participated.<sup>70</sup> The procedures of the sector hearings were structured such that “experts” or “representatives” made submissions. The “human face” of suffering so effectively captured in the victim hearings was not replicated. As the sector hearings were voluntary, participation was low in all of them.<sup>71</sup> This was particularly the case however in the hearings on the legal sector where judges refused to come before the Commission, and media hearings, where Afrikaans newspapers threatened to fire any employee who made a submission to the Commission.<sup>72</sup> Though these hearings emphasized the complicity of a range of institutions in contributing to an environment where human rights abuses were rife, they failed to draw beneficiaries and their victims together in a meaningful and reconciliatory way.<sup>73</sup>

By interpreting its mandate to exclude the routine violence perpetrated against non-whites as a group, the TRC failed to facilitate dialogue between communities and between beneficiaries, bystanders, and victims of routine systemic denigration. While individual victims and perpetrators faced their truths through the TRC, reconciliation at the second and third level was less successful. The TRC’s constrained agreement on the terms of reference and the identities of victims and perpetrators meant that the violence of Apartheid – a violence directed at communities rather than individuals – was obscured.<sup>74</sup> This denied the benefits of truth-telling to the victims of the systemic crime of Apartheid, and relieved beneficiaries of obligations pursuant to national reconciliation.<sup>75</sup> Effectively, the suffering of millions in the “new” South Africa was passed over.<sup>76</sup> Though difficult to evaluate, this has likely had lasting effects on perceptions of justice and racial reconciliation in South Africa.<sup>77</sup>

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<sup>67</sup> ‘Truth Commissions and Interpretations of Violence.’ in *Overcoming Apartheid, Building Democracy*. Available at <http://overcomingApartheid.msu.edu/sidebar.php?id=65-258-7&page=10>.

<sup>68</sup> *TRC Report Vol IV Chapter 1 at 2*.

<sup>69</sup> See Mamdani, M. *supra* note 10.

<sup>70</sup> Du Bois, F. and Du Bois-Pedain, A. (2008) *Justice and Reconciliation in Post-Apartheid South Africa* at 308.

<sup>71</sup> Gready, P. (2011) *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* at 98. See also Rousseau, N. (date unavailable) ‘Truth Commissions and Interpretations of Violence: Revisiting the Debate on the South African Truth Commission’s Mandate’, available at <http://overcomingApartheid.msu.edu/sidebar.php?id=65-258-7&page=1> at 10.

<sup>72</sup> *Id.*

<sup>73</sup> Rousseau, N. *supra* note 68 at 10-11.

<sup>74</sup> See Mamdani, M. (2000) ‘A Diminished Truth’ in James, W. and van de Vijver, L. (eds.), *After the TRC: Reflections on Truth and Reconciliation in South Africa* at 179-80.

<sup>75</sup> For an argument along similar lines, see Nagy, R. (2004) ‘The Ambiguities of Reconciliation and Responsibility in South Africa’ 52 *Political Studies* 709-727, Nagy, R. (2005) ‘After the TRC: Citizenship, Memory and Reconciliation’ 38 *Canadian Journal of African Studies* (3). See also Asmal, K., Asmal, L. and Roberts, R. *supra* note 10 at 19.

<sup>76</sup> *Id.*

<sup>77</sup> In ‘All Is Not Forgiven: South Africa and the Scars of Apartheid’ (2017) *supra* note 10, Sisonke Msimang writes that the TRC’s failure to treat the “most enduring wounds of Apartheid” has led to the situation where “today, white South Africans seem to be suffering from collective amnesia—a mass forgetting of just how bad things could have been if the transition to democracy had not been managed so well by the ANC and its followers. Meanwhile, black South Africans have grown increasingly bitter toward the TRC”. According to Msimang, “it is this growing resentment, coupled with whites’ collective shrugging of their shoulders despite the grace they have been given, that lies at the root of the tension in contemporary South Africa”.

## Evaluation of this criticism and the TRC's constraints

Criticising the TRC for overly narrowing those who could participate in its hearings fails to recognise the limits that the context imposed. The TRC was shaped by a protracted and fractious parliamentary debate.<sup>78</sup> The negotiated settlement was fragile and threatened by outbreaks of politically motivated violence.<sup>79</sup> As an uncomfortable “moral compromise”, the success of the TRC, and of the transition more broadly, depended upon the buy-in of the former government and of the African National Congress (hereafter, “ANC”).<sup>80</sup> The members of the Apartheid regime (particularly the security forces) were aware and wary of the implications of a TRC with broad reach and prosecutorial powers. These concerns led to attempts to limit the power and scope of the TRC. The new government was reliant on the Apartheid government’s security forces to guarantee peaceful elections, and therefore had to take these concerns into account when establishing the parameters of the TRC. Had the TRC defined the victims of Apartheid more broadly, those viewed as perpetrators would have been correspondingly broadened. This is not something to which the Apartheid government would likely have agreed.<sup>81</sup>

Moreover, the criticism fails to take into account the temporal, financial, and personnel constraints under which the TRC operated. From the outset, documenting the gross violations of human rights that took place during the Apartheid regime within two years was arguably overly ambitious. Though the TRC’s budget and staff were considerably larger than preceding truth commissions, its ambitious task meant that it lacked sufficient time, personnel and funds.<sup>82</sup> According to Graeme Simpson, former Director of the Centre for the Study of Violence and Reconciliation, to evaluate the TRC against its own mandate of national reconciliation “is to measure the TRC against an almost impossible ideal”.<sup>83</sup> The TRC Report explicitly refers to these constraints. “With its short lifespan and limited mandate and resources, it was obviously impossible for the Commission to reconcile the nation”.<sup>84</sup> Had the TRC broadened its ambit to include the victims of the routine harms of Apartheid, the number of victims and perpetrators eligible to participate in the hearings would have increased exponentially. This would have inundated the already overburdened commissioners and infrastructure. It would have been a logistical impossibility for the TRC to have extended its reach to the hundreds of thousands of victims and perpetrators of forced removals, the Bantu education system, pass laws, and other forms of routine degradation.

The TRC itself acknowledged that that an understanding of the history of the period so crucial to reconciliation was impossible unless Apartheid and racism were given their "rightful place as the defining features of that period".<sup>85</sup> Its choice to limit its mandate to “gross violations of human rights” as defined in the PNUR Act should not be understood to mean that these were

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<sup>78</sup> See Hamber, B. and Kibble, S. (1999) ‘From Truth to Transformation: The Truth and Reconciliation Commission in South Africa’ Catholic Institute for International Relations Report, February.

<sup>79</sup> In 1993, for example, a beloved ANC leader, Chris Hani, was brutally assassinated by white supremacists. This kind of violence threatened to derail negotiations. See Msimang, S. *supra* note 10.

<sup>80</sup> Mamdani, M. *supra* note 71 at 178.

<sup>81</sup> For a more extensive discussion of this aspect, see Fullard, M. and Rousseau, N. (2004) ‘An Imperfect Past: The Truth and Reconciliation Commission in Transition’ in Daniel, J., Habib, A. and Southall, R. (eds.) *State of the Nation, 2003 – 2004* at 78-104.

<sup>82</sup> In 2001, the TRC’s total budget was estimated to be in the range of \$33 million. At its peak, it had a staff of 400 people. See Van der Merwe, H., and Chapman, A. (2008) ‘*Truth and reconciliation in South Africa: did the TRC deliver?*’ at 247.

<sup>83</sup> Simpson, G. (1998). ‘A Brief Evaluation of South Africa’s Truth and Reconciliation Commission: Some lessons for societies in transition’. Paper written prior to the publication of the TRC’s Final Report (October).

<sup>84</sup> TRC Report, Volume 5 at 350.

<sup>85</sup> TRC Report, *supra* note 4 at 15.

the only grave human rights violations that occurred.<sup>86</sup> The report acknowledges how difficult it was for the TRC to focus on a relatively narrow number of victims in the face of its “deep awareness of this systematic discrimination and dehumanization”.<sup>87</sup>

For these reasons, the TRC’s failure to bring about meaningful reconciliation beyond the victims and perpetrators of specific political crimes should be seen as an inevitability. This is not to suggest that catharsis through creation of a shared national history could only be achieved through a comprehensive, all-encompassing reconstruction of the several decades of Apartheid. Rather, the TRC should be seen to have succeeded in narrating a collective experience represented by a comparatively small number of cases.<sup>88</sup> According to Justice Albie Sachs, the TRC constructed a truth of the experience “established through interaction, discussion and debate”.<sup>89</sup>

### **Exposing the gap: reconciliation at the community and national level**

Still, the choice by the TRC to focus on the individualized horrors of Apartheid came at the cost of paying the attention due to its “systemic and collective evils”. The reconciliation that it facilitated was limited to the relatively narrow group of people that participated in the hearings. The criticism put forward by Mamdani and others does, however, highlight the large numbers of South Africans who did not participate in the public dialogue that took place in the hearings held by the TRC. If reconciliation requires talking, being heard, and enemies finding ways to identify with each other, it must be that the majority of South Africans did not receive this opportunity through the TRC.

It follows that the majority of South Africans have not faced the past through active dialogue. Most have not relived their personal narratives, or explored their grief, their anger or their inherited prejudices. A July 2014 survey of multi-racial first-year history students at the University of the Free State reveals that 41% of students “never” discuss reconciliation, and another 46% only “seldom”.<sup>90</sup> Contrast this with the 92.2% of those same students who represented that reconciliation is necessary for the construction of a peaceful post-conflict South Africa.<sup>91</sup> Moreover, the survey revealed that 75% of students interviewed “would like to learn more about the TRC”.<sup>92</sup> The interviewers noted their impression that family members have not exposed them to information about the TRC and its objectives.<sup>93</sup> Talking about reconciliation is unpopular as a conversation among peers, who feel ill-equipped to speak about – and uncomfortable with – the topic.<sup>94</sup> For most South Africans, the past is unspoken.

These statistics are particularly troublesome in light of another study by the Institute for Justice and Reconciliation (hereafter, “IJR”) conducted in 2013.<sup>95</sup> The IJR’s study was designed

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<sup>86</sup> *Id.* at 63-4.

<sup>87</sup> *Id.*

<sup>88</sup> Posel, D. *supra* note 9 at 176.

<sup>89</sup> Sachs, A. cited in Boraine, A. and Levy, J. (eds.) (1995) *Healing of a Nation* at 105.

<sup>90</sup> Oelofse, M. and Oosthuysen, A. ‘The knowledge and perceptions of history students of South Africa’s Truth and Reconciliation Commission (TRC)’ available at <http://dspace.nwu.ac.za/bitstream/handle/10394/10950/14%20Oelofse%20et%20al%20TRC.pdf?sequence=1> at 267.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 263.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> For the full set of statistics that emerged from this survey, see Msimang, S. (19 December 2013) ‘On Truth & Reconciliation: Let’s start with the simple complicated truth’ *Daily Maverick*, available at <http://www.dailymaverick.co.za/opinionista/2013-12-19-on-truth-reconciliation-lets-begin-with-the-simple-complicated-truth/#.VGn2Z4uUfok>.

to measure progress in reconciliation since the transition to democracy. According to the study, only 52.8% of white South Africans agree with the statement “Apartheid was a crime against humanity”, compared to 70.4% of coloured, 77.1% of Indian and 80.9% of black South Africans. The majority of white South Africans are unconvinced that they played a role in the Apartheid system.<sup>96</sup>

These statistics cast doubt on the success of the TRC in constructing a lasting shared national truth. Moreover, they reveal that discussions about the past have not taken place, and the outstanding and current need for reconciliation. The statistics support the contention that the TRC’s focus on the victims and perpetrators of specific political crimes shifted the focus away from the routine harms that typified the crime against humanity that was Apartheid. As suggested by Hamber, uncovering truth about gross human rights abuses can, perhaps inevitably and unconsciously, obscure a number of other truths.<sup>97</sup> The disparities between the races indicate pervasive ideological divides, and a population that remains socially separated. These statistics reveal that the dialogue initiated by the TRC between victims and perpetrators has not extended to the young adult population in South Africa.

### **The TRC as part of a reconciliatory process**

The truth that the TRC excavated was a critical foundation for a reconciliatory process beyond the victims and perpetrators who participated directly in the TRC hearings. It marked the beginning of the reconciliatory process, rather than an entire process in itself. As argued by Hamber, any truth commission is doomed to failure if it is the exclusive vehicle of reconciliation.<sup>98</sup> This mirrors David Crocker’s position that “it is morally objectionable as well as impractical for a truth commission to force people to agree about the past, forgive the sins committed against them, or love one another”.<sup>99</sup>

Truth commissions “on their own cannot achieve reconciliation”.<sup>100</sup> Rather, they should be viewed as one of several mechanisms for reconciliation and only as one among other mechanisms for addressing the conflicts of the past.<sup>101</sup> These mechanisms include economic development, the entrenchment of the rule of law and human rights, as well as symbolic reconciliatory initiatives and violence prevention strategies that seek to extend the process initiated by the TRC.<sup>102</sup> Social reconciliation requires, among other things, establishing institutions and forums that are trustworthy and that genuinely promote the idea that each individual is a rights holder.<sup>103</sup> This process cannot happen solely through victim-perpetrator encounters.

John Alderdice, an Irish psychiatrist and politician, argues that “addressing . . . communal reconciliation following the trauma, stress and loss of conflicts and human rights abuses requires

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<sup>96</sup> Theissen, G. (1997) *Between Acknowledgement and Ignorance: How white South Africans have dealt with the Apartheid past* at 1 and 5.

<sup>97</sup> Hamber, B. (1999) ‘Remembering to Forget: Issues to Consider When Establishing Structures for Dealing with the Past’ chap. 6 in *Past Imperfect: Dealing with the Past in Northern Ireland, Guatemala and South Africa* at 4.

<sup>98</sup> Hamber, B. (1998) ‘Dr Jekyll and Mr Hyde: Violence and transition in South Africa’ in Bornman, E., Van Eeden, R. and Wentzel, M. (eds.) *Violence in South Africa*.

<sup>99</sup> Crocker, S. ‘Truth Commissions, Transitional Justice, and Civil Society’ in Rotberg and Thompson *Truth v. Justice* at 103 and 108.

<sup>100</sup> UN Human Rights Council, *supra* note 28 at 14.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 15

‘large group’ interventions”.<sup>104</sup> Looking to the South African context, he suggests that “ceremony, ritual and the establishment of facilities like the Freedom Park in Pretoria, with its ceremonial space and educational emphasis, are the kind of strategic interventions that may play a role in the “quest for symbolic reparation of the nation”, and the extension of the process begun by a truth commission.<sup>105</sup>

## **PART B: CULTURAL INTERVENTIONS**

### **Extension of the truth and reconciliation dialogue through cultural interventions**

Cultural interventions such as exhibitions, theatre productions, monuments, memorials and museums are key mechanisms that can play a valuable role in extending the reconciliation process started by the TRC beyond its participants.<sup>106</sup> These initiatives, aimed at changing attitudes, are particularly effective in filling a moral gap left in the aftermath of atrocities, and have the potential to “strengthen bonds of solidarity within society”.<sup>107</sup> They continue the dialogue started by truth commissions, and provide alternative forums for confrontation and generation of empathy. The role of interventions in the cultural sphere is an aspect of transitional justice that traditional literature tends to undervalue.<sup>108</sup> Utilised properly, cultural interventions have the capacity to increase the impact of truth commissions.<sup>109</sup> They can enhance society’s understanding of the plight and strength of victims, and foster dialogue and mutual understanding between former enemies. This mirrors the work of truth commissions, and in so doing, continues the contribution to reconciliation beyond the individuals who participate in the hearings.

This is not to say that cultural interventions have the capacity single-handedly to deliver reconciliation. Economic restructuring, reparations, criminal prosecutions, institutional reform and rebuilding trust in the law all play vital roles in transitions.<sup>110</sup> Rather, the argument is that cultural interventions are a powerful means through which the reconciliatory process begun by commissions like the TRC can be extended beyond the individual sphere, thereby enabling reconciliation at the community and national levels.<sup>111</sup> Unencumbered by the personnel, temporal, legal and financial strictures of truth commissions (and other similarly limited mechanisms of transitional justice), cultural interventions can recognise a far broader range of victims, perpetrators and bystanders.

In his discussion of the importance of cultural interventions, Pablo de Greiff highlights firstly their ability to “make victims visible”.<sup>112</sup> Moreover, they can illuminate the “depth, breadth, and effects of rights violations in a way that other forms of communication can hardly aspire to”.<sup>113</sup>

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<sup>104</sup> Alderdice, J. L. (2015) ‘Reconciliation and psychosocial understanding’ *The British Journal of Psychiatry* 12 (3) at 55.

<sup>105</sup> *Id.*

<sup>106</sup> De Greiff, P. (2014) ‘On Making the Invisible Visible: The Role of Cultural Interventions in Transitional Justice Processes’ in Ramirez-Barat, C. (ed.) *Transitional Justice, Culture and Society: Beyond Outreach* at 18.

<sup>107</sup> *Id.*

<sup>108</sup> See Pablo de Greiff’s discussion of the overemphasis of traditional literature on “technocratic responses and institutional measures at the expense of cultural and individual interventions” in UN Human Rights Council (2017) *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his global study on transitional justice recurrence (Pablo de Greiff) (Special Rapporteur)*, A/HRC/36/50/Add.1(2017) at 17.

<sup>109</sup> *Id.*

<sup>110</sup> De Greiff, P. *supra* note 104 at 11.

<sup>111</sup> UN Human Rights Council (2015) *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (Pablo de Greiff) (Special Rapporteur)*, A/HRC/30/42 at 21.

<sup>112</sup> De Greiff, P. (2014) *supra* note 104 at 18.

<sup>113</sup> *Id.*

As the TRC did, they can bring to life the suffering of victims, and humanise perpetrators. They continue the conversation initiated by truth commissions through causing audiences to see themselves in the victims or perpetrators presented. In doing so, they have the capacity to facilitate the conditions for empathy, and thereby enhance the potential for reconciliation. The audience that participates in the dialogue generated by cultural interventions is likely to be far greater and far broader than that of a truth commission. Their impact extends beyond the limited number of people that a truth commission can accommodate, and beyond the transitional moment.

Pius Langa, former Chief Justice of the South African Constitutional Court, agrees.<sup>114</sup> There are many ways, he suggests, to foster a “climate of reconciliation”, including public dialogue, art and music.<sup>115</sup> These initiatives are vital to national reconciliation, without which “we will simply have changed the material conditions and the legal culture of a society that remains fractured and divided by bitterness and hate”.<sup>116</sup>

Justices Sachs and Cameron of the Constitutional Court have also voiced their support of art’s role in generating the conditions for empathy through dialogue. In a joint article about the remarkable art collection owned and freely exhibited by the Constitutional Court, they remarked that:

*“Lying beyond the strictures of formalism and rules, the power of art in this sense is its ability to prompt discussion and dialogue about law by celebrating the humanity of the oppressed and (often at the same time) by seeking the humanity in those who would deny justice”.*<sup>117</sup>

Two examples from South Africa, *A Human Being Died That Night*<sup>118</sup> and the District Six Museum, illustrate the ability of cultural interventions to continue the contribution of truth commissions to reconciliation. In different ways, they continue the dialogue between victims, perpetrators and beneficiaries of the Apartheid system. They humanise those who suffered and those who inflicted the atrocity that the system was. In doing so, they confront their audiences with a difficult reality that demands reflection and recognition of those that once seemed other. This creates a forum for empathy and fosters the conditions for potential reconciliation.

### ***A Human Being Died That Night***

The theatrical adaptation of Pumla Gobodo-Madikizela’s book, *A Human Being Died That Night*, recounts Gobodo-Madikizela’s interviews with Eugene de Kock. De Kock was a colonel in the South African Police Force known as “Prime Evil”. From a farm near Pretoria known as “Vlakplaas”, he led a death squad that tortured and executed activists and opponents of the

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<sup>114</sup> Langa, P. (2006) ‘Transformative constitutionalism’ 3 *Stell LR* 351 – 360 at 359.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 358.

<sup>117</sup> Cameron, E. and Sachs, A. (2015) ‘Celebrating transition from Apartheid to democracy: The Constitutional Court Art Collection of South Africa’, available at <http://www.contemporaryand.com/magazines/celebrating-transition-from-Apartheid-to-democracy-the-constitutional-court-art-collection-of-south-africa/>.

<sup>118</sup> Gobodo-Madikizela, P. (2003) *A Human Being Died That Night: A Story of Forgiveness*.



Apartheid government.<sup>119</sup> Gobodo-Madikizela's genius is to illuminate the humanity of De Kock: the parts of him that make him just like each one of us, rather than an embodiment of all that we do not (want to) see in ourselves.

Without condoning his crimes, Gobodo-Madikizela humanises the man that history traditionally relegates to the ranks of the evil and the insane:

*“Should he have resisted such forces as apartheid’s legalization of violence and the silent support by a society that benefited from the violence? Of course he should have. But could he have? Did he have the conviction to oppose the system he served? Did he have any of the unique resources that only the morally courageous – the few who have the courage to follow their conscience – possess in totalitarian societies? That one is not confronted with the choices de Kock could have or could not have made, that one was not a member of the privileged class in apartheid South Africa are matters of sheer grace”.*<sup>120</sup>

The audience identifies with his thoughts and his words as indistinguishable from one's own. Almost shamefully, the reader finds oneself reluctantly but undeniably empathizing with Prime Evil. More perturbing, one feels strangely close to the mass-murderer. In its running time of under two hours, it invokes in audience members a quiet acknowledgment that the “otherness” that we once attributed to “evil” perpetrators of an abhorrent system was our own coping mechanism. It leaves the viewer perilously less able to separate oneself from the likes of a brutal assassin.

The play's attentiveness to what it is and what it feels like to be human weaves a common thread between us and those with whom we believed we had little in common. This dialogue, both with oneself and with others, facilitates empathy: seeing the other in oneself, and oneself in the other. It is an extension of the type of dialogue in which the TRC's participants engaged.

In a 2014 talk presented at the University of Cape Town Law Faculty, Diane Davis recounted her reaction to *A Human Being Died That Night*. She spoke of the original text's illumination of the role of forgiveness in South Africa's transformation.<sup>121</sup> For her, empathy is the key to the constitutional ideal of unity and reconciliation. When one empathizes with a perpetrator, and empathizes with a victim, one becomes less strident in condemning others; less certain of one's own moral rectitude. Empathy shifts the focus from the depravity of the individual perpetrator to the conditions that led to the action. In seeing oneself in the perpetrator, and the perpetrator in oneself, empathy shifts the mind and the heart away from the perilous practice of “othering”. Echoed in psychological rhetoric, the “empathetic moment” that draws victim and perpetrator “into a shared human community” is the “first step towards genuine forgiveness”.<sup>122</sup> While a perpetrator, bystander or beneficiary cannot undo the past, “his or her acknowledgement, contrition, and recognition of the victim's pain can go a long way in contributing to the victim's journey toward mastery of the traumatic memory” as well as to the rehumanisation of him- or herself.<sup>123</sup>

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<sup>119</sup> For an interesting take on De Kock, see Pauw, J. (2007) *Dances with Devils: A Journalist's Search for Truth*, especially the chapter entitled ‘The Men That Evil Do’.

<sup>120</sup> Op cit note 1 at 57.

<sup>121</sup> Diane Davis is a member of the Cape Bar in South Africa. Her main practice areas include administrative law, public law and constitutional law.

<sup>122</sup> Kristeva, J. (1987) *Black Sun: Depression and Melancholia* Chapter 7.

<sup>123</sup> Gobodo-Madikizela, P. ‘Remorse, Forgiveness, and Rehumanisation: Stories from South Africa’ (2002) 42 *Journal of Humanistic Psychology* at 24.

The absence of empathy signals the separation of human beings from one another. It must be, then, that the absence of empathy is at loggerheads with reconciliation, which is, by definition, a “coming-together”. If, therefore, *A Human Being Died that Night* provokes in its audience a sense of the common experience of being human by humanising De Kock, then it has succeeded at extending the dialogue necessary for reconciliation beyond the participants of the TRC. The text, by acknowledging the humanity of a man like “Prime Evil”, offers a radical way of grappling with the experience of Apartheid. It challenges the reader to respond in ways that foster healing – congruent with reconciliation – rather than revenge, which associates with division. Critically examining the narratives with which we have become too comfortable and uncritical “provide[s] a basis for genuine reconciliation built on a realization . . . that we must face new facts about an uncomfortable past”.<sup>124</sup>

The play is itself a way of confronting history.<sup>125</sup> By compelling the reader to recognise his or her past in that of De Kock’s, it acknowledges that the process of reconciliation is heterogeneous and incomplete.<sup>126</sup> National reconciliation demands the hearing of the stories of each who suffered under the cruelty of Apartheid, as a victim, a perpetrator, a beneficiary, a bystander, or as one who bears any scars of the legacy of the past. This acknowledgment creates the space for debate and dialogue to be rekindled among a wide range of people, and in doing so, guards against Posel’s “premature closure of [the kind of] debate” that is essential for reconciliation.<sup>127</sup> It continues the difficult and confronting dialogue that the TRC began.

Gobodo-Madikizela’s text interrogates the divides that we construct for our own comfort when confronting, or failing to confront, the trauma of the past. It initiates a rethinking of likenesses across “embattled lines of difference” and thus redefines the way the way in which a society casts its past.<sup>128</sup> This “rethinking” is the product of engaging, as opposed to labelling,<sup>129</sup> which “shuts the door to the kind of dialogue that leads to an enduring peace”.<sup>130</sup> Confronting the likeness of oneself in an Apartheid assassin initiates precisely the kind of dialogue and debate that is the “touchstone of reconciliation”.<sup>131</sup>

## The District Six Museum

The District Six Museum is an example of the way in which systemic violence directed at a wide group of victims can be acknowledged and memorialized through cultural interventions. The museum was established in 1994 on the site of one of the most notorious Apartheid forced removals and is a member institution of The International Coalition of Historic Sites of Conscience (hereafter, the “Coalition”).<sup>132</sup> The Coalition is committed to restoring a measure of dignity to those who have suffered human rights abuses of the most extreme kind through museums, historic

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<sup>124</sup> Asmal, K., Asmal, L. and Roberts, R. *supra* note 10 at 214.

<sup>125</sup> Goodman, R. (2006) ‘History, Memory and Reconciliation: Njabulo Ndebele’s *Cry of Winnie Mandela* and Pumla Gobodo-Madikizela’s *A Human Being Died that Night*’ *Literator* 27.2 at 12.

<sup>126</sup> *Id.*

<sup>127</sup> Posel, D. *supra* note 9 at 169-69.

<sup>128</sup> Moore, D., Kosek, J. and Pandian, A. (2003) *Race, Nature and the Politics of Difference* at 47.

<sup>129</sup> Gobodo-Madikizela, P. *supra* note 120 at 18.

<sup>130</sup> Gobodo-Madikizela, P. *supra* note 116 at 125.

<sup>131</sup> Gobodo-Madikizela, P. *supra* note 29.

<sup>132</sup> For a full list of member institutions, see <http://www.sitesofconscience.org/en/home/>.

sites, and memory initiatives.<sup>133</sup> All of the initiatives that the Coalition supports are “united by their common commitment to connect past to present, memory to action.”<sup>134</sup> In keeping with this goal, the District Six museum aims to “ensure that the history and memory of forced removals in South Africa endures” and to “foster understanding between people, isolated by segregation”.<sup>135</sup>

The museum traverses the trauma of forced removals from the District Six area by the Apartheid government after it was declared a “whites only area” under the Group Areas Act of 1966.<sup>136</sup> As this paper has discussed, this is a group of victims of the Apartheid system whose suffering at the personal level went largely unvoiced and unacknowledged because they were not seen as victims of a gross human rights abuse. More than sixty thousand “non-whites” living in District Six had their homes bulldozed and were displaced to a barren outlying area known as the Cape Flats.<sup>137</sup> The only possessions they had were those that they could gather and carry from their homes.

The government's justification for the evictions was an additional affront to the dignity of those removed. District Six, the officials declared, had become a hotbed of immoral and illegal activity including drinking, gambling and prostitution.<sup>138</sup> On the contrary, the sixth district of Cape Town was home to a diverse community of people who worked in the nearby docks and in the central business district.<sup>139</sup> Many believe that it was the heterogeneity of the community that provoked the Apartheid government to forcibly remove all non-whites, thereby entrenching its policy of geographic and physical racial segregation.<sup>140</sup> A successful cosmopolitan community was a threat to the separationist ideology of the Apartheid regime.

The museum and its exhibits portray the vibrant, multiracial and multicultural community of freed slaves, merchants, artisans, labourers and immigrants that District Six was before the forced removals.<sup>141</sup> Through a variety of different artistic and cultural forms – photographs, installations, sculptures, oral histories, children’s art, media – the District Six Museum documents the history of District Six and its people before and during the removals. Original shop fronts have been recreated and sound booths invite visitors to experience the jazz culture of District Six's artistic community. Reclaimed street signs decorate the walls and are suspended from the ceiling as part of a mobile.

Visitors are given a tour of the museum by education officers who speak to themes of memorialisation, the heritage and culture of resistance, the sites of District Six and the Cape Flats. Part of the tour is the surprising story of how an Apartheid official on the demolition team at the time of the forced removals collected the street signs and carefully stored them underneath the

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<sup>133</sup> See Sites of Conscience ‘About Us’, available at <http://www.sitesofconscience.org/en/who-we-are/about-us/>.

<sup>134</sup> *Id.* The Coalition supports member institutions through “grants, networking, training, transitional justice mechanisms and advocacy”.

<sup>135</sup> Crooke, E. (2008) *Museums and Community: Ideas, Issues and Challenges* at 119.

<sup>136</sup> *Id.*

<sup>137</sup> McEachern, C. (1998) ‘Working with Memory: The District Six Museum in the New South Africa’ 2 *Social Analysis: The International Journal of Social and Cultural Practice* Vol. 42 at 51.

<sup>138</sup> *Id.* at 50. See also De Villiers, M. (1988) *White Tribe Dreaming: Apartheid's Bitter Roots as Witnessed by Eight Generations of an Afrikaner Family*.

<sup>139</sup> McEachern, C. (1998) ‘Mapping the Memories: Politics, Place and Identity in the District Six Museum, Cape Town’ *Social Identities: Journal for the Study of Race, Nation and Culture*, 4:3, at 501.

<sup>140</sup> Mabin, A. (1994) ‘Dispossession, Exploitation and Struggle: an Historical Overview of South African Urbanization’ in D. Smith (ed.) *The Apartheid City and Beyond* at 19.

<sup>141</sup> For a detailed account of the exhibits of the District Six Museum, see Crooke, E. *supra* note 132 at 121. The exhibitions are also detailed on the official site of the District Six Museum, available at <http://www.districtsix.co.za/Content/Exhibitions/Permanent/index.php>.

floorboards in his home for decades. He later donated the signs to the museum, where they now have pride of place.<sup>142</sup> Stories such as this one shake up conventional notions of victims and perpetrators, and draw attention to the humanity of the individuals involved in the crime of Apartheid.

The guided visits are offered for a nominal fee and can be tailored to different groups, from members of the business community to primary school children.<sup>143</sup> Visitors are encouraged to consider the contemporary implications of the history they witness in these sites, and invited to participate in a critical dialogue (internal and with others) about the past and their role in it. Echoing this sentiment is a poem printed on one of the banners hanging from the ceiling of the museum, the last stanza of which reads:

*“We, all of us, need to decide,  
how as individuals and as people we wish to re-  
trace and re-signpost the lines of our future. Such a process  
Is neither easy nor straightforward. It is not predictable either”.*<sup>144</sup>

Engaging with the past was also a key focus in the development and curating of the museum and its exhibits. For this reason, the importance of participation of the victims of forced removals was emphasized.<sup>145</sup> Former-residents engaged in a "memory-mapping" project in which a detailed map of the destroyed neighbourhood was created.<sup>146</sup> Victims drew onto the map the roads, their homes and other significant sites, as well as excerpts from poems and songs that evoke District Six. This map, signed by those who participated in the project, now covers the entire floor of the museum's entrance.<sup>147</sup>

Some of the former residents of District Six donated a range of photographs, postcards and household objects to the museum. These very intimate items are displayed in the smaller rooms of the museum in a poignant exhibit.<sup>148</sup> Visitors of this exhibit are drawn in to the minutiae of the lives of the victims of the forced removals. One identifies parallels with one's own daily experience of family, friends and routine existence. Like the TRC did, this very simple exhibit facilitates the conditions for empathy, and the possibility of reconciliation. According to Hooper-Greenhill, behind these exhibits is the idea that “if we can experience the emotional memories of another, rather than possessing only the verbal knowledge to speak about the other's experience, we are more likely to exercise tolerance... in our behaviour with one another in the future”.<sup>149</sup>

The museum turns a site of trauma into a site of acknowledgement and celebration. It celebrates the cultural, vibrant, tolerant melting-pot of a community that District Six once was. It acknowledges the abuse of human rights that the forced removals were, and publicly recognises the humanity that was routinely disregarded under Apartheid. As Charmaine McEachern puts it,

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<sup>142</sup> Crooke, E. *supra* note 132 at 121.

<sup>143</sup> For more information on the various tours provided by the museum, see the “Education” tab on the official website, available at <http://www.districtsix.co.za/Content/Education/Teachers/Teaching/index.php>

<sup>144</sup> McEachern, C. *supra* note 136 at 505.

<sup>145</sup> Soudien, C. (2006) ‘Memory and critical education: Approaches in the District Six Museum’ *Africa Education Review* 3 (1) at 7.

<sup>146</sup> *Id.* See also Gibson, L. (2009) ‘District Six Museum’s Critical Pedagogy: Making Spaces to Heal Community Memories’ *Faculty of Information Quarterly* 1(2), available at <http://fiq.ischool.utoronto.ca/index.php/fiq/article/view/43/130>.

<sup>147</sup> See Appendix 1.

<sup>148</sup> See Appendix 2.

<sup>149</sup> Hooper-Greenhill, E. (2007) *Museums and Education: Purpose, Pedagogy, Performance*.

the museum is both a documentation of history and a “performance of memory”.<sup>150</sup> It reveals a truth that defies denial and forces its way into the national narrative. Through this memory site, a sense of dignity and humanity is restored to the victims of the forced removals from District Six.

As the TRC did, the District Six Museum succeeds in “excavating memories” previously silenced by the dominant Apartheid narrative.<sup>151</sup> It confronts victims, perpetrators, bystanders and visitors with a truth that provokes critical thought and demands a response. Through its exhibits, it invites visitors to engage in an alternative narrative of the past. As suggested by Laura Gibson, this engagement has the potential to “facilitate community healing and forgiveness”.<sup>152</sup> This sentiment harkens back to Pumla Gobodo-Madikizela’s conception of empathy. In the words with which she ends her equally profound book, the human capacity for empathy is – a “profound gift in this brutal world we have created for one another as people of different races, creeds, and political persuasions”.<sup>153</sup> It is the touchstone of reconciliation, and the foundation of unity.

### **Cultural interventions and truth commissions linked: support, recommendations and / or reparations**

Cultural interventions such as the District Six Museum and *A Human Being Died That Night* show how cultural projects can accord ethical, political, social and historical significance to the suffering of the broad groups that were the victims of systemic, pervasive, everyday discrimination. Free of the legal, temporal and financial strictures of truth commissions, they can provide opportunities for reflection, dialogue, comparison and sharing of narratives among a broad group of people. In this way, cultural interventions take the metaphorical baton of reconciliation from truth commissions, and broaden the scope of the victims and perpetrators that take part in active reflection about the past.

In his address at the opening of the Robben Island Museum on Heritage Day in 1997, President Nelson Mandela declared that South Africa’s cultural institutions could not “stand apart” from the country’s Constitutional project and Bill of Rights if the country is to “triumph over yesterday’s division and conflict”.<sup>154</sup>

For this reason, the work and the worth of cultural interventions should be seen as an extension of the reconciliatory process begun by truth commissions. Recognizing this relationship, Pablo de Greiff has argued that truth commissions “are well placed to encourage and support cultural manifestations, art exhibits, memorials and museums, which enhance society’s understanding of the plight and the strength of victims, empower them, and foster the formation of a culture of rights”.<sup>155</sup> He has urged truth commissions, states and donors to plan, finance or otherwise support cultural interventions.<sup>156</sup>

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<sup>150</sup> McEachern, C. *supra* note 136 at 500.

<sup>151</sup> Gibson, L., *supra* note 143.

<sup>152</sup> *Id.*

<sup>153</sup> Gobodo-Madikizela, P. *supra* note 116 at 139.

<sup>154</sup> Address by President Mandela on 24 September 1997, South African History Online, available at [www.sahistory.org.za/archive/address-president-mandela-heritage-day-robben-island-24-september-1997](http://www.sahistory.org.za/archive/address-president-mandela-heritage-day-robben-island-24-september-1997), cited in Durbach, A. *supra* note 62 at 208-09.

<sup>155</sup> UN Human Rights Council (2013), *supra* note 28 at 27.

<sup>156</sup> *Id.* at 29.

Going forward, truth commissions should recognise the broad reconciliatory power of cultural interventions. While the particular context of each truth commission should inform the way in which this relationship is structured, truth commissions may decide to formally recommend cultural interventions in their reports. This endorsement would provide recognition and legitimacy to the reconciliatory potential of truth commissions. This would ameliorate buy-in and participation from local communities. Increased legitimacy of cultural interventions may also attract funding by donors and organizations interested in contributing to national- and community-level reconciliation where truth commissions themselves cannot provide the necessary financing.

In addition or in the alternative, truth commissions may incorporate cultural interventions as part of a reparations program administered either by the commission itself or by an independent body. The 2003 Comprehensive Reparations Program (“PIR”) designed by the Peruvian Truth Commission included symbolic collective reparations such as memorials and acts of recognition.<sup>157</sup> It justified these proposals by linking reparations to the promotion of national reconciliation.<sup>158</sup> It noted too that the implementation of the PIR should include the participation of victims, as this process has its own symbolic and psychological benefits.<sup>159</sup> Symbolic reparations in Peru were understood to recognise the denial of full citizenship of the large number of poor and marginalised sectors of Peruvian society.<sup>160</sup> They were seen as a way to demonstrate that all Peruvians are rights holders and valued members of society.<sup>161</sup>

## Conclusion

The reconciliatory power wielded by the South African TRC was remarkable and earned it the position of a paradigmatic truth commission. It has been criticized for falling short of its objectives of facilitating reconciliation at three different levels: between individual victims and perpetrators, at the community level, and at the national level. The TRC made significant steps in generating the dialogue and opportunities for empathy that reconciliation requires. At the community and national level, the TRC made some contributions to reconciliation through contributing to a national narrative and combatting denial. Beyond this contribution, however, this paper has argued that community-wide and nationwide reconciliation was beyond the capabilities of the TRC. At these levels of reconciliation, cultural interventions can play a vital role in extending the reach of truth commissions. Unrestricted by the temporal, personnel and financial constraints under which truth commissions operate, cultural interventions can generate dialogue and the conditions for reconciliation beyond those involved in a truth commission. This is illustrated by the examples of *A Human Being Died That Night* and the District Six Museum. Finally, this paper seeks to highlight the symbiotic relationship between truth commissions and cultural interventions, and encourages future truth commissions to recognise this dynamic, too. This recognition may take the form of support or funding of cultural interventions by truth commissions, or inclusion of such interventions in recommendations or reparations programs. Taking heed of this particular way in which the reconciliatory impact of truth commissions may

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<sup>157</sup> Comisión de la Verdad y Reconciliación Final report (2003) volume 9 Programa Integral de Reparaciones chapter 2, available at <http://www.cverdad.org.pe/>.

<sup>158</sup> *Id.* Fundamentacion, at 2.2.1, 139–44.

<sup>159</sup> *Id.* Enfoques Transversales, at 2.2.2.3, 156–58.

<sup>160</sup> Laplante, L. and Theidon, K. (2007) ‘Truth with Consequences: Justice and Reparation in Post-Truth Commission Peru’ *Human Rights Quarterly* 29 The Politics of Reparations in Peru” at 249.

<sup>161</sup> *Id.*

be extended will hopefully enhance the effectiveness of future truth commissions in contexts of national transition.

*Appendix 1: Floormap of District Six in entrance of District Six Museum*



Photograph by Katie Markham (2017) “Two-dimensional engagements: photography, empathy and interpretation at District Six Museum” *International Journal of Heritage Studies*.



Appendix 2: Family photographs on the ‘Interior’ display at District Six Museum



Photographs by Katie Markham (2017) “Two-dimensional engagements: photography, empathy and interpretation at District Six Museum” *International Journal of Heritage Studies*.