



Transitional Justice and DDR: The Case of South Africa

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Transitional Justice and DDR Project

This research project examines the relationship between disarmament, demobilization and reintegration (DDR) programs and transitional justice measures. It explores the manifold ways in which DDR programs may contribute to, or hinder, the achievement of justice-related aims. The project seeks not only to learn how DDR programs to date have connected (or failed to connect) with transitional justice measures but to begin to articulate how future programs ought to link with transitional justice aims. The project is managed by Ana Patel, Deputy Director of the Policymakers and Civil Society Unit at the ICTJ. For more, visit www.ictj.org/en/research/projects/ddr/index.html.

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About ICTJ

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Table of Contents

Introduction	4
Context	5
The Conflict in South Africa.....	5
Postconflict Transition.....	7
Process	9
Disarmament, Demobilization and Reintegration (DDR).....	9
Military Negotiation Process.....	9
Integration of Armed Forces into the SANDF.....	10
Disarmament, Weapons Collection and Stockpile Management	13
Demobilization	14
Reintegration into Civilian Life.....	15
Overall Assessment of the Demobilization and Reintegration Process	16
Transitional Justice	16
Legal Framework.....	16
Truth-Telling.....	18
Prosecutions.....	20
Reparations	21
Institutional Reform.....	22
Local Transitional Justice Initiatives.....	23
Preliminary Conclusions—Transitional Justice	24
Examination of the Interrelationship between the DDR Process and Transitional Justice Measures.....	24
Conclusions	30
Missed Opportunities.....	30
Recommendations for Linking DDR Programs and Transitional Justice Measures	32

Introduction

South Africa's transition from an apartheid state to a democracy included a number of national processes meant to address the violent and painful past and to transform the country into a stable and peaceful state. Essential among these programs was a process to disarm, demobilize and reintegrate ex-combatants and to create a new defense force integrating the armed forces of opposing parties into a united military structure. Disarmament, demobilization and reintegration (DDR) of ex-combatants was an important component of a larger process of the transition within South Africa, yet it remained largely independent from other initiatives, including transitional justice initiatives, such as the South African Truth and Reconciliation Commission (TRC).

This paper outlines these different processes and investigates the lack of cohesion between the DDR program and transitional justice measures. The first part of the paper contextualizes the conflict in South Africa and outlines the transition to democracy. The paper then looks specifically at the DDR program, including the military negotiation process and the integration of the separate armed forces under the new South African National Defence Force (SANDF), as well as the reintegration of former combatants—highlighting its shortcomings while recognizing how the program helped achieve sustainable peace. The paper further outlines the larger transitional justice measures employed, including an amnesty for crimes committed during apartheid that was linked to a larger truth and reconciliation process, prosecutions of certain crimes, reparations for victims and institutional reform. In the final section, the paper analyzes the relationship between DDR and transitional justice, showing why the two processes remained independent from one another, as well as providing suggestions regarding how they might have been linked.

Context

The Conflict in South Africa

The origins of the conflict in South Africa reach back to the arrival of the first European settlers in 1652. The gradual expansion of colonial territory brought the colonial powers and local settlers into conflict with numerous African communities over the next two centuries. White rule was formalized through the sale and expropriation of land and the establishment of the Cape and Natal colonies and the Boer Republics in the 1800s. Ongoing tensions over political exclusion, land expropriation, taxes and other oppressive policies resulted in numerous military confrontations and protests. Protest actions during the first half of the twentieth century were largely nonviolent, and it was only with the banning of the African National Congress (ANC), the Pan Africanist Congress (PAC) and other liberation groups in 1961 that the liberation forces engaged in a military struggle. The conflict in the 1960s, 1970s and 1980s mainly involved guerrilla attacks on military personnel and government facilities. The government security forces, particularly the South African Defence Force (SADF), and the South African Police (SAP), were directly involved in battling the liberation forces, as well as repressing public protests against the government. The conflict was also marked by violence between various groups of the liberation movement.

During the 1980s, the tensions between the ANC and the Inkatha Freedom Party (IFP) escalated and took on an increasingly violent form. Especially after the beginning of the peace negotiations in 1989, these conflicts escalated into open warfare and the arming of Self-Defence Units (SDUs) and Self-Protection Units (SPUs) within ANC and IFP areas, respectively. These units were armed and received basic combat training, but were subject to very little formal control. While the conflict was ostensibly between the ANC and IFP, the state security forces were directly implicated in supplying arms and other support to the IFP.

The main armed sectors of the primary liberation groups were the Spear of the Nation [*Umkhonto we Sizwe*] (MK) under the ANC and the Azanian People's Liberation Army (APLA) under the PAC. These groups had training camps in other southern African countries and many young South Africans left the country in order to receive training.

Because of this, the conflict in South Africa was not restricted to its own territory. The SADF was involved in wars of destabilization in neighboring countries to undermine support for the ANC and its military campaign. The South African Truth and Reconciliation Commission (TRC) stated in its final report that it “believes that the number of people killed inside the borders of the country in the course of the liberation struggle was considerably lower than those who died outside.”¹

The nature and extent of abuses by all sides in the conflict were documented by the TRC. The TRC relied mainly on its database of victim statements, which covered 33,713 gross human rights violations (based on 21,296 statements).² The majority of violations were committed in the

KwaZulu-Natal region and the most violent period was from 1990 to 1994.³ Most of those killed or tortured were young men between the ages of thirteen and thirty-six, while other forms of abuse (including sexual abuse) targeted men and women in roughly similar numbers.⁴

The Commission found that the state perpetrated the following types of gross violations of human rights in South Africa and other southern African countries: torture; abduction; severe ill treatment, including sexual assault; unjustified use of deadly force in situations where lesser measures would have been adequate; the deliberate manipulation of social divisions in society, resulting at times in violent clashes; judicial and extrajudicial killings; and the covert training, arming and funding of offensive paramilitary units or hit squads for deployment internally against opponents of the government.⁵

The TRC also concluded that the IFP was the primary nonstate perpetrator of gross human rights abuses in South Africa from the late 1980s to 1994, responsible for approximately one-third of all the violations reported to the Commission.⁶ Statistics derived from the Commission's database indicate that the IFP was the major perpetrator of killings on a national scale, allegedly responsible for over 4,500 killings, compared to 2,700 attributed to the SAP and 1,300 to the ANC.⁷ The ANC's responsibility for human rights abuses are also detailed in the final report, specifically its use of limpets and landmines, which resulted in civilian casualties and gross human rights violations. While the Commission acknowledged that targeting civilians was not ANC policy, it found that their MK military wing nonetheless ended up killing more civilians than security force members.⁸ The report also briefly noted the gross violations of human rights committed by the ANC in exile in its camps.⁹

Along with the human rights abuses mentioned, gender-based violence was also a part of the atrocities committed. Women were employed by the military groups, particularly in the liberation forces. While they played a lesser role in direct combat (only 1 percent of TRC amnesty applications received were from women),¹⁰ women were very active in the liberation movement in other roles. Because of this, many women were detained and subjected to various "severe ill treatment."¹¹ Women between the ages of thirty-seven and forty-eight years of age experienced the highest concentration of ill treatment. While the TRC collected numerous accounts of sexual abuse by different armed groups (of their own members and of enemies), the extent of this is still largely unknown. What is known, however, is that sexual abuse was used as a form of torture, particularly by the SAP. Allegations of sexual abuse in ANC training camps have also surfaced, but have not been openly debated until recently.

As the conflict progressed, the boundaries between political and criminal violence became increasingly obscured to the point where it would be a mistake to portray the patterns of and motivations for violence simply in terms of ideology and political affiliation. The state employed criminal networks in its actions against the liberation groups, and state security forces themselves became involved in criminal activities. Similarly, the liberation forces engaged with criminal

networks in pursuit of their goals. Lack of accountability to political leaders or the local community created the space for criminal acts by those professing to be political combatants.

Postconflict Transition

The transition to democracy in South Africa was a long and painful process of bilateral and multiparty negotiations between 1990 and 1994. Various bilateral talks—namely, between the National Party, which had institutionalized apartheid in 1948, and the ANC, which was the largest liberation group—provided the basis for the establishment of multiparty negotiations about the future of the country. Initial talks between the parties focused on issues of ending political violence, the release of political prisoners and interim governance mechanisms.

After the release of Nelson Mandela in February of 1990, and the legalization of numerous political parties, initial talks led to an agreement on, among other things, an indemnity process that would release certain political prisoners from South African jails and ensure that political exiles were not arrested when they returned to South Africa to participate in the peace process. This agreement, called the Groote Schuur Minute, led to the enactment of the Indemnity Act of 1990, which provided for temporary amnesty for individuals, mainly ANC members, accused of political violence. The Further Indemnity Act of 1992 followed this, allowing members of the National Party security forces to receive amnesty through a wholly secretive procedure.¹² The Further Indemnity Act of 1992 was passed despite ANC and international scorn. With the passage of these two acts, those who wanted to benefit from indemnity had to provide information about the acts they had committed.

These negotiations also led to the establishment of a National Peace Accord in 1991, which outlined a framework for dealing with political protests and community conflict. It also established various local peace accord structures, such as local dispute resolution measures, to address the high level of ongoing political violence. These local measures were needed, as this four-year transition process was marked by escalating violence, particularly among political factions in the black townships where militarized youth played a key role in the conflict.¹³ The continuing and increasing violence, such as the Boipatong Massacre in 1992, led to a temporary breakdown in talks. The ANC accused the government of not doing enough to protect ANC-aligned communities, and of direct complicity in some attacks, including the one at Boipatong.

When negotiations resumed, they centered on creating an interim constitution. This was a cumbersome process involving nineteen parties, working on a principle of “sufficient consensus.” Agreement was ultimately reached in December 1993 on an interim constitution and an election process for the national parliament. The date for the election was set for April 27, 1994. The final hurdle in this process was the IFP’s refusal to participate until given certain assurances in the final weeks before the election. Conservative whites still sought to undermine the election process, but aside from a few bomb blasts, right-wing resistance did not seriously threaten the process. The PAC

was also only gradually won over to the election process, and was responsible for a number of attacks in the months leading up to it. Political violence between the ANC and the IFP was significantly reduced around the time of the election, but numerous incidents of violence still raised fears that the situation was spiraling out of control. On the whole, however, the elections of 1994 were very peaceful and almost universally accepted as free and fair.

The negotiated constitution received broad support and its provisions were generally accepted by political parties and welcomed by the majority of South Africans. A key provision of both liberation parties and the government was amnesty for past human rights abuses. This was the final obstacle to agreement and it was the one provision in the negotiations that occurred in bilateral discussions between the ANC and the National Party to the exclusion of other parties. The National Party (under pressure from military leaders) insisted that no transition would happen without a guarantee of amnesty. The specifics of its implementation were left to the incoming government.¹⁴

The constitution was also hailed as a major victory for human rights campaigners. It provided a very strong bill of rights, instituted independence of the judiciary and provided other assurances of good governance. Importantly, the bill of rights included socioeconomic rights as a provision, a key element in the context of a country facing vast poverty and inequality.

Civil society played a very important role in both the peace process and the constitutional negotiations. During the peace process, numerous NGOs, particularly those with expertise in conflict resolution, were called on to assist in implementing the National Peace Accord structures. They also served a vital monitoring role in bringing incidents of violence and abuse to public attention and putting pressure on political parties to abide by the peace agreement. In terms of involvement in the constitutional process, various human rights NGOs made contributions to the drafting of the constitution. These inputs were made mainly via the ANC, which sought civil society recommendations to ensure that human rights were effectively incorporated.

Despite the highly lauded human rights and good governance components of the constitution, the root economic causes of the conflict in South Africa essentially persist. Differences between rich and poor (and between white and black) remain very stark and the level of absolute poverty and underdevelopment, particularly in rural areas, remains high. Income disparity in South Africa is extreme, with the UNDP estimating the nation's 2007–2008 Gini coefficient¹⁵ as 57.8, one of the highest in the world.¹⁶ While economic growth in the country has been strong since the late 1990s and into the early 2000s, the benefits have been largely limited to those with formal sector employment. In fact, because of this steady economic growth, the continuing lack of jobs, a 40 percent unemployment rate and the failure to meet the basic needs of most of the people are issues that still fuel social conflict. Land distribution also remains extremely racially skewed, with most land belonging to white farmers, compounding tensions further.

Another source of tension and a serious threat to democratic values and institutions in South Africa is the high crime rate. Frustration with violent crime in particular has led to calls from the public

and some senior politicians for more severe police action, the curtailing of legal rights of criminal suspects and the undermining and sidelining of criminal justice institutions that are seen as ineffective.

Despite the democratic transition and the adoption of a human rights–based constitution, intolerance of out-groups remains high. For example, while usually regarded as heroes in their communities, ex-combatants are at times regarded with suspicion and sometimes stereotyped as criminals. This intolerance has also led to the identification of new out-groups. The new “rainbow nationalism” has started identifying immigrants (especially from other African countries) as responsible for crime and unemployment, and in 2008, thousands were driven from their homes and dozens killed in xenophobic attacks.

Process

Disarmament, Demobilization and Reintegration (DDR)

Military Negotiation Process

In April 1993, formal military negotiations were initiated between the SADF and the MK, the armed wing of the ANC. The negotiations focused on the control of the national military during the political transition; the creation of a new defense force; and the integration of various, often opposing, armed forces into a new, united, postapartheid national military, which was to become known as the South African National Defence Force (SANDF). APLA, the armed wing of the PAC, did not participate in the military negotiations, and only formally suspended the armed struggle in 1994. The various homeland (collectively referred to as the TBVC states) armed forces were formally excluded from the negotiation process, as they were effectively subservient to the SADF.

The major outcome of the negotiation process, which was directly conveyed to the Convention for a Democratic South Africa (CODESA),¹⁷ was that all armed forces in South Africa would be incorporated into the SANDF. Despite their not participating in the negotiation process, provision was made for both homeland military personnel and APLA members to join the SANDF.¹⁸ Between 1993 and 1994, all South African armed forces had to submit a roster of their personnel to a centralized list called the Certified Personnel Register (CPR), which was administered by the Department of Defence. This list was to form the basis of the SANDF integration and demobilization process. The compilation of the CPR lists for the nonstatutory forces (MK and APLA) was controversial. Both entities had difficulty presenting complete and accurate information due to their own insubstantial personnel records and combatants’ historical use of noms de guerre. There have also been allegations of corruption and errors in the process. The CPR was finalized in August 1995.¹⁹ Yet to date, the accuracy of the list is a point of contention, as a significant number of ANC and PAC members claimed to have been part of their parties’ armed groups. The MK and APLA, respectively, were excluded from the CPR.

There was also much controversy over who should be recognized as a combatant. Some military and/or militarized groups who defined their members as soldiers in the struggle for liberation were excluded from the integration and demobilization process altogether, mainly due to their lack of representation in the negotiation process. AZANLA (Azanian Liberation Army), the military wing of the Azanian People's Organisation, was one example. The numerous SDUs spread throughout the country, with varying levels of training and connection to the ANC, were often at the front lines of the violence that took place within South Africa, but also did not have a clear status in the process. While some SDUs were included under the auspices of MK, most were not, and thus were not part of the integration into SANDF.

It is pertinent to mention that the CPR-based SANDF integration and demobilization process was integral in defining who constitutes South Africa's "ex-combatants." These definitions are hotly contested, no doubt because they have a role in influencing access to or exclusion from scarce resources and opportunities, as well as informing other processes, such as the building of national memory.²⁰ These controversies continue as parliament debates the provision of new benefits for ex-combatants.

Some members of various SDUs were, however, included in an earlier "informal"²¹ demobilization process that took place prior to the start of official integration into SANDF. This informal demobilization occurred during the early 1990s. Approximately 4,000 people from MK camps in Tanzania and Uganda were repatriated to South Africa as "unarmed civilians" under this process. Each returnee received R50 (US\$11) so that they could travel back to their original communities, as well as an R1,800 (US\$400) grant.²² A survey of 180 respondents from this MK group undertaken by Jacklyn Cock revealed that most were unemployed. Many indicated that they had been unable to find employment due to poor education or no marketable skills, as well as a lack of work experience. A substantial number suffered from psychological problems.²³

Integration of Armed Forces into the SANDF

The integration of the various armed forces into the SANDF was facilitated by the Joint Military Coordinating Council of the Sub-Council on Defence of the Transitional Executive Council (JMCC), which was made up of representatives of the SADF, MK, APLA and some of the homeland militaries. This entity determined that the infrastructure of the SADF would be used as the basis for the SANDF. The minimum age for integration into the SANDF was originally set at eighteen, but was reduced to sixteen to accommodate the militarized youth from the ANC's SDUs.²⁴ Information regarding the number of ex-combatants who were under the age of eighteen at the time of integration is not available in the public domain.

Women had also served within the nonstatutory forces, and some had engaged in combat. It is estimated that about 20 percent of the personnel of MK at the time of integration were female, and that 200 women were APLA members.²⁵ As a result, MK negotiated for gender equality at all levels within the SANDF (including combat positions). The SADF was traditionally patriarchal in nature

and sought to exclude women from combat roles, but an agreement was secured to ensure SANDF career paths for women would be the same as those for men. Women could enroll in the same training courses and apply for the same posts as their male counterparts, including combat posts. Of those nonstatutory force members that were integrated into the SANDF, approximately 10 percent were female.²⁶

The numerical breakdown of the CPR by armed force at the start of the SANDF integration process was as follows:²⁷

**Table 1:
Certified Personnel Register Data**

Armed Force	Number
<u>Statutory forces:</u>	
Former SADF (excluding part-time forces, but including civilians)	90,000
Former TBVC defense forces	11,039
Subtotal	101,039
<u>Nonstatutory forces:</u>	
MK	28,888 ²⁸
APLA	6,000
Subtotal	34,888
TOTAL	135,927

The SANDF integration process began in April 1994 following intensive negotiations within the JMCC. During these negotiations it was decided that the SANDF would include 17,000 MK members, 6,000 APLA cadres, 10,000 personnel from the homeland militaries and 85,000 soldiers and staff from the SADF.²⁹ Once this was established, integration occurred in four stages.

First, ex-combatants were assembled regionally at selected military bases, including Hoedspruit, Wallmansthal and De Brug. Many of the nonstatutory forces' personnel had to be repatriated from Tanzania, Uganda and Zimbabwe. The majority of exiled MK members were directly transported from outside of South Africa to relevant military bases within the country under JMCC supervision, while the APLA headquarters supervised its own repatriated members.³⁰ MK and APLA were required to provide the JMCC with key personal data relating to their members; however, neither group provided a complete database. As a result, the Personnel Maintenance Office of the SANDF was tasked with the complex and lengthy process of verifying the credentials of MK and APLA members. This task was further confounded by the fact that the dissemination of information to rank-and-file nonstatutory force members was unsystematic. The MK and APLA were unable to establish the necessary structures needed to inform their members of the modalities of the integration process. This lack of proper communication led to unsystematic reporting of nonstatutory force members to the relevant military bases. Consequently, the administration and management of the integration process unfolded in a jumbled fashion.³¹ Some nonstatutory forces also reported for integration with military weapons, but the majority did not, and it appears as if no audit of the weapons holdings of individual nonstatutory force members was undertaken.

Second, ex-combatants appeared before the SANDF Placement Board, which consisted of appointed personnel of the different armed forces and the British Military Assistance Training Team (BMATT).³² Those with physical and psychological disabilities, suffering from ill health, without sufficient military training or without the minimum military or educational qualifications were demobilized.

Third, those ex-combatants who were assessed to have insufficient experience and knowledge of the workings of a conventional military were provided with bridging training and orientation. Detailed personal data about these individuals was captured on the SANDF personnel database.

Fourth, ex-combatants were placed into different arms of the SANDF.³³ In essence, the statutory and nonstatutory armed forces were absorbed into the structures of the SADF. Under the guise of "integration," the SADF gained an initial and became the SANDF.

The integration process was characterized by dissatisfaction about ranks, conditions of service, living conditions, and salaries. Members of the nonstatutory forces received lower pay and rank as compared to their SADF and homeland military counterparts. Other complaints that emerged from the process, including, for example, about the use of Afrikaans as the language of instruction in training sessions, about the stigmatization and marginalization of former MK members, and about the inefficacy or lack of channels to address grievances, were usually underpinned by charges of racism.³⁴ Further contributing to dissatisfaction was the difficulty some ex-liberation fighters had in adapting to a conventional military environment, and the lack of forethought and planning on the part of those managing the process concerning the sensitive and fraught context of reintegration. While the insulting of troops, for instance, is typical of conventional militaries, it was experienced as discriminatory and an extension of intolerance and racism by ex-liberation fighters. Overall, it seems

that “mechanisms . . . to facilitate the delicate process of integrating armed forces”³⁵ were not considered.

In response, many former nonstatutory force activities intentionally violated the military discipline code, and absence-without-leave incidents were rife.³⁶ In 1995, 7,000 MK soldiers left military bases and engaged in protest actions. Five thousand of these MK members returned to military bases following Nelson Mandela’s guarantee that their grievances would be addressed. Those who did not return were discharged, while some faced courts-martial.³⁷ Women faced additional integration challenges. Many of the integration sites did not have adequate sanitation and accommodation facilities for women, there was a shortage of women’s uniforms and there were a number of allegations from women of sexual harassment by their male counterparts.³⁸

Racial tensions within the SANDF emerged after MK and APLA members had been integrated into the new South African military. There were a number of incidents of alleged racial discrimination by white soldiers against their black counterparts in the mid to late 1990s. These incidents reportedly took the form of unfair punishment, assaults, slurs, unfair dismissals and other acts of discrimination. There were also a series of incidents where black soldiers shot and killed white SANDF members. A Ministerial Commission of Inquiry reported that the SANDF’s management was predominantly white, and this fueled racial tension and contributed to overt racist incidents between white and black soldiers.³⁹ This state of affairs was exacerbated by an intensive military downsizing that took place from 1996 and sought to reduce the size of the SANDF from 135,000 to 70,000 personnel. Since 2001, however, race relations have stabilized within the SANDF, and it has become a professional, nonpartisan military.

Disarmament, Weapons Collection and Stockpile Management

During the integration process an arms and armament committee was established within the SANDF to compile a registry of MK arms and armaments, as well as ensure that demobilizing soldiers surrendered their weapons. The weapons held by the homeland forces were either incorporated into SANDF armories or were discarded.

Many of the MK weapons caches were located outside of South Africa—namely, in Angola, Botswana, Mozambique, Tanzania, Uganda and Zimbabwe; however, only weapons caches within South Africa were seen to be a priority.⁴⁰ By the end of 1994, 120 MK weapons caches had been unearthed in the country and placed under the SANDF control. These stockpiles contained a wide range of arms, ammunition and explosive devices.⁴¹

An audit of the homeland forces’ weapons holdings revealed that a total of 690 small arms had been stolen from the Bophuthatswana, Ciskei and Venda defense forces (a third of which were then recovered by the SANDF after the audit). In addition, approximately 15,000 weapons, mainly automatic rifles and handguns, from the Transkei military and police went missing prior to integration. The Goldstone Commission of Inquiry found that the Transkei security forces had

provided weapons to APLA in the early 1990s in order to allow the group to continue its armed struggle against the South African government. The whereabouts of these weapons is currently not known. The 3,800 firearms that the apartheid state distributed to the SPUs were not integrated into the SANDF armories.⁴²

Demobilization

The demobilization process within the SANDF began in April 1995 with a focus on the voluntary release of SANDF personnel who either did not wish or were unable (due to physical disability or ill health) to serve in the military.⁴³ It involved the provision of gratuities,⁴⁴ which varied according to the number of years of military service, from a minimum of R12,734 (US\$3,499) to a maximum of R40,657 (US\$11,156). Demobilizing soldiers were also encouraged to participate in two weeks of voluntary counselling and eighteen months of vocational training through the Department of Defence's Service Corps.

Special pensions were also provided to certain former members of the MK and APLA groups, under the Special Pension Act No. 69 of 1996. Monthly pension payouts ranged in amount from between R500 (US\$111) and R5,000 (US\$1,111), depending on the age of the ex-combatants. Only those ex-MK or ex-APLA members who were thirty-five years or older on the commencement date of the Special Pension Act were entitled to apply for the funds. This has excluded many potential beneficiaries, given that a key feature of the liberation armies was the considerable representation of young people. The act and this provision continue to be challenged, and were again reviewed in 2006.

Close to 6,000 soldiers were formally demobilized from the SANDF in 1995, the majority of which were originally from the MK and the APLA. Information relating to the gender distribution of these demobilized ex-combatants is currently not available. Most demobilized soldiers returned to impoverished communities where opportunities for employment were severely limited. It should be noted that due to the rationalization process within the SANDF, approximately 30,000 additional military personnel left either by means of natural attrition or nonrenewal of contracts between 1996 and 2003.

The Department of Defence anticipated that the Service Corps would train close to 22,000 personnel between 1995 and 2001, of which 10,000 would be former members of the MK and the APLA.⁴⁵ This was an optimistic and perhaps unrealistic figure, given that the Service Corps was plagued by numerous problems stemming from a lack of effective planning and a failure to conduct an audit of the skills and career aspirations of those soldiers who were to be demobilized. No labor market analysis was undertaken, and some trainees were provided with skills with which they could not secure jobs in their place of residence. The military culture within the Service Corps also proved inappropriate in preparing demobilized soldiers for the complexities of civilian employment. In addition, issues arising from the sensitive context of the program, particularly that the trainees were managed and trained by their former enemies, were barely addressed. A number of official inquiries

into the performance of the Service Corps found that it had significantly under-performed and was ineffective in fulfilling its mandate. By late 2000, only 1,049 demobilized soldiers had received training from the Service Corps, 815 of whom were former APLA and MK soldiers.⁴⁶

Reintegration into Civilian Life

There were a number of problems with the general process of reintegrating former combatants into civilian life, especially with respect to economic integration. Most of the difficulties arose from a lack of adequate planning and coordination to implement programs effectively. The reintegration process was determined in a top-down manner without sufficient consultation with ex-combatants and civil society organizations.⁴⁷ There was also again an absence of feasibility studies to determine the social and economic needs of former MK and APLA combatants and their dependants. To date three substantial studies on the reintegration of ex-combatants into civilian life have been undertaken by Ian Liebenberg and Marlene Roefs,⁴⁸ Sasha Gear⁴⁹ and the Centre for Conflict Resolution,⁵⁰ respectively. All three studies obtained data from male and female former combatants, but none provide a detailed analysis of the plight of demobilized female combatants.

Liebenberg and Roefs conducted a questionnaire-based study on the experiences and needs of 307 demobilized SANDF soldiers and staff, the majority of whom were reportedly former members of the MK or APLA.⁵¹ Women comprised 13 percent of this sample. Sixty percent of the respondents had not completed their high school education, and more than 60 percent of respondents were not employed. More than 90 percent of the entire sample claimed that the SANDF had not provided them with sufficient reintegration assistance.

Gear's sociological investigation of the reintegration experiences of former combatants in South Africa also indicated that they had major difficulty in returning to civilian life. Many ex-combatants perceived themselves to have been "wished away,"⁵² as "former superiors and respective communities now tend to distance themselves from the people who not so long ago, they urged into armed action."⁵³

The Centre for Conflict Resolution's work corroborated the above findings. From 2001 to 2003, the research group interviewed a total of 410 previously demobilized ex-MK or ex-APLA members to ascertain their quality of life and socioeconomic needs after societal reintegration.⁵⁴ They found that 66 percent of respondents were unemployed, with most either being dependent on family members to provide them with money, food and shelter or else were engaged in ad hoc informal sector activities, such as hawking. Close to 40 percent of respondents had their own accommodations, but many of these homes were shacks in improvised settlements. More than a third of the respondents indicated that they suffered from psychological problems. Women, who made up 12 percent of the study population, reported facing additional psychological challenges: apart from exposure to war-related violence, some were the victims of sexual abuse by commanders. According to one of the women ex-combatants interviewed during the study: "When I remember my first three years of exile I feel like crying, because I had sexual intercourse with more than 20 MK commanders. I also saw

this happening to other young female students who joined MK in the 1970s and 1980s. The female comrades were used as sex slaves, but if a young male comrade was found having an affair with a female comrade, he was punished and in some cases killed.”⁵⁵

Overall Assessment of the Demobilization and Reintegration Process

The full implications of the demobilization and reintegration process of former combatants into civilian life in South Africa are yet to be realized. The legacy of this process is that a large population of unemployed and disempowered former combatants currently exists. In the ex-combatant studies mentioned above, many of the former MK and APLA respondents were dissatisfied with the government’s lack of interest in their plight. Some had resorted to public protests to air their grievances. There is also anecdotal evidence that suggests that former combatants from MK and APLA have been involved in organized criminal activities, including cash-in-transit heists and bank robberies. There is inadequate information as of yet to formulate generalizations about the role of ex-combatants in criminal activities.

Despite the inadequacies of the demobilization and reintegration process, to date, the ex-combatant community appears not to have significantly undermined efforts by government and individual South Africans to achieve sustainable peace. A small minority of former combatants from the specialist divisions of the SADF engaged in mercenary activities in civil wars in other African countries between 1993 and 1999, but this was reduced to negligible occurrences following the formulation of anti-mercenary legislation. That said, South Africa remains afflicted by high levels of armed violence, with firearms being one of the leading causes of death and injury, a consequence of the absence of a comprehensive disarmament process directly following the political transition.

Transitional Justice

Legal Framework

The interim constitution negotiated in 1993 provided a specific provision for amnesty for all combatants involved in political violence. It stated in a “post amble” that:

In order to advance . . . reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993,⁵⁶ and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.⁵⁷

Without this provision, talks between the parties may well have broken down. Rather than provide a blanket amnesty, the new ANC government opted for a provisional amnesty that was linked to a broader truth and reconciliation process. The enactment of the amnesty provision was thus incorporated into the establishment of the Truth and Reconciliation Commission (TRC). One of the TRC's functions was thus to implement the constitutional obligation to grant amnesty.

The Amnesty Committee of the TRC provided a very controversial, but constitutionally mandated, function of reviewing applications for amnesty made by perpetrators of illegal acts (including human rights violations) that occurred during the period of 1960 to 1994. Individuals, but not groups or organizations, could apply for amnesty from civil claims and criminal charges. To be eligible, applicants had to show that the acts for which they requested amnesty were politically motivated, and they had to provide full disclosure about the events.⁵⁸ The legislation establishing the TRC required that a majority of the members of the Amnesty Committee be judges and legal professionals. The Amnesty Committee was given a level of independence from the rest of the TRC⁵⁹ and had autonomy in exercising its decisions as to whether or not to grant amnesty.

The amnesty process involved a number of steps, including an administrative review, investigations and public hearings. Most of the more than 7,000 amnesty applications received were rejected during an initial administrative review, seemingly on the basis that they were criminal cases without a clear political motive. In the end, only 1,973 cases went to public hearings. The hearings, conducted by the Amnesty Committee, were dominated by lawyers, legal arguments and cross-examinations, and took on a much more legalistic tone than the victims' hearings, in which survivors were given an opportunity to participate and challenge the amnesty applications. Victims' hearings were also public, and provided harrowing media images of perpetrators confessing to horrendous acts, demonstrating torture techniques and occasionally pleading for forgiveness. Because the amnesty process was much more time-consuming than the TRC had initially anticipated, the hearings continued well beyond the life of the rest of the TRC.

Both victims and amnesty applicants had a right to legal representation, although the quality and extent of their representation differed.⁶⁰ The substance of the hearings was extremely emotive, and the dynamics of perpetrator and survivor engagement were very complex. Yet the hearings were constrained by the legal ambit of the committee members and legal representatives. TRC staff sometimes facilitated behind-the-scenes interpersonal dialogues to complement the legal process, but only in exceptional cases. Some cases were granted amnesty without a public hearing—namely, those where a crime had been committed but no direct victim was involved (for example, distributing ANC literature).

International legal obligations did not seem to feature much in discussions around the provision for amnesty in the constitution or in the legislation. When the constitutionality of the amnesty provisions of the TRC were challenged,⁶¹ the international law obligations were not seriously considered by the judges, as illustrated in the judgment itself:

The issue which falls to be determined in this Court is whether section 20(7) of the Act is inconsistent with the Constitution. If it is, the enquiry as to whether or not international law prescribes a different duty is irrelevant to that determination. International law and the contents of international treaties to which South Africa might or might not be a party at any particular time are, in my view, relevant only to the interpretation of the Constitution itself, on the grounds that the lawmakers of the Constitution should not lightly be presumed to authorize any law which might constitute a breach of the obligations of the State in terms of international law.⁶²

John Dugard argues that this reluctance to seriously review the constitutional provision in the light of international law was a serious omission:

Had the Court carefully considered the question whether customary international law requires prosecution of those alleged to have committed crimes against humanity as an absolute rule, it would probably have found that state practice is too uncertain and unsettled to support such a rule. Its failure to do so, however, evidences a disregard for international law. . . .⁶³

Constitutional Judge Albie Sachs has also argued that the primary responsibility of the state is not for prosecution, but rather for some form of accountability, which is what the TRC pursued through its amnesty hearings. He reasons that “[p]rosecution and sending people to jail is not a principle, it is a mechanism for accountability.”⁶⁴

Truth-Telling

As discussed above, the amnesty debate provided the impetus for the creation of a truth commission process that was meant to provide a counterbalance for impunity, address survivor concerns and instigate investigations that would provide a contextualized approach for engaging with the information coming from the amnesty hearings. The initiative of setting up a truth commission came mainly from individuals within the ANC. The main proponent was Kadar Asmal, a high-profile ANC-linked human rights professor who had spent years in exile. During the negotiations phase, he made public statements calling for the establishment of a commission.⁶⁵ The initiative was then picked up by Alex Boraine at the Institute for a Democratic South Africa, who initiated a civil society dialogue process that fed into the drafting of legislation by the ANC.

The Promotion of National Unity and Reconciliation Act 34 adopted on December 15, 1995, provided a comprehensive mandate to the TRC with a wide range of objectives, only some of which related to truth recovery. The key truth-finding functions assigned to the TRC were to:

- establish “as complete a picture as possible of the causes, nature and extent of the gross violations of human rights”⁶⁶ which were committed during the period between March 1960 and May 1994, “including the antecedents, circumstances, factors and context of such

violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings”;⁶⁷ and

- compile a comprehensive report providing an account of its activities and findings about the gross violations of human rights along with its execution of its other functions.⁶⁸

The truth-seeking function of the TRC was pursued through a number of avenues. There was a very complex process of statement taking, which involved hundreds of interviewers visiting numerous communities and collecting statements from over 22,000 victims. These statements were then followed up with investigations to provide verification of the claims. The TRC also initiated investigations and conducted research into “window cases.” These investigations sought to examine particular types of crimes, or specific incidents that would provide insights into broader patterns of events. Finally, the TRC also carried out investigations with respect to amnesty applications. Generally these were fairly superficial, and challenges to the truth of applicants’ versions of events were mainly left to victims and their counsel. A major criticism of the TRC was that it did not develop a system of integrating its various sources of information. One key obstacle in this was that the Amnesty Committee did not approach its work in terms of a systematic research process. Its members saw their role in terms of truth as simply verifying whether the applicant was telling the truth in a particular case. They did not collect information about the applicants’ military history and did not ask key questions about the line of command, or other information that might have led to a more systematic understanding of the patterns of abuse.

In total, the TRC handed over information on more than 300 cases it thought could be further investigated and prosecuted. While the information collected by the TRC can be used in a trial, any evidence or statement from the accused made in the amnesty process cannot be used in a prosecution process.

The TRC also collected information about victimization as related to gender, race and other demographic variables. This data was, however, mainly analyzed by a foreign researcher and very little of the analysis found its way into the final report. Thus, the information contained in the final report is largely anecdotal, providing an indication of the types and severity of abuses, but not giving a clear gender analysis of the conflict. The report states that women, particularly between the ages of thirty-seven and forty-eight years,⁶⁹ were detained and subjected to various abuses. While the TRC collected numerous accounts of sexual abuse perpetrated by different armed factions (of their own members and of enemies), the extent of this is still largely unknown. Most of those who made statements to the TRC were women, but the majority of them made statements about abuses of their male relatives, rather than of their own victimization.

Other than the final report, the TRC showed a reluctance to engage directly with civil society in relation to its truth-seeking process. While it drew on civil society organizations for information, it did so in an ad hoc manner. The main reason for this was that the TRC was very careful to protect

its image as impartial, and association with civil society organizations would be seen as relying on anti-apartheid sources. Similarly, the Commission also shied away from working with civil society organizations when engaging with statement-taking or reconciliation processes, preferring to work with church structures. The one exception was that it employed a number of Khulumani Support Group members to assist in statement taking, as the TRC was concerned that not enough statements had been collected by its own interviewers.

The TRC built on previous efforts to establish the truth about abuses in South Africa. There were a number of government commissions, most notably the Goldstone Commission and the Steyn Commission, both of which found evidence of police abuses, while other government commissions appeared to contribute only to official denials of abuse. The ANC similarly held enquiries (the Motsuenyane Commission) into alleged abuses of its own members, particularly in its training and detention facilities in exile.

Alongside such formal truth-seeking processes were efforts by civil society organizations to document human rights abuses in South Africa as part of their efforts to create public awareness and call the government and other actors to account.⁷⁰ This information, in conjunction with that of the formal enquiries, fed into the compilation of the comprehensive TRC report.

The South African and international public received the TRC's final report with great anticipation. Summarized data from the report was widely distributed through the media, but other than information about specific cases, not much public debate emerged around the broader contents. The TRC's final report comprised a seven-volume publication that cost over US\$20 per volume, and its publishing rights were sold to a private company. Ultimately, it seems that academics were the only group to engage seriously with the report.

Prosecutions

Perpetrators of human rights abuses were very selectively prosecuted under the apartheid government, particularly since most of the apartheid-era human rights abuses committed were sanctioned by law. Criminal actions in violation of established law perpetrated by the state, however, were also generally not seriously investigated, and when they did reach court, they were not handled in an unbiased manner. Investigations and prosecutions mainly focused on the actions of the liberation movements. Intense police and prosecutorial efforts resulted in hundreds of convictions of liberation force members for criminal actions (including human rights abuses). These arrests and convictions continued until the change in government in 1994. Some prosecutions continued during this time, but once the TRC legislation was enacted, various court cases were suspended pending the findings of the amnesty committee.

Trials of liberation force members were often tainted by the political bias of judges, by the admissibility in court of forced confessions, and the intimidation of witnesses. Sentences for

political convictions were also very severe, with scores receiving the death penalty and hundreds receiving lengthy prison sentences.

This imbalanced prosecution led to a situation where most of the amnesty applicants before the TRC were members of the liberation forces. They were either in jail already or were anticipating prosecution as a result of apartheid-era investigations. State operatives were less afraid of evidence against them being revealed, and could thus ignore the amnesty process with relatively little fear of prosecution. Moreover, not all imprisonment was the result of prosecution, as thousands were detained without trial, including children as young as twelve years of age.

Prosecutions of perpetrators of human rights violations since the closing of the TRC in 2001 have progressed at a snail's pace. Only four cases have been pursued in open court and only two of these cases have been concluded (one conviction and one not-guilty finding). In 2004, the National Prosecuting Authority (NPA) placed a moratorium on prosecutions of apartheid-era political cases in response to concerns about the political ramifications of pending cases, specifically that of Adriaan Vlok, a Minister of Law and Order in the apartheid government. In December 2005, a new prosecution policy was announced, which in effect reintroduced the amnesty criteria for considering decisions about whether or not to prosecute politically motivated human rights abuse cases. The new policy gives the NPA discretion to drop charges (or not enter charges) in cases that meet the TRC's amnesty criteria, or where prosecution might undermine reconciliation or the needs of victims, with consideration also given to the perpetrator's age at the time of the offense and the indoctrination they received. The NPA is empowered to make these assessments without public scrutiny and without making information about the case public (other than the final decision). Indications are that only about fifteen cases will be actively pursued in the next few years, as the cost of such cases, both financially and politically, are quite high.

The issue of prosecutions is still hotly debated, particularly because of the controversial new legislation. Civil society organizations, in collaboration with a survivor group (the Khulumani Support Group), are planning a constitutional challenge to the new prosecution policy on the grounds that it violates victims' constitutional rights. At the same time, political pressure against prosecution is also mounting. The PAC has come out strongly against the anticipated prosecution of one of its leading ex-commanders who has openly admitted his role in certain attacks on civilian targets, while refusing to apply for amnesty to the TRC.

Cases involving gender-based crimes have not been heard in court, and there is no indication that such cases are pending with the NPA.

Reparations

Victims registered by the TRC each received a lump-sum payment of R30,000 (US\$6,417) from the government.⁷¹ This was about a quarter of what the TRC had recommended and did not include

any privileged access to medical, social or educational services. Payments were made directly into the bank accounts of victims or their relatives.⁷²

The TRC only recognized those who were victims of gross human rights abuses (that is, victims of politically motivated physical violence). It did not cover combatants injured during military operations. The TRC recognized only victims and perpetrators and generally treated each group as mutually exclusive of one another. Many ex-combatants could have qualified for reparations (for example, they themselves were tortured), but were not informed of this possibility, and at times were reluctant to cast themselves as “victims.”

Reparations were forthcoming only in 2003, six years after the TRC started hearing victims’ testimonies. The fact that perpetrators benefited immediately from the amnesty process, while victims had to wait so long, caused much frustration. Compounding this frustration was the fact that the demobilization grants of 1994 and special pensions to older ex-combatants both exceeded the amount of payment received by victims. Reparations for victims only began after extensive lobbying by survivors and civil society organizations.

The amnesty provision within the constitution meant that victims could not pursue civil claims against those who were granted amnesty. There has been only one case in which victims have since pursued a civil claim against a perpetrator who did not receive amnesty. This case was settled out of court.

Reparations claims are still being fought against international corporations who provided assistance to the apartheid government. These international claims are being challenged by the present government, who see them as negatively impacting on international confidence in the South African economy.

Institutional Reform

Institutional reform (or transformation, as it was locally called) of the security sector was largely aimed at changing the profile of the military and police, which were white-dominated under apartheid.⁷³ This involved integrating various armed factions into the military and police forces, and using a large-scale affirmative-action program to recruit and promote these individuals, particularly to senior ranks and positions that were white-dominated under apartheid.

While various armed factions have been incorporated into the security sector, members of SDUs and SPUs have faced severe difficulties in securing positions within the military or police force, resulting in violent protests against the integration process. Despite these actions, most SDU and SPU combatants were ultimately prevented from joining the security sector due to their lack of education and basic skills.

In addition to diversifying the security sector, various programs and policies were introduced to change the nature of policing and defense to comply with good governance practices. This included human rights training, civil accountability, community-police forums, parliamentary oversight mechanisms, separate investigative units to examine cases of abuse and the development of policies and skills for public order policing. Certain military and policing units were also disbanded or completely transformed (for example, the Internal Stability Unit).

Institutional vetting was not introduced in the South Africa reform process because the amnesty provision of the constitution prevented such measures. Various people known to have committed abuses (some through confession at the TRC) in the past have continued in senior positions, particularly within the police force. Perhaps due in part to this, indications are that human rights abuses still continue in the police force. The number of deaths in police custody is still very high, and allegations of torture are not uncommon. Such abuses seem to reflect the continuity of certain torture practices, aimed no longer at political, but criminal, targets.

Local Transitional Justice Initiatives

A wide range of local justice and reconciliation initiatives have been developed separately throughout South Africa. These include processes of restorative justice dialogues, local community healing meetings, victim counseling programs, disappearance support and investigation programs, survivor advocacy initiatives, ex-combatant reintegration programs and memorialization projects, among others. Some of these initiatives, such as restorative justice dialogues, enabled ex-combatants to engage directly with victims, affecting collaboration in developing local community memorialization initiatives.⁷⁴

These initiatives have been run by community-based organizations and local NGOs, as well as church-based groups. Some local justice and reconciliation programs were initiated during the operation of the TRC, while others sought to pick up on the efforts of the TRC to deepen its impact in communities or extend its work to new communities. Others still saw themselves as undoing some of the harm done by the TRC. Organizational views of the TRC notwithstanding, such programs attempted to both address transitional justice issues directly and to influence government policy and service delivery in these areas. Local organizations have sometimes worked in collaboration with government services, but have at other times taken an adversarial position with respect to government policies and services pertaining to justice and reconciliation. Women have often played a key role both in the running of programs and as participants.

While some programs have managed to reach thousands of survivors of the conflict, or at the very least effectively engage large sections of well-populated communities, generally they have not been effective in reaching out on a national level. Most programs have really only been effective in engaging with a very small section of either the victim or ex-combatant populations.

Preliminary Conclusions—Transitional Justice

Public perceptions of the transitional justice process in South Africa are generally very positive. The public supported the TRC, displayed a grudging acceptance of the need for amnesty and felt that the TRC had provided truth about the conflict.⁷⁵ Indications are, however, that certain issues are not satisfactorily resolved in the public mind. Further prosecutions are likely to prove controversial, with opinions breaking down along racial and political lines, depending mainly on the political affiliation of the person being prosecuted.

The need for further reparations, particularly from local and international corporations, is also likely to pit civil society and victim organizations against the government and split public opinion.

It does appear that the transitional justice arrangements did facilitate a peaceful changeover. The compromises reached avoided serious political fallout and marginalized the most radical voices within and outside of government. The religious message of reconciliation underlying much of the process appears to have resonated with the public. This, along with the dominance of the ANC and the strong voice of key leaders, such as Nelson Mandela, ensured broad buy-in from the majority of South Africans on a majority of compromises that would have otherwise been unpopular.

The lack of substantial delivery on the promises made with respect to transitional justice does, however, mean that many of the above gains are quite fragile. Frustration of victims and ex-combatants alike regarding the government's inability to uncover the truth, provide accountability or justice, ensure the release of all political prisoners or facilitate sufficient reparations means that significant discontent could still burst into the open and find public sympathy.

Serious concerns have also been raised about the cost of impunity. Human rights perpetrators are seen as having received a slap on the wrist and most apartheid perpetrators, particularly political leaders, are seen as having avoided justice and accountability for their past actions. Political commentators have drawn links between this lack of serious action and present problems with political corruption, police abuse of power and high levels of criminal violence.⁷⁶

The lesson of the transitional justice process in South Africa was that it contributed to political reconciliation but failed to effectively build a culture of human rights, accountability of political leaders and transparency in government.

Examination of the Interrelationship between the DDR Process and Transitional Justice Measures

The DDR process in South Africa was largely one-dimensional and ad hoc in nature. This process was not conceived by the architects of the interim political government to require a significant

transitional justice dimension. DDR was largely seen as a technical exercise, geared toward reducing the potential threat that a sizeable population of individuals, within the country and without, having military skills posed to preparations for, and the consolidation of, democracy and sustainable peace. In particular, South Africa's transitional political elite were concerned that former combatants could destabilize the 1994 elections, thus swift solutions were sought to reduce this risk. In addition, the South African military was perceived to be the "guarantor of the transition."⁷⁷ In fact, the DDR process was predominantly implemented prior to the generation of momentum and debate around transitional justice in South Africa.

In the early to mid 1990s, military personnel, both senior officers and rank-and-file soldiers, were treated with kid gloves to ensure that they were not marginalized. In this regard, the South African DDR process neglected to take into account the past behavior of the combatants on both sides of the armed conflict. At the time of integrating the various armed factions into the SANDF, military authorities merely verified the identity and status of combatants and, subsequently, they were either incorporated into the military or demobilized. Former soldiers were not debriefed about their past actions or their involvement in particular operations. With few exceptions, no punitive action was taken against those allegedly responsible for planning and committing human rights abuses. As a result, justice was compromised in an effort to secure short-term stability.

The only transitional justice component that was deliberated upon was that of amnesty for past human rights abuses by members of the various armed groups and forces. Amnesty was agreed upon and incorporated into South Africa's interim constitution of 1993. While the concept of amnesty was agreed upon, there were divergent interpretations of this provision. Many former members of the apartheid security forces, for example, took this provision as a blanket amnesty for all human rights abuses perpetrated during the conflict. This belief was so pervasive that many members of the SADF's Special Forces unit, which was on the "sharp edge"⁷⁸ of the apartheid war machine, have argued that their actions were justifiable acts of war.

Following the design and implementation of the DDR process, military planners and legislators were obliged to take transitional justice considerations into account. The reason for this was that a significant number of ex-combatants from the nonstatutory forces had been imprisoned by the South African state on charges of subversion and terrorism, and provision for these individuals had not been made in the DDR process. Consequently, the legislation and policy relating to demobilization and reintegration was amended, and the timeline was extended in order to include these individuals in the DDR.

The noticeable absence of a meaningful transitional justice focus in the DDR process in South Africa was not entirely an intentional act on behalf of the planners of the political changeover, but was also a consequence of the nature of the armed conflict that unfolded within South Africa. That is, most of the formal military campaigns and encounters took place on foreign soil, mainly in Namibia, Angola and Mozambique. With the exceptions of the Self-Defense and Self-Protection Units, the actions of the nonstatutory forces within South Africa were largely limited to acts of sabotage against

government targets and infrequent assassinations of perceived government collaborators and internal political opponents.

Only select groups benefited from the DDR process (and related SANDF integration), given that the government used a fairly narrow definition of who constituted “armed actors” in the conflict. Armed actors were those in the formalized armies of the largest liberation organizations, and the SADF and its associated “homeland” defense forces.

Considering both this relatively prescribed approach for DDR and the nature of South Africa’s conflict, where most (formal) military campaigns took place on foreign soil, it could be argued that the need for reconciliation, justice and healing initiatives at the community level within South Africa is substantially minimal. This view, however, fails to take into account the considerable amount of violent conflict that did take place in South Africa, both within and between communities. It also fails to recognize the numerous and varied groupings of actors in these conflicts—who were oftentimes much closer to the violence than their counterparts in the formal militaries.

While the SADF certainly had a role in internal violence, most notably through its repressive presence in the townships, the apartheid government’s police force played at least as substantial a role, if not a more extensive one, in perpetrating violence. In addition, the state made use of and directly sponsored armed actors in numerous other guises (for example, *askaris*,⁷⁹ vigilantes and *kitskonstabels*⁸⁰), as part of its counterinsurgency campaign. Indeed, part of the aim was to disguise the role of the state in “black-on-black” violence. Determining clear definitions regarding the liberation fighters is no easier: many of those who most directly experienced and participated in violent conflict were not part of MK or APLA, but were often members of local defense and protection structures in their communities with various links to political organizations. It was therefore the less formalized groups of both the liberation movement and the apartheid state who were often directly involved as victims and perpetrators of the most damaging violence played out at the community level.

Despite this, neither the armed forces integration nor the DDR process has taken proper account of any of these less formalized groups. As mentioned above, while some SDU and SPU members made it into the process under the auspices of MK, APLA or later through the IFP, most did not.

There have been a few localized attempts to include former SDU and SPU members in alternative processes of integration into the South African Police Service or other state institutions. Such initiatives have generally, however, been short-term projects and unsuccessful in providing sustainable solutions, more often than not further raising and then dashing the expectations of ex-combatants.⁸¹

The official DDR definitions determined who was considered a soldier, and therefore also implicitly constrained possibilities for potential connections between the DDR and reconciliation and

transitional justice initiatives. In other words, the South African DDR process predetermined some of the scope for transitional justice initiatives in the country.

One of the most feasible points at which the DDR and transitional justice processes could (and should) have been linked was in the integration of the newly constituted SANDF—a process that was intertwined with demobilization. Little was done to debrief the new SANDF members about the process of integration, or to engage them with the concept of having to work with their former enemies.

A discourse on the transcendent possibilities of “professional soldiering”—the belief that once the members of a disparate group are all training and fighting together, old divisions will melt away—seems to have informed the decision to avoid anything to do with justice, accountability or reconciliation in the military integration process. There was an assumption that building a professional armed force negated the need for reflective acknowledgment of and coming to terms with past abuses and divisions.

Professionalization was seen mainly to apply to the liberation forces. As mentioned above, the integration process was deeply uneven and was more an absorption of the former nonstatutory forces into the former SADF than a creation of a wholly new military structure. Thus, it was only former nonstatutory group members who were expected to go through selection and training. Far from unifying, this procedure was, in itself, often perceived as racist and disrespectful to the newly integrated recruits.

One important missed opportunity was the chance to bridge past and existing relationships between combatants of statutory and nonstatutory forces within the confines of the newly constituted SANDF and its members—both for the transformation of state security and for reintegration more generally. As has been noted, one of the significant challenges facing ex-combatants is the continuing lack of recognition and acknowledgment of their role in the struggle for liberation and the sacrifices they had to make. In South Africa, this was intensified by the secret nature and foreign location of much of the armed action. Soldiers’ histories therefore remain largely unknown and removed from public memory. Some acknowledgment of this history in the SANDF, the very organization that set about—as far as the military was concerned—to create a legitimate force toward the “new South Africa,” could conceivably have made a significant impact in reducing the resultant tensions and dynamics that stemmed from combatants’ experiences not only of conflict but of integration with former enemies.

The nexus between transitional justice and the actions of the various participants of South Africa’s internal violent conflict was a major theme of the TRC. In practice, however, much of the TRC’s focus was on the role of the police and paramilitary structures of the apartheid state, such as Vlakplaas⁸² and the Civil Cooperation Bureau (CCB). The South African military made a submission to the TRC in which it refused to acknowledge its role in perpetrating human rights abuses, either within or outside of South Africa. Given this, and that the TRC was heavily

dependent on SADF files for evidence in its investigations, the Commission was often stonewalled in its efforts to access information from the military, despite the establishment of a liaison office, which was supposed to facilitate communication. The TRC chose not to take a confrontational approach with the military, and did not invoke its search and seizure powers. This enabled the military to effectively protect its own corporate and historical interests, irrespective of who had committed human rights violations.

The ANC, on the other hand, made detailed submissions to the TRC in which the senior leadership of the organization acknowledged some of the human rights abuses that were committed by members of MK, and took political responsibility for some of these acts. Of the 256 members of the apartheid-era security forces that applied for amnesty from the TRC, only 31 had served in the SADF. In contrast, there were close to 1,000 applications for amnesty from members of the various armed structures aligned to the ANC.⁸³

Ex-combatant involvement in the TRC occurred mainly through the amnesty hearings. Relatively few made statements as victims of abuse or were given a chance to testify at victims' hearings. They did not generally identify themselves as victims, and, thus, their experiences of victimization are not well captured by the TRC. Those who did testify sometimes felt the process to be one that usurped their experiences and changed the meaning of their actions in the pursuit of particular public goals.⁸⁴ The public image created by the TRC was generally one that portrayed the ex-combatants as perpetrators, rather than victims or proud soldiers.

The amnesty process itself was confusing and complex for many ex-combatants from the nonstatutory forces. The decision about whether to apply for amnesty was a very difficult one for many, and they often did not have access to sound legal advice. Many encountered pressure from certain political leaders and comrades to not apply for amnesty, as their testimony could implicate other individuals. Those seeking amnesty were rarely assisted in compiling their applications, and as a result many of these amnesty applications were refused by the TRC without a hearing.⁸⁵

In general, the TRC process devoted most of its energy and attention to the plight of noncombatant victims of human rights abuses. Ex-combatants were challenged by TRC commissioners to defend their actions, and were subjected to rigorous legal and moral questioning. This was in strong contrast to the various public narratives of the heroism and noble struggle of the liberation movement forces that were projected after the 1994 elections, and which are still the main feature presented by the ANC-led government during memorialization programs of the antiapartheid struggle.

A study conducted by the Centre for the Study of Violence and Reconciliation (CSV) found that the structure and process of the amnesty hearings were not what the ex-combatants had expected. The assumption on the part of the ex-combatants was that amnesty would be a vehicle to assist them with the process of reintegrating into civilian life by allowing them to explain their actions and reclaim some sense of dignity while facing the victims of their actions, their communities and society at large. Instead they were subjected to intense cross-examinations about their political motives, the

morality of their actions and their honesty, seemingly in an effort to portray them as criminals. Ex-combatants did not feel that they were given the opportunity to explain the full context of their experience under apartheid and the reasons for their specific actions. Many who had committed severe human rights abuses felt abandoned by their political leaders, who disavowed responsibility for ordering certain actions. Even those who were granted amnesty felt that the process itself was one that at times contributed to their stigmatization. Their experiences at the amnesty hearings, and the subsequent amnesty decisions, left many feeling that the process was both politically and racially biased. They found the legalistic process to be one that was uncompassionate, while also denying them a sense of fairness. Amnesty applicants were also generally not offered psychological assistance, nor any social or economic reintegration benefits if their amnesty resulted in release from prison.⁸⁶

Many liberation force ex-combatants still feel resentful about the fact that they were called to account for their actions in opposing the apartheid government, and that others could still face prosecutions or remain in jail because of either the perceived biases of the TRC or the apartheid-era biases of the courts. In many respects, the experiences of the amnesty process created for amnesty applicants a similar perception to that of victims of apartheid injustice and violence, who were disappointed by the failure of the TRC to facilitate a process that would lead to what they regarded as adequate truth. Both processes instead continued to marginalize their voices and did not provide adequate space for dialogue.⁸⁷

While there was only a limited need for community reconciliation processes for the demobilized statutory force members who returned to civilian life, there was a strong need for a community process to assist with the reintegration of former combatants from the apartheid military structures. The reason for this is that the TRC discredited the idea of military service based on ideals, such as protection of the state, the fight against communism and protection of the church. Thus, state-aligned ex-combatants faced serious reintegration challenges. At the same time, the politicians who had indoctrinated them, conscripted them and commanded them to commit human rights abuses denied responsibility for the actions of their “foot soldiers” and instead blamed them for the human rights violations and abuses attributed to the state. For certain SADF soldiers, the TRC was viewed as yet another vehicle of their betrayal: the ordinary soldiers again “carried the can for the generals.”⁸⁵ This also contributed to a sense of loss as individuals felt that what they may have offered or experienced was invisible, and soldiers were instead being defined by the atrocities presented to the TRC.

In addition, because the TRC’s mandate focused strictly on human rights violations and no other initiatives were created to acknowledge ex-combatants’ histories, there is an absence of “ordinary soldier” stories in the public domain and collective memory.⁸⁸ This has resulted in a number of former SADF members and sympathizers compiling books and other publications on the “real” role of the SADF (and aligned structures) during the South African armed conflict.

The TRC did convene a special hearing on compulsory military service.⁸⁹ This hearing provided for some public acknowledgment of the indoctrination of young white males, the trauma they and their

families suffered as a result of their participation in the military, the legacy of militarization and the psychological damage resulting from the conflict. The hearing was, however, treated with hostility by most ex-SADF military officials, who saw it as a “one-sided programme which did not analyze the past honestly.”⁹⁰ There were no similar hearings examining the challenges faced by permanent force members from either side of the conflict.

Conclusions

Missed Opportunities

In hindsight it is possible to identify missed opportunities in the relationship, or lack of relationship, between the limited experiences of transitional justice and DDR in South Africa. Negotiations around transitional arrangements were fragmented between military and political issues, rather than developed in an integrated manner. A more comprehensive approach would require an engagement with various elements of the process.

For example, civil society and other human rights proponents (including political leaders) did not play an effective role in negotiations around DDR policy and practice. The process was driven by short-term objectives relating to stability and party–political power relations with very little human rights input or consideration of long-term human security concerns. Inputs from certain military groups (particularly APLA) were also lacking, and their members’ needs were not addressed.

Another missed opportunity was the lack of an effective policy by the TRC to engage the new integrated military structure. TRC members were reluctant to use their search and seizure powers in the face of a newly unified military that opposed exposing past abuses of those within its ranks. Furthermore, the military created obstacles to delay any exchange of information, ultimately rendering their extensive efforts to establish liaison structures to access military archives in vain.

At the same time, there were a number of internal enquiries by the ANC and the apartheid government in relation to particular abuses carried out by their respective security forces. Because these were internal enquiries, they appear to have received more cooperation from the military, leading to better access to personnel. The TRC did not, however, effectively build on these internal reports. They were perceived as sufficiently covering certain issues, such as abuses at ANC camps, but were not linked to other issues. Instead, the TRC process engaged directly with the larger group of security personnel and ex-combatants through the amnesty process. It approached these cases with a very narrow legal mandate of applying the amnesty criteria and determining their legal status. This approach did little to address ex-combatant concerns about integration in the SANDF, or reintegration into their communities, particularly for those who had served lengthy jail terms. The TRC did not make effective use of this opportunity to engage more substantially with this group,

who were publicly known to have committed abuses but whose position in the SANDF or in their communities was not sufficiently resolved.

Additionally, the TRC's amnesty process was undermined by a lack of clarity about the status of various applicants who claimed to be combatants aligned to various armed formations. The development of the registration list was constrained by political negotiations, corruption and fear, and thus never resulted in an exhaustive or reliable register of combatants. The development of a comprehensive register of military personnel could have been accompanied by a more detailed recording of lines of command and documentation of various structures and units within each military formation. Gathering this information would require consideration of how to provide protection to those who come forward to name themselves, particularly since this action previously was intensely dangerous.

The TRC's amnesty process sought to isolate itself from other civil society and government structures to protect its neutrality. The result was that it failed to engage with the psychological and social consequences of its procedures. A less legalistic approach (or one complemented by other services) might have had a dramatic impact on the applicants, their communities and the ex-combatant population at large. The TRC process could have offered an opportunity to openly consider reintegration challenges and contribute to more inclusive policy debate and increased public awareness.

A further missed opportunity was that both the DDR process and the integration of the SANDF happened without any attention to building relationships and healing between combatants *within* the current armed forces—who were, after all, former enemies. A focus on reconciliation within SANDF might have positively impacted not only the stability and transformation of the SANDF but also the lives of numerous ex-combatants who have since left the military, often because of issues related to the military integration process. Frequently they depart to swell the ranks of the unemployed ex-combatants. Where high levels of dissatisfaction and anger have been a feature of their time within the SANDF, it is not unreasonable to suggest that this adds a layer to the challenges of reintegrating ex-combatants into civilian life, and to the potential for this to play out in destructive ways within their communities and society as a whole.⁹¹

Questions about the criteria used in defining who was an ex-combatant, and thus of access to resources and opportunities, could also have been more fully examined. This would have produced different categories of ex-combatants and perhaps different programs for each category. In this way, more people might have had access to services and benefits appropriate to their particular needs and challenges. Differences in age, combat experience, level of geographic and social displacement, skills, education and gender are all important factors determining reintegration and accountability priorities.

A final missed opportunity was the tendency of the TRC process to focus on fixed categories of victim and perpetrator, with ex-combatants mainly perceived as perpetrators. This meant that an

enhanced understanding of the impact of the conflict on combatants, and the potential role of the TRC in dealing with their victimization, was lost. The TRC could have engaged ex-combatants in terms of their complex experiences (particularly in acknowledging their victimization experiences during apartheid and during conflict), and thus facilitated a much more nuanced understanding of their needs and the challenges of dealing with the consequences of violence for South African society.

Recommendations for Linking DDR Programs and Transitional Justice Measures

Looking forward, the missed opportunities of the South African experience encourage us to approach the development of DDR and transitional justice policy issues simultaneously in other country or regional contexts. DDR policy negotiations cannot be isolated from the political transition process. Political leaders, civil society and international actors (particularly human rights organizations) should seek more direct engagement in the development of DDR policy.

It should be considered that effective DDR and transitional justice processes both rely on a thorough and reliable register of combatants, their units and their lines of command. Ways of gathering this information and protecting those who provide it needs to be carefully planned.

Transitional justice advocates and practitioners should reflect on the positive role that ex-combatants can play in transitional justice efforts. Many of those who were combatants may have joined the military structures out of a desire for social justice, a commitment to protecting their communities, or other pro-human rights goals. Many ex-combatants are also treated as heroes and looked to for leadership in the postconflict context. These political ideals still motivate some in the postconflict period, and their enhanced social status can motivate them to play a constructive role in transitional justice processes.

Certain contexts see reintegration and reconciliation at the community level as completely inseparable. Yet in some cases, ex-combatants do not return to their own communities or have not committed acts that alienate them from their own communities. In other cases, the issue of reintegration requires ex-combatants to engage with people whom they victimized or were victimized by. Such situations call for intensive restorative justice approaches that can directly confront specific incidents and grievances as an accompaniment to national-level transitional justice measures.

Central to the challenges of reintegration is the ex-combatants' often broader sense of alienation from civilians. Transitional justice can play a key role in bridging the gaps between ex-combatants and civilians through some acknowledgment of ex-combatants' experiences and histories. Only an integrated DDR and transitional justice process, which is sensitive to the local conflict dynamics and postconflict social needs, can address this dilemma.

Finally, criminal and social violence is often a serious challenge in a postconflict environment. Because of their access to weapons, skills associated with the use of force, social and economic

alienation and links to criminal networks, many ex-combatants are susceptible to engagement in crime. Transitional justice advocates thus need to engage in a broader conception of their role—beyond a focus on the politically divided past. Transitional justice processes are generally defined in narrow liberal terms to deal only with human rights violations involving violence. This reflects an approach to human rights that may seem quite foreign to many combatants who see themselves as being driven to violence by the lack of social justice (for example, the denial of socioeconomic rights). The ideological framework of transitional justice needs to be shaped in a way that makes sense to these broader human rights goals. It is only when transitional justice programs establish their relevance for addressing broader social justice issues that they will be accepted as legitimate vehicles for peace by certain ex-combatant sectors.

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¹ Truth and Reconciliation Commission, *Repression and Resistance*, vol. 2, *Truth and Reconciliation Commission of South Africa Report* (London: Macmillan, 1998), 4, 11.

² Truth and Reconciliation Commission, *Regional Profiles*, vol. 3, *Truth and Reconciliation Commission of South Africa Report* (London: Macmillan, 1998), 3–4.

³ *Ibid.*, 4–6.

⁴ *Ibid.*, 5–6.

⁵ Truth and Reconciliation Commission, *Findings and Recommendations*, vol. 5, *Truth and Reconciliation Commission of South Africa Report* (London: Macmillan, 1998), 223.

⁶ *Ibid.*, 230, 233.

⁷ *Ibid.*, 232–33.

⁸ *Ibid.*, 240–41.

⁹ *Ibid.*, 241–42.

¹⁰ Truth and Reconciliation Commission [hereafter TRC], *Institutional and Special Hearings*, vol. 4, *Truth and Reconciliation Commission of South Africa Report* (London: Macmillan, 1998), 313.

¹¹ TRC, *Regional Profiles*, 5.

¹² Under the Further Indemnity Act of 1992, “disclosure . . . would be satisfied in secret by a government commission and a list of names of those who had received amnesty would be released. Thereafter, the records of this body would be destroyed.” See Kenneth Christie, *The South African Truth Commission* (New York: St. Martin’s Press, 2000), 75.

¹³ For a more detailed discussion of the use of child soldiers by military and armed forces, see Miguel A. Maússe and Daniel Nina, *Child Soldiers in Southern Africa*, ISS Monograph Series, no. 37 (Pretoria: Institute for Security Studies, 1999).

¹⁴ Such legislation would also determine the fate of those granted temporary amnesty according to the Indemnity Acts discussed previously.

¹⁵ The Gini coefficient is the most commonly used measure of inequality. A value of 0 represents absolute equality, and a value of 100 absolute inequality.

¹⁶ World Bank Indicators 2007 (Washington, DC: World Bank Publications, 2007).

¹⁷ CODESA was the main multiparty political negotiation forum.

¹⁸ Two thousand members of the Self-Protection Units of the IFP, which were essentially militias, were admitted into the SANDF as new recruits in 1996 and were not part of the earlier integration process. See Tsepe Motumi and Penny McKenzie, “After the War: Demobilisation in South Africa,” in *From Defence to Development: Redirecting Military Resources in South Africa*, ed. Jacklyn Cock and Penny McKenzie (Cape Town: David Philip, 1998), 189–90.

¹⁹ *Ibid.*

²⁰ Sasha Gear, “Trials of Transition: The Case of Ex-combatants,” in *Victimology in South Africa*, ed. Linda Davis and Rika Snyman (Pretoria: Van Schaik Publishers, 2005), 271–79.

²¹ Lephophotho Mashike, “Standing Down or Standing Out? Demobilising and Reintegrating Former Soldiers,” *African Security Review* 9, no. 5/6 (2000): 66.

²² *Ibid.*

²³ Jacklyn Cock, “Towards a Common Society: The Integration of Soldiers and Armies in a Future South Africa” (unpublished Human Science Research Council Report, Johannesburg, 1993).

²⁴ Gavin Cawthra, *Securing South Africa’s Democracy: Defence, Development, and Security in Transition* (Houndsmill, Basingstoke: Macmillan, 1997), 148–49; Philip Frankel, *Marching to the Millennium: The Birth, Development and Transformation of the South African Defence Force* (Pretoria: South African Department of Defence, 1998), 20–29; and Motumi and McKenzie, “After the War,” 189.

- ²⁵ Centre for Conflict Resolution, “The Reintegration into Civilian Life of Demobilised Umkhonto we Sizwe and Azanian People’s Liberation Army Ex-Combatants” (unpublished report, Cape Town, 2003), 22.
- ²⁶ Frankel, *Marching to the Millennium*, 82.
- ²⁷ These figures were not the final figures listed in the CPR and have been subsequently adjusted.
- ²⁸ MK had previously submitted a provisional list of approximately 83,000 names in an attempt to offset the dominance of the SADF, but many of the people on the list had negligible or no military experience, and, as a result, the number of names on the MK CPR was reduced.
- ²⁹ Creative Associates International, Inc., “A Toolbox to Respond to Conflicts and Build Peace: Tool Category C: Military Measures: 7. Integration/Restructuring of Military Forces,” Creative Associates International, Inc., www.caii.com/CAIStaff/Dashboard_GIROAdminCAIStaff/Dashboard_CAIAdminDatabase/resources/ghai/toolbox7.htm (accessed May 30, 2006).
- ³⁰ Frankel, *Marching to the Millennium*, 25.
- ³¹ Ian Liebenberg and Marlene Roefs, *Demobilisation and Its Aftermath: Economic Reinsertion of South Africa’s Demobilised Military Personnel*, ISS Monograph Series, no. 61 (Pretoria: Institute for Security Studies, 2001), 45–46.
- ³² BMATT was commissioned by the South African government to act as a neutral party that would be responsible for directing the SANDF integration process.
- ³³ Mafole Mokalobe, *Demobilisation and Reintegration of Ex-combatants in South Africa* (Braamfontein: Group for Environmental Monitoring, 1999), 13.
- ³⁴ Sasha Gear, “Wishing Us Away: Challenges Facing Ex-combatants in the ‘New’ South Africa,” *Violence and Transition Series*, vol. 8 (Johannesburg: Centre for the Study of Violence and Reconciliation, 2002), 26.
- ³⁵ *Ibid.*, 29.
- ³⁶ Frankel, *Marching to the Millennium*, 85.
- ³⁷ Creative Associates International, Inc., “A Toolbox to Respond to Conflicts.”
- ³⁸ Frankel, *Marching to the Millennium*, 83.
- ³⁹ Ministerial Committee of Inquiry, *An Analysis of Progress with Transformation in the Defence Force* (Bloemfontein: Ministerial Committee of Inquiry, 2001), 62–73.
- ⁴⁰ Frankel, *Marching to the Millennium*, 24.
- ⁴¹ Cawthra, *Securing South Africa’s Democracy*, 151.
- ⁴² Jacklyn Cock, “The Cultural and Social Challenge of Demilitarisation,” *NOD & Conversion*, no. 37 (July 1996): 6–27; Chandré Gould and others, “Country Study: South Africa,” in *Hide and Seek: Taking Account of Small Arms in Southern Africa*, ed. Chandré Gould and Guy Lamb (Pretoria: Gun Free South Africa / Centre for Conflict Resolution / Institute for Security Studies, 2003), 132–266.
- ⁴³ Motumi and McKenzie, “After the War,” 194.
- ⁴⁴ This is the British usage of the term, meaning a reward or bonus given to military personnel on discharge or retirement.
- ⁴⁵ Cabinet Memorandum No. 1, January 18, 1995.
- ⁴⁶ Centre for Conflict Resolution, “The Reintegration into Civilian Life,” 49. No gender breakdown for these figures was available.
- ⁴⁷ Motumi and McKenzie, “After the War,” 197.
- ⁴⁸ Liebenberg and Roefs, *Demobilisation and Its Aftermath*.
- ⁴⁹ Gear, “Wishing Us Away.”
- ⁵⁰ Centre for Conflict Resolution, “The Reintegration into Civilian Life.”
- ⁵¹ Liebenberg and Roefs, *Demobilisation and Its Aftermath*, 25–34.
- ⁵² Gear, “Wishing Us Away,” 119.
- ⁵³ *Ibid.*
- ⁵⁴ Centre for Conflict Resolution, “The Reintegration into Civilian Life,” 20.

⁵⁵ Ibid., 14.

⁵⁶ This date was subsequently changed through a constitutional amendment to May 10, 1994, the day Nelson Mandela was inaugurated as president.

⁵⁷ Interim Constitution of the Republic of South Africa, 1993, National Unity and Reconciliation postamble, www.concourt.gov.za/site/constitution/english-web/interim/ch15.html.

⁵⁸ The Amnesty Committee also used such criteria as proportionality of abuse, but its main concerns appear to have been around the political motivation for human rights abuses and the full disclosure of acts committed.

⁵⁹ The other committees making up the TRC included the Human Rights Violations Committee and the Rehabilitation and Reparations Committee, who were responsible for organizing victims' hearings, conducting research and developing reparations policies. Neither committee enjoyed the same level of independence and autonomy as that of the Amnesty Committee.

⁶⁰ Jeremy Sarkin, "An Evaluation of the South African Amnesty Process," in *Truth and Reconciliation in South Africa: Did the TRC Deliver?* ed. Audrey Chapman and Hugo van der Merwe (Philadelphia: University of Pennsylvania Press, 2008).

⁶¹ *AZAPO and others v. the President of the Republic of South Africa and others*, (8)BCLR 1915 (Constitutional Court of South Africa, 1996).

⁶² Judgment in *AZAPO and others v. the President of the Republic of South Africa and others*, (8)BCLR 1915 (Constitutional Court of South Africa, 1996), 688, para. 26, quoted in John Dugard, "International Law and the South African Constitution," *European Journal of International Law* 8, no. 1 (1997): 91.

⁶³ Dugard, "International Law and the South African Constitution," 91.

⁶⁴ Albie Sachs, "Four Sayings and a Denouement," in *The Provocations of Amnesty: Memory, Justice, and Impunity*, ed. Charles Villa-Vicencio and Erik Doxtader (Cape Town: David Philips, 2003), 19.

⁶⁵ Kadar Asmal, "Victims, Survivors, and Citizens: Human Rights, Reparations, and Reconciliation" (inaugural lecture, Law Faculty at University of the Western Cape, Cape Town, May 25, 1992).

⁶⁶ Promotion of National Unity and Reconciliation Act, 1995, chap. 2, pt. 3.1a, www.fas.org/irp/world/rsa/act95_034.htm.

⁶⁷ Ibid.

⁶⁸ Ibid., chap. 2, pt. 3.1d.

⁶⁹ TRC, *Regional Profiles*, 5.

⁷⁰ Lydia Levin, Polly Dewhirst, and Brandon Hamber, "The Use of EVSYS for Preparing a Human Rights Database for Presentation to the Truth and Reconciliation Commission in South Africa" (paper presented at HURIDOCs Conference, Mexico City, November 11–13, 1997).

⁷¹ This was in addition to initial interim reparations of between R2,000 and R4,000 provided during the TRC.

⁷² More detailed information on the reparations program in South Africa is available in Christopher J. Colvin, "Overview of the Reparations Program in South Africa," in *The Handbook of Reparations*, ed. Pablo de Greiff (New York: Oxford University Press, 2006), 176–214.

⁷³ More detailed information on institutional reform in South Africa is available in Jonathan Klaaren, "Institutional Transformation and the Choice Against Vetting in South Africa's Transition," in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 146–79.

⁷⁴ Bryant Greenbaum, *Evaluation of the 2005 Ex-Combatants' Dialogues* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2006), 11.

⁷⁵ Gunnar Theissen, "Object of Trust and Hatred: Public Attitudes Towards the TRC," in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, 202–09.

⁷⁶ Fred Hendricks, *Fault-Lines in South African Democracy: Continuing Crises of Inequality and Injustice* (Uppsala: Nordic African Institute, 2003), 25.

⁷⁷ Cawthra, *Securing South Africa's Democracy*, 119.

⁷⁸ Guy Lamb, “From Military to Civilian Life: The Case of Retired Special Forces Operators,” *Track Two* 12, no.1/2 (2003): 40.

⁷⁹ *Askaris* refer to liberation force members who were “turned” through interrogation and torture, and then used against their colleagues.

⁸⁰ *Kitskonstabels* (Afrikaans for “instant constables”) refers to those South African Police constables (mainly black) who only received very brief training and were noted for their zealotry and lack of police procedure. Their official name was special policeman.

⁸¹ Gear, “Wishing Us Away,” 59.

⁸² Name for the South African Police’s counterinsurgency unit.

⁸³ Don Foster, Paul Haupt, and Marésa de Beer, *The Theatre of Violence: Narratives of Protagonists in the South African Conflict* (Cape Town: Human Science Research Council, 2005), 15–16.

⁸⁴ Yazir Henry, “Where Healing Begins,” in *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000), 168.

⁸⁵ Sarkin, “An Evaluation of the South African Amnesty Process,” 96–97

⁸⁶ See Theresa Abrahamsen and Hugo van der Merwe, *Reconciliation Through Amnesty? Amnesty Applicants’ Views of the South African Truth and Reconciliation Commission* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2005).

⁸⁷ See Sizwe Phakathi and Hugo van der Merwe, “The Impact of the TRC’s Amnesty Process on Survivors of Human Rights Violations,” in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*

⁸⁵ Gear, “Wishing Us Away,” 111–12.

⁸⁸ Ibid.

⁸⁹ TRC, *Institutional and Special Hearings*, 220–47.

⁹⁰ Ibid., 222.

⁹¹ Gear, “Wishing Us Away,” 28–29.