Human Rights, Reconciliation and Democratic Consolidation

-A case study of the South African Truth and Reconciliation Commission

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May 2002

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PREFACE

When visiting KwaZulu Natal in South Africa in 1997, a few years after the democratic transition, I was struck by an incredible sadness over the enormous tension and disillusion that met me. I do not know what I had expected. But instead of signs of South Africans rebuilding a common future, I found the continuos building of higher walls decorated with barb-wire and broken glass around white peoples houses. The gate signs read "alarm: armed response", and I was advised against walking alone down crowded streets in broad daylight. The train trip from Johannesburg was considered so dangerous that the conductor advised me against going, and ended up locking me up. Black students that had been cheering the day Mandela became President no longer saw the point of voting, because they did not think democracy could solve anything. Coming home, I was unable to let these impressions go, resulting in this thesis.

A special thanks to Liv Tørres who has been my supervisor when writing this essay, and who has stretched herself much further than anybody could expect to help the project come true. Thanks to Samfunnsvitenskapelig Fakultet for monetary support to do fieldwork. To Paul Houpt at the Institute for Justice and Reconciliation in Cape Town for helping me with local contacts, and to the CP Nel museum in Oudtshoorn for giving me access to their media archives. All my respondends shared of their painful experiences, and for that I thank them. Thanks to Kjetil Stene, Lill Ulvær and Heidi Solheim Johansen for support, discussions and invaluable input in my work. My family have been immensely supportive during my work, and a special thanks to my parents for reading through my manuscripts. But most of all, thank you Fred, for moving to Norway so that I could finish this work, for coming with me to South Africa and being the glue that has held our family together in this process. I could never have finished this without your support.

Ragnhild Drange

May 2003

INTRODUCTION

After the end of the cold war the African continent saw a remarkable change in terms of democratisation. Between 1990 and 1996 three quarters of Sub-Sahara independent countries (37 out of 48) held founding elections (Bratton and Posner 1998). Hope raised that democracy would be able to solve the destructive social, political and ethnic problems, and be an instrument in the attempts to create economic development and fight the widespread poverty on the continent. But in many of these African countries, democracy has broken down or suffered from deterioration in quality (ibid). The high number of armed conflicts in the region[1] also shows that democracy has left many of the internal conflicts unresolved, and that democracy is not yet institutionalised as the only legitimate conflict solving mechanism. Several of these countries also have histories of oppressive regimes where severe human rights abuses have been frequent.

Abrahamsen (2000) argues that international agents like the World Bank, IMF and donor countries have pushed the African countries to adapt a particular form of democracy based on neo-liberal ideas. These include cutting state costs and minimising state intervention. She argues that the new African democracies are unable to meet the challenge of dealing with poverty, because state budget cuts hit the poorest sections of society hardest. This neo-liberal, "minimalist" way of understanding democracy only focus on political and civil human rights, and exclude economic and social human rights from the agenda. She claims the poor majority in African countries wants democracy to be an instrument to improve their living conditions, and do not see it as a good thing in itself, independent of performance. This makes the new African democracies particularly vulnerable to lack of delivery of economic and social human rights, which is undermining the consolidation of the new African democracies.

We also know that countries that have gone through armed conflicts, violence, and gross human rights abuses, have a great need for reconciliation. Experiences from Latin America shows that open wounds after large-scale use of torture and extra juridical killings by former

[1] Between 1989 and 1998 the number of armed conflicts in Africa varied between 9 and 17. There were only more armed conflict in Asia in the period. The high rate of armed conflicts in these regions cannot be explained by number of states or population density alone (Wallensteen and Sollenberg 1999)

regimes have been destructive for the consolidation of democracy (Skaar 1994). Yet we have limited knowledge about how to address former human rights abuses in democratic transition in ways that lead to reconciliation. Democratic theory has often highlighted the need to address structural, economic, cultural and institutional factors to promote democratic consolidation (Tørres 2000:16), and several of these factors will be critical also in repairing wounds from a violent past. But more direct, short term interventions have also often been used to address former human rights abuses and promote reconciliation.

Zimbabwe faced both the problems of widespread poverty and a history of violent conflict and human rights abuses when going through a democratic transition. But Zimbabwe under Mugabe has not addressed former human rights abuses after the transition, and little has been done to change access to land for the poor majority of the population. State violations against political opponents in Matabeleland, and current events where so called war-veterans are occupying land owned by white farmers with Mugabe's blessing, shows that this has not contributed to respect for human rights and the rule of law. It shows that the regime has failed to solve the social conflict between the small white land-owning minority and the generally poor black majority in a way perceived as legitimate by all parties. Ignoring the violations has led to lack of reconciliation after the violent conflict, and limited success in solving the socio-economic conflicts in Zimbabwe and is now undermining the consolidation of democracy.

South Africa faced the same issues of widespread poverty and a violent history when the country went through its democratic transition in the early 1990s. This thesis looks at how the previous human rights violations were handled as South Africa went through a negotiated, and thereby restrained, transition to democracy. The racially based system of apartheid had been a repressive system that violated human rights, and left a legacy of poverty, extreme inequality between different racial groups, and a culture of violence. The Truth and Reconciliation Commission (TRC) was set up to deal with gross human rights abuses[2] that had taken place during apartheid. But with research emerging on continued tensions in South Africa in the democratisation process through the late 90s, and several other countries having pursued different paths to reconciliation, questions emerge as to:

- How can we best address former gross human rights abuses after democratic transitions in ways that promotes reconciliation?
- Are institutional means to address gross human rights abuses, such as the establishment of the TRC, sufficient to promote reconciliation in cases that also have experienced massive repression of economic and social human rights?

These questions are parts of the larger question of how to establish sustainable democracies. This thesis is also relevant for the ongoing debate about the relationship between democracy and human rights. While close links between civil and political rights and democracy are widely recognised, the relationship between democracy and economic and social rights are disputed. Some argue that civil and political rights, in the form of democracy, will lead to delivery of economic and social rights. Others points out that lack of economic and social rights hinders the exercise of the civil and political rights, leaving at best a low quality democracy, or at worst democratic breakdown. As the reconciliation debate has focused on severe violations of civil and political rights (gross human rights violations), I hereby extend the debate by also looking into the relationship between violations of economic and social human rights (resulting in poverty) and democratic consolidation.

1.1 The South African case and the Truth and Reconciliation Commission

South Africa is generally regarded as a success story in the literature of democratic transition and seems to be heading towards consolidation of democracy. This apparent success is in spite of its violent history where gross human rights violations were widespread over a long time-span. The apartheid regime denied the majority black population basic human rights, which resulted in a society with one of the most unequal distribution of resources in the world, widespread poverty and a general overlap between race and class.

By the middle of the 1980s, apartheid marked every aspect of people's lives and the country had also grown increasingly militarised (Tørres:2000). Reform apartheid in the 70s and early 80s was part and parcel of increased military control of the townships which was later turned into

[2] Gross human rights violations abuses is used as a term for the most severe violations of human rights. Definitions vary, but the term generally only includes certain violations of civil and political rights. A discussion of the term is found in chapter 2.

the counter revolutionary "total strategy" offensive of the apartheid regime. While the government was attempting to legitimise the system by claiming that South Africa was facing a "Communist threat" and a "total onslaught" from the enemy, - the "onslaught" of the opposition was met by a "total strategy" from the government. This included a comprehensive strategy of militarisation under a sophisticated National Security Management System. Tanks and security forces had become a permanent phenomenon in the townships. The operations of death squads aimed at oppositional forces and deaths in detentions etc. were no longer extraordinary. 68 political prisoners are estimated to have died in detention from 1966 to 1988 (RRS 1991/92:492-494 & 1992/93:27-28 quoted in Tørres 2000:110). Successive states of emergencies followed from 1985 to 1989, allowing for the banning, deportation and detention of individuals and the banning and restrictions of organisations deemed to be a threat to the state. 98 organisations were banned between 1950 and 1988. 73 000 individuals were detained between 1960 and 1988 (du Toit 1995:350). About 3.5 million people were forced to leave their homes between 1960 and 1983 (du Toit 1996:309). Torture and assassinations of political opponents were widespread (TRC final report). Simultaneously, apartheid left a legacy of poverty and gross inequality in access to recourses, whether education, work or wealth. May (1998) estimates that 40% of the South African households, and almost 50% of the total population are living below the national poverty line. Widespread poverty persists in spite of the fact that South Africa, unlike most other African countries, is a middle income country. South Africa has one of the highest levels of inequality in the world[3].

Resistance against apartheid

The resistance against apartheid started with non-violent means. The African National Congress (ANC) was established in 1912 demanding equal rights for Africans. Little was however achieved until the Defiance Campaign of 1952, where nation wide civil disobedience was followed by more repressive laws by the government. In 1955 the ANC and its white, coloured and Indian allies adapted the freedom charter. A group of Africanists, objecting to the co-operation with whites, left the ANC in 1959. Pan Africanist Congress (PAC) advocated a non-violent campaign. The Zulu cultural movement Inkatha developed

[3] Poverty is extremely unevenly distributed between the population groups: 61% of the black population, 38% of the coloureds, 5% of the Indians and only 1% of the white population live in poverty (May 1998).

into a mass movement under chief Buthulezi[4]. The Sarpeville massacre[5] in 1960 led to ANC's and PAC's establishment of military wings (Umkhonto we Sizwe, and Poco), that after the banning of ANC and PAC moved into armed confrontation with the state. Key people in the resistance movement, including Nelson Mandela, were arrested. In the late 60s and early 70s, the Black Consciousness Movement emerged under Steve Biko. He was killed in detention, and it looked like resistance had broken down. But in 1976, the student led Soweto uprising spilled over to fighting and unrest, spreading to other townships. Strikes, stay-aways and consumer boycotts swept the country in the 80s. Uprisings started in the townships to make them ungovernable, and were successful in several areas. Despite several states of emergencies, tens of thousands of arrests and detentions, and thousands of deaths in political unrest, black resistance was stronger than ever (Tørres 2000:110-112). In the beginning of the 90s, the main political actors against apartheid in South Africa were the ANC, the communist party (SACP), community organisations united in SANCO and the trade union federation COSATU, all supporting the Freedom Charter. The africanists included PAC and the AZAPO. Inkatha mainly had support in the Zuludominated region of Natal[6] (Tørres 2000:113). The Apartheid regime was led by the Afrikaner dominated National Party.

After decades of violent conflict without any of the parties winning on the ground, the transition to democracy was made possible by a negotiated settlement of the conflict. But the negotiations between the apartheid government and the main opposition groups threatened to break down several times over the question of how to handle former human rights violations. The government refused to give up their power unless there was amnesty for gross violations of human rights, which ruled out trial as an option. Without amnesty, there would have been no democracy at that point of time. The result was a compromise: The establishment of the Truth and Reconciliation Commission (TRC)(Christie2000:65). The TRC's goals were to establish a broad picture of former gross human rights violations that the former government

[4] While the PAC and ANC supported socialist or social democratic economic strategies, Inkatha supported an economic system based on market economy. Inkatha, with a formal strategy of non-violent disobedience and negotiations with the government, did not boycott the homeland structure. Buthulezi was head of the local government in the Zulu homeland.

[5] Police killed unarmed Africans during a demonstration against the pass laws in Sharpeville.

[6] Even though Inkatha started as a Zulu cultural movement, it later developed into a political party and took the name Inkatha Freedom Party (IFP).

and liberation movements were behind, give recommendations for reparations for victims and to administrate amnesty (TRC final report vol.1ch.4).

The handling of amnesty puts the TRC in a different position from other truth commissions. Former truth commissions was often set up together with a blank amnesty for human rights violators. In South Africa the amnesty was limited to politically motivated violations of the most severe kind, and made contingent on individual confession and disclosure of the violations (Gloppen2002:22). This way the abusers got incentives to tell the truth to avoid prosecution. The victims and (or) their families should get to know the details of what happened, why, and who was responsible.

One idea behind this was that victims needed the true stories and acknowledgement for the fact that violations had taken place. Knowledge should lay the ground for reconciliation. The price the victims had to pay for this was that their offenders would walk free from prosecution, but not from moral condemnation. By naming the people and institutions involved in gross human rights abuses, the TRC also sought to establish some moral accountability. Because the victims and their families lost their ability to sue the perpetrators in the process, the commission made recommendations to the state about damage reparations towards victims. This can be seen as an attempt to create restorative justice, as opposed to traditional retributive justice involving prosecutions and penalty for the perpetrator.

South Africa thus gave up delivering criminal justice in order to uncover and establish the truth about gross human rights abuses and promote reconciliation. No one should ever again be able to say that they did not know what was going on. The hope was that the TRC would promote reconciliation at the national political level, within communities that were split due to the old conflict, between the races and different ethnic groups, between individuals, and help victims and perpetrators to reconcile with their own personal past (TRC final report vol.1ch5).

1.2 Reconciliation

Political reconciliation implies a climate in which conflicting parties can resolve their differences through non-violent means, a political climate where former enemies may continue to disagree, but nevertheless interact and communicate on the basis of a shared normative framework and mutual recognition (Gloppen 1:2002) Gloppen argues that

reconciliation is a matter of degree and an ongoing process rather than and end goal (2002:V). There are several factors suggested for such processes of reconciliation to be successful, but the debate is mainly focusing on the effect of handling former gross human rights abuses in different ways, usually focusing on trials, truth commissions and oblivion.

While trials have a strong focus on justice by seeking to hold the perpetrators legally responsible for former abuses, it is heavily debated under which circumstances trials have a positive effect on reconciliation. It is also common to acknowledge that in some cases trials are not possible because it can be against the interest of powerful people during the transition process, who can be in a position to jeopardise the whole democratic transition if there are no guarantees for amnesty. In such cases, truth commissions are often established to uncover that violations have taken place, establish moral accountability, and in some cases give reparations to victims in an attempt to deliver restorative justice. While some argue that oblivion (or "national amnesia") is more likely to promote reconciliation than focusing on the past by trials or truth commissions, others argue that this outcome is more due to power considerations and the interests of key role-players than moral considerations or hope for reconciliation.

Democracy as an instrument for conflict management, poverty reduction and reconciliation?

Adding to such short term interventions as trials or truth commissions, we can also expect that the new regimes ability to solve the main conflicts in society, in ways perceived as legitimate by all major parties, will in the long run affect reconciliation.

There is as mentioned a general overlap between race and class due to the legacy of apartheid in South Africa, resulting in one of the most unequal distributions of wealth and resources in the world. Overlapping lines of division are generally seen as mutually reinforcing, and the conflicts in South Africa are often seen as one of conflict of interest between the economically (and earlier politically) dominant whites, and the majority of black people, with a generally much lower standard of living. Voting patterns can to a large extent be explained by race (Reynolds:1999). Voting based on ethnic identity as opposed to rational personal interest has by many been seen as the bane of democracy in Africa, because elections in such cases become little more than ethnic census, where the largest group will dictate the minority (ibid). It has been heavily debated whether this should be solved by

institutional arrangements including minority protection mechanisms (like veto power for the minority groups or regional self-determination) or seeking to change political identity from race/ ethnic group (that are "given" identities), to class (that can be changed by social mobility and reduction of inequality). While some have highlighted the need for a gradual nation building process (strengthening the overriding identity as South Africans), others have argued that their ethnic group has a right to maximum self-determination.

There is already a lot of knowledge about how different models of democracy fit different kinds of conflict structures. Two ideal types are the majoritarian Westminster model and the Consociational model. The Westminster model is based on concentration of power with the majority, and is suitable in societies where the conflict structure is one-dimensional and no group forms a permanent minority. The Consociational model is argued to be better suited in countries with frozen lines of division (such as ethnicity), and includes power sharing and minority protection mechanisms.[7] South Africa has as mentioned overlapping and mutually reinforcing lines of division (race and class). A majority model would secure all power to the blacks, and be perceived as illegitimate among the whites. A Consociational model would include a minority veto for the whites, which could make economic and social reform impossible and would be perceived as illegitimate by the majority of blacks.[8] Other tools for protection of minority rights and instruments to overcome stark cleavages have also been debated in South Africa, such as federal versus centralised powers. While the ANC argued for a strategy of nation building and centralisation of power, some white groups argued for an Afrikaner homeland with high degree of self-determination. The Zulu nationalist Inkatha Freedom Party wanted as high degree of self-determination as possible in their stronghold, the KwaZulu Natal province.

After several compromises, the negotiated outcome was a constitution lending from both democracy models. As in the Consociational model elections were based on proportional representation and as a transitional arrangement, all major parties got access to a Government of National Unity. Even though IFP and NP did not get through any form of minority veto, changes in the constitution require a qualified majority. Some power was given to regional governments securing the IFP control over KwaZulu-Natal. The

7 For a thorough discussion on the general debate and the debate within South Africa, see Gloppen 1997 and Deegan 1999.

8 For a thorough discussion, see Gloppen 1997

constitution established a bill of rights, with a strong focus on individual economic and social rights, at the same time as establishing the right to private property (Gloppen 1997). This is effectively blocking radical redistribution of wealth as a policy option.

After the democratic transition, the ANC dominated government has increasingly been criticised from their own ranks for following a neo-liberal policy focusing on macro economic growth, without securing that this growth leads to improved living conditions for the majority of poor South Africans. The growth has not led to increase of jobs (Deegan 1999:140), and estimates of unemployment vary between 32 and 45% (Tørres:2001). Tørres also finds indications that inequality within and between the racial groups have increased after the democratic transition (Tørres:2001). Despite adapting one of the worlds most progressive constitutions when it comes to economic and social rights, and a declared policy of redistribution of wealth and fight against poverty, the government has had limited success in delivering. As several writers point out the instrumental view of democracy in African countries, many worry that the South African democratic consolidation is threatened as people are becoming disillusioned by lack of infrastructure and welfare delivery. Against this background, with the regime's so far limited success of solving the main conflicts in South Africa, I question whether short term institutional interventions as the TRC is enough to deliver reconciliation.

The TRC and reconciliation

TRC's work and its ability to promote reconciliation has been heavily debated both within South Africa and internationally, in academic literature and political circles. Stene (2002:128) suggests that the TRC has had limited success in promoting national reconciliation because this would require deep changes in society that were beyond the limited mandate of the commission. Gunnar Theissen's (1998) research on the TRC suggests that white people are still in a state of denial about their role in the gross violations of human rights that took place during the apartheid regime, and are unconvinced that the violations were wrong. This suggests that the TRC has had difficulties in communicating its findings to the main group supporting and benefiting from the apartheid system. This raises the question of what happened within the group benefiting from the violations when the truth commission operated, and how to reach this group with reconciliatory attempts.

The debate on how to promote reconciliation in South Africa has been focusing on the TRC and gross human rights violations. But these only affected a small proportion of the South African population compared to the majority that suffered from violations of economic and social human rights abuses, that still results in widespread poverty. This raises the question whether only gross human rights violations count when it comes to promoting reconciliation, or if addressing former violations of economic and social rights also matter.

Most of the analysis of TRC's work focuses on the national level. Considerable research and documentation have been conducted by both academics and key players who were part of negotiating the establishment of the TRC, focussing on the TRC as a reconciliatory compromise that made the transition possible. Several commissioners working within the TRC have also written about their experiences[9]. There is also much literature based on surveys and statistical analysis of people's attitudes towards the work of the TRC at the individual level. But these analyses are usually either focusing at an elite political level or at an individual mass level. But as the TRC seems to have had limited success at promoting reconciliation, this reopens the question of what happened at the grass root level when the TRC operated. It creates a need for new, open-ended qualitative material on how people reacted to TRC's work, why it seems to have had a limited effect, and what people see as obstacles for reconciliation.

Van der Merwe (1999) argues that the TRC was designed to promote reconciliation at the national political level but was less successful at creating community reconciliation. He argues that the TRC followed a "top-down" approach to reconciliation, instead of listening and taking into account local needs and input (bottom up approach). He suggests that top-down approaches assumes that national reconciliation will trickle down to community reconciliation, while bottom up approaches assumes that community reconciliation will aggregate to national reconciliation. I will investigate closer whether the causes of the TRC's limited success at promoting reconciliation can be found at the community level, by looking into community level reactions to TRC's work, and investigate what are perceived as obstacles for reconciliation at this level of analysis.

[9] This includes the autobiographies by ANC leader and first democratically elected president Nelson Mandela (1995), and South Africa's president during the transition, Fredrik W. De Klerk (1998). Within the TRC, the leader Desmond Tutu (2000), Deputy leader Alex Borain (2000), and Commissioner in Western Cape, Wendy Orr (2000) wrote books about their experiences.

1.3 Focus of the thesis and questions to be addressed

This thesis will give focus to the tools used to address human rights abuses in South Africa with specific focus on the TRC. The overall focus of this thesis is on the strength and weaknesses of the institutional paths to reconciliation in South Africa. While existing research and surveys may indicate a limited effect of the TRC's work on reconciliation at the national level in South Africa, several studies indicate that effects of institutional tools to reconciliation will depend on local community characteristics (Van der Merwe:1999). The local level has specific relevance to reconciliation, because local conflict dynamics might undermine, or reinforce, the work of institutional arrangements designed to promote reconciliation. Research on racial contact and harmony suggests that certain forms of contact between racial groups promotes racial harmony, while other forms of contact does not have such effect (Gibson:2001A). This was not taken into account in TRC's work or other institutional paths to reconciliation. More information is needed on the community level about the relative importance of institutional paths to reconciliation compared to other factors such as personal experiences through daily contact between different racial groups on reconciliation. We need to know more about whether the TRC, with a "top down" approach to reconciliation is sufficient to promote reconciliation, or if the limited success of the TRC in promoting reconciliation may be explained by its impact on local communities. If the TRC was insufficient to promote community reconciliation, this lack of local reconciliation might have aggregated to the national level. This would suggest that further work for reconciliation should also be put in at the community level. In order to investigate the overall general questions mentioned above we will look closer at:

How we can address gross human rights abuses after democratic transitions in ways that promote reconciliation: We need to look at both the various tools that have been used in other parts of the world and their strength and weaknesses. We also need to investigate the real political restraints in connection with democratic transition that might affect or even determine the choice of reconciliatory strategy.

When looking closer at whether institutional means are sufficient to secure reconciliation, we will have to look at the existing research and documentation to date on how the TRC affected reconciliation at different levels in society. Furthermore, we need to investigate whether the effect of TRC's work have had different content and characteristics in small communities that have been specifically affected by human rights abuses and apartheid

cleavages, than at the national level. Such community effects will not easily be possible to "pick up" from national surveys, which cannot grasp the complexity of local conflicts and relationships, which creates the need for more qualitative research at this level. The suggested limited effect of the TRC also creates a need to look for other factors that we expect may affect reconciliation, and different or supplementary roads to reconciliation. We need to know more about community obstacles for reconciliation, how communities reacted to TRC's work, and why the group benefiting from apartheid abuses was alienated in the reconciliatory attempts. Can community level answers to limited reconciliation help explain TRC's limited success at promoting overall cross-racial reconciliation.

My main hypothesis is that addressing a limited amount of gross human rights violations affecting a relatively small proportion of the people is inadequate to have a strong effect on reconciliation if the result of abuses affecting the vast majority is not adequately addressed: Limited success in addressing extreme inequality, widespread poverty and overlapping lines of division after economic and social human rights abuses are then expected to render short term institutional interventions (like the TRC) inadequate to have a strong effect on reconciliation.

1.4 Methodology

To be able to answer the above questions, former research on the relationship between human rights and democracy, and ways of addressing former human rights abuses to promote reconciliation and democratic consolidation has to be investigated. As there is a lot of research on the effect of the TRC at the national level, I go through some of the major findings, and fill in on the limited knowledge of how the TRC affected the communities they operated in by doing a community study. This open the possibility of asking open ended questions on local reactions to TRC's work, and what is perceived as obstacles for reconciliation. To get an overview over local events and community reactions within the limited time and costs available for the project, I chose a small community. At this level I could study individual reactions to TRC's work and how it affected relations between people within and between sub-communities in this town.

Unit for analysis

I picked Oudtshoorn as a unit for analysis because it had been affected by human rights violations and TRC's work. Oudtshoorn was a regional centre for oppression and gross human rights abuses, forced removals to impose racial segregation, and strict repression of black and coloured people's economic and social rights was widespread. The TRC held a separate hearing on gross human rights violations that happened in this town, and Oudtshoorn was one of a few communities where the TRC arranged a post hearing community programme to follow up the needs of the community to promote reconciliation. This meant that a lot of information was available about this community from the TRC records. The size of the town and its relative isolation meant that local actors knew each other and it made it easier to get an overview of local cleavages, conflicts and problem areas for reconciliation.

Oudtshoorn is also of special interest because it is an Afrikaner dominated community. As the Afrikaners are not in majority in any area in South Africa, Oudtshoorn is of interest because the Afrikaners dominate the town culturally and economically. Located in Western Cape, the nature of the oppression was slightly different than in most of South Africa: This province was declared a coloured labour preference area, excluding black workers in cases where there were coloured people available for the job. This policy resulted in a coloured majority in the region, and the town does not reflect the apartheid conflict as one between black and white people only. Still the case is of equal relevance because it was affected by the same abuses as we find throughout the country, including torture, killings by police, forced removals, harsh oppression of the economic and social rights of the coloured and black population. It was highlighted in my interviews that coloured people did not feel they got recognition for their role in the struggle against apartheid. There is also little specific research on the coloured community's reactions to the TRC.

Written documents

As the TRC documented its work by making transcripts of hearings and community programmes, the transcripts concerning Oudtshoorn have been invaluable sources of information. The TRC material in connection with the victims hearing outlines the local context for the struggle, type of oppression and the nature of the human rights violations that took place in Oudtshoorn. It also includes the testimonies of victims from Oudtshoorn from the public hearing. The material from the Post Hearing Community Programme (PHCP)

includes a local historical analysis as well as the communities views on what are hinders for reconciliation and ways to promote reconciliation.

Interviews

I decided to do qualitative interviews with community leaders from all sides of the former conflict to get a broad picture about how TRC's work had affected the community, and to what degree it had succeeded in promoting local reconciliation. I wanted to ask their views on what were the obstacles for reconciliation, and what was needed to promote reconciliation in their town. I wanted their opinion on whether Oudtshoorn was moving in that direction, and whether community reconciliation was possible without addressing former violations of economic and social rights.

To get local contacts, I made several attempts of contacting TRC staff that proved to be inaccessible as the TRC was closing down at the time. I then went through the Institute for Justice and Reconciliation in Cape Town, where former TRC co-worker Paul Houpt, who had been involved in putting up the PHCP in Oudtshoorn, got me a contact in Oudtshoorn that had also been involved in putting up the PHCP. Arriving in Oudtshoorn, this contact helped me to get in touch with key community leaders from all sides of the former conflict. Afterwards contacts were made through a snowballing effect as most respondents had suggestions of who could fill me in on particular subjects or views. The strength of using this approach was that I got access to differing views by people that were informed about attitudes and reactions from all main sides of the conflict. The downside is that it is an elitist approach, where grass root views may have been underestimated. When asking about reconciliation, I was careful to ask to what extent Oudtshoorn was reconciled, about TRC's role in the process first. I thereafter asked for views on obstacles for reconciliation, before ending with asking whether reconciliation is possible without addressing poverty and inequality. That way I tried to avoid steering the respondents' answers on what reconciliation would take by my hypothesis. Adding to interviews, I did observations including guided tours with one of my informants to the black and coloured townships. I planned to contact local bodies working with implementation of the suggestions from the community programme, discovering that these were non-existing. Despite the amount of work put into the programme by the TRC and the community, nothing was done to follow this up.

I traced the response to TRC's work in the local media. A biased local media controlled by white people and covering their versions of reality was identified as one of the major obstacles for further reconciliation in the PHCP. I looked into media archives and interviewed key people in the local media about whether the input form the TRC had made an impact.

I did an interview with a representative for the human rights organisation Black Sash that was involved in taking witness statements for the TRC in the region, with a focus on whether the TRC had lead to any changes in reported human rights abuses. I did interviews with a member of the municipality about local politics, including political composition, involvement with the TRC, the policy for reconciliation and implementation of national poverty alleviation programmes.

The major language in Oudtshoorn is Afrikaans but as I have limited knowledge of the language, I decided to do the interviews in English. I wanted to avoid using an interpreter because of the sensitivity of the research subject, and fear that it would have affected or limited the answers from the respondents. Conducting the interviews in English did not seem to be a problem for any of the respondents. I also decided to write this final report in English, to avoid errors of translations, and for it to be readable outside Norway, where it has most relevance. As I have some knowledge of Dutch, which is fairly similar to Afrikaans, I was able to work myself through written documents, like newspapers.

Methodical dilemmas

As the TRC in general and gross human rights violations in particular is a highly sensitive issue, fear of being identified by readers was an issue for several of the people I interviewed. As I wanted to get honest and thorough replies even on sensitive issues, I decided not to tape the interviews, offer the respondents to read what I wrote based on their interviews and to offer anonymity for the respondents in the report. Most respondents spoke more openly after these reassurances, and as most wanted anonymity, I decided to do that for everybody: As the local community is so small, and many knew who I had been talking to, it would otherwise be too easy to identify who said what. As I did not tape the interviews, I made notes instead. I think some information may have been lost this way, but that less honest information would have been exchanged if the interviewees were afraid the information would be used against them.

South Africa is troubled with violent crime, so personal safety affected the choice of Oudtshoorn as it is located in the relatively relaxed province of Western Cape. As the town was a local centre for repression where the same kinds of human rights abuses took place as throughout South Africa, this should not affect the relevance of the findings.

A general problem with qualitative interviews is that the researcher may affect the answers. Sometimes people may answer what they think the researcher wants to hear or what they perceive as politically correct. It was obviously little I could do about being a white, younger foreign woman, with expectations attached to that. But this also had certain advantages. Being younger than everyone I interviewed, and a female student (with lower status than the people interviewed), seemed to make me appear less threatening (than if I had a higher social status). I also worked on creating a sympathetic environment in the interviews (all interviews were executed in a private place decided on by the respondent). I explained that the final report would be published in Norway which for most respondents seemed less threatening than if it was published locally, as some were concerned about giving information that might be used as basis in criminal courts. Being white seemed to give less political connotations as I was an outsider/ foreigner that had not been involved in the apartheid conflict. I tried to communicate understanding to all my respondents about their particular situation and make it clear that I was there to try to understand, and not to judge anyone. I generally felt that even though several interviews started out nervously, they ended in a friendly manner, where several people said the conversation had been therapeutic. Building up this confidence meant that, to a certain extent, I had to let the respondent steer the conversation (which was part of the point in asking open ended questions about reconciliation). But this made it difficult to ask about the respondents possible personal involvement in human rights abuses as perpetrators.

The coloured and black communities, and people associated with the liberation movements, were a lot more eager to discuss TRC's work than white people were. In these groups opinions were deeply split over TRC's work, but people were generally interested and engaged by the theme. The sensitivity of the subject in the white community was apparent (reactions varied from surprise, discomfort, ridicule and plain hostility when the TRC was mentioned). As it proved hard to get in touch with many hard line Afrikaners, I did interviews with a former member of the security police, who gave me valuable input on how this group accused of being behind most of the gross human rights violations in town,

reacted to the TRC. For input on the more general Afrikaner view of the TRC, I interviewed a priest in the Afrikaner NG Kerk. He was known to be more liberal and sympathetic to the TRC than general, so I both interviewed him about personal views, and the general view within the Afrikaner community.

As I mainly interviewed community leaders I did not reach the poorest sections of society in Oudtshoorn. This did not become apparent until the end of my stay, when I realised that most of my respondents from the coloured and coloured communities, that had achieved positions as community leaders, were members of the new emerging middle class. The poorest people in Oudtshoorn are the black Xhosa population (about 10% of the people), and I did not have the language skills to communicate with them, and not the time left to arrange for an interpreter. I did, however, during my interviews, ask both for personal opinions, and general opinions in the community. When interviewing a clear distinction was made between official views of any organisation the respondent belonged to, personal experiences and views, and views in the community. As most victims of gross human rights abuses, and most community leaders were men, women are also underrepresented in my interview material. Issues particularly relevant to women and family and their views on reconciliation were, however, covered in the post hearing community programme, which is my main source of information on female perspectives.

1.5 Layout of the thesis

After this introduction chapter, chapter two looks into theory about the relationship between human rights and democracy. I look into the debate over the relationship between former human rights abuses, reconciliation and democratic consolidation. The key concepts are defined and the analytic tools are presented.

Chapter three presents different suggestions of roads to reconciliation and how gross human rights abuses have been dealt with in the past. Chapter four introduces the South African case, the main challenges of the new regime and the compromises that led to the establishment of the Truth and Reconciliation Commission as their main strategy for reconciliation.

Chapter five looks into TRC's work, its mandate, limitations and to what degree it succeeded at reaching its aims. Then I present my community study of Oudtshoorn in

chapter six. I look into to what extent the TRC succeeded in delivering reconciliation at this level of analysis, and different views in the community of what is needed to promote reconciliation.

In the last chapter I summarise the main findings and their implications for theory and practice on how to handle former human rights abuses to promote reconciliation and democratic consolidation. The findings mainly have practical relevance for policymakers, human rights activists and people working with community reconciliation. It has theoretical relevance for the ongoing debates on how to handle former abuses after democratic transition, and for the debate over the relationship between democracy and human rights, and particularly the debates around minimalist versus maximalist views of democracy.

2. THE RELATIONSHIP BETWEEN DEMOCRACY, HUMAN RIGHTS, RECONCILIATION AND DEMOCRATIC CONSOLIDATION

This chapter looks into theory about the relationship between human rights, reconciliation and democracy. First I look into the debate about the relationship between democracy and human rights, and different ways of understanding this relationship. Then I look into how human rights abuses during a former regime have made reconciliation difficult and caused problems in democratic consolidation.

2.1 Human rights and democracy

The human rights agenda has a universal aspiration. It claims that humans have individual value and rights that are basic because we are human. It is common to distinguish between different generations of human rights. The first is civil and political rights, the second economic and social rights, and the third generation is cultural rights[10]. This thesis will focus on the first two. The civil and political rights have had a strong position in the western world, and the economic and social rights had a stronger position in the former communist block. The academic debate during the cold war was concentrating on whether there was a conflict between the two first generations of rights or not. Abrahamsen (2000) argues that the human rights debate is being led from the western world after the fall of the Soviet Union. She claims as mentioned that the debate now focuses on civil and political rights and democratisation, as two sides of the same coin, assuming that political and civil rights will lead to economic and social rights.

In the human rights debate it is common to distinguish between positive and negative understandings of rights: A negative understanding, for instance to housing, means that taking away somebody's shelter is a violation of this right. A positive understanding of this right means that people that have no shelter, have got the right to have it provided for them.

Beetham argues that democracy and human rights are based on the same understanding that all people have the same value. This legitimises the democratic principle that all people are

10 For background on human rights and the legal foundations of different kinds of rights, see Gloppen & Rakner 1993.

to have right to participate in political decision-making. He defines democracy as popular control of collective decision-making by equal citizens (Beetham 1999:39),[11] and this is the understanding of the concept that I will use in this thesis.

> Its starting point is with the citizen rather than with the institutions of government. Its defining principles are that all citizens are entitled to a say in public affairs, both through participation in government, and that this entitlement should be available on terms of equality to all. Control by citizens over their collective affairs and equality between citizens in the exercise of that control are the basic democratic principles…Once we start with these underlying principles of popular control over collective affairs on terms of equal citizenship, then we can proceed to a second order question. What is needed to make these principles effective in the context of the modern state? To answer this further question takes us in two directions simultaneously (Beetham 1999:90-91)
>
> One direction is towards an elucidation of the institutional arrangements, which have over time proved themselves necessary to ensure effective popular control…these institutions can be termed democratic to the extent they contribute to the popular control of government (Beetham 1999:91).
>
> A second direction in which we are taken to consider what other rights citizens require if their basic democratic right of having voice in public affairs is to be effective. Here at once the necessity of the civil and political part of the human rights agenda becomes evident. At the heart of democracy thus lies the right of all citizens to a voice in public affairs and to exercise control over government, on terms of equality with other citizens. For this right to be effective requires, on the one hand, the kind of political institutions -elections, parties, legislatures etc. –with which we are familiar from the experience of the established democracies. On the other hand, it requires the guarantee of those human rights we call civil and political…Both are needed to realise the basic principles of democracy. Thus, as the accompanying diagram makes clear, the connection between democracy and human rights is an intrinsic one rather than an extrinsic one; human rights constitute a necessary part of democracy (Beetham 1999:91-92).

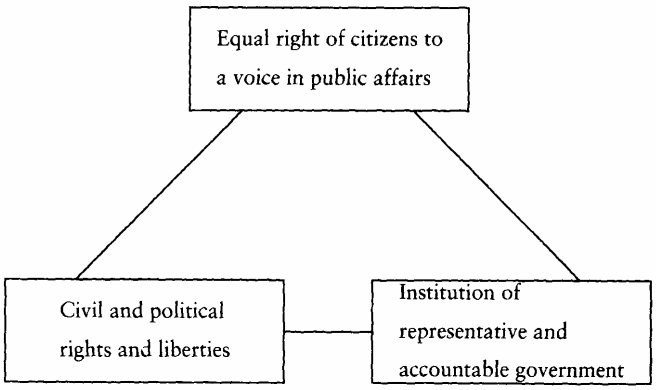

Figure 2.1 Democracy: Rights and Institutions (Beetham 1999:92)

Beetham argues that defining democracy in terms of a set of political institutions alone is to make a double error because it ignores the underlying principles that makes them democratic, and it treats those institutions as all that is required for democracy, by overlooking the human rights, which are also an intrinsic part of it. It is because they are intrinsic part that democratisation may be more effectively advanced in certain conditions under a campaign for human rights than through a campaign for democracy per se (Beetham 1999:92).

11 For a discussion about different ways of defining democracy and its implications, see Beetham: 1999 chapter 1

As figure 2 shows, there is a conceptual overlap between democracy and civil/ political human rights. The issue hotly debated is the relationship between democracy and economic/ social rights. While some argue that the two types of rights reinforce one another, others argue that there are elements of conflict between them. The the biggest challenge in the field of economic and social rights in South Africa is poverty, affecting about half the prpulation as a result of apartheid abuses. I therefor narrow down the focus of the debate below to the relationship between the two types of rights to looking at the relationship between democracy/ civil and political rights, and poverty.

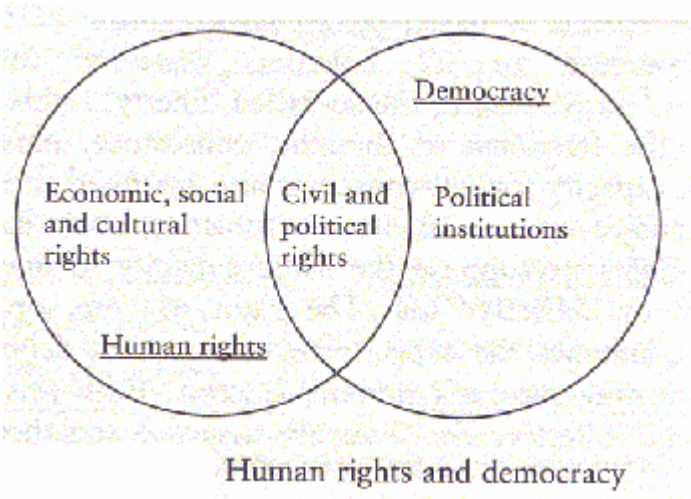

Figure 2.2 Human rights and democracy (Beetham 1999:94)

Democracy and poverty

Amartya Sen argues for the primacy of political rights (1994), because he does not see the relationship between different kinds of human rights as dichotomous: He claims that

> Political rights can have a major role in providing incentives and information toward the solution of economic privation. But the relationship between rights and needs are not merely instrumental; they are also constructive. For our conceptualisation of economic needs depends on open public debates and discussion, and the guaranteeing of those debates and those discussions requires an insistence on political rights (Sen 1994:32).

He thus argues that political rights both will lead to economic rights and form people's preferences. He uses the case of Kerala in India, where democracy has among other things led to prioritising education, which has made women choose to have less children. The province has also succeeded in building out a health sector and increased the expected lifetime. He thereby claims to show that a poor province, like Kerala, has managed to meet the basic economic needs of the population because of the existence of political rights. He thus argues that political rights can be instrumental in providing economic rights. If this is

correct, the waves of democratic transitions across the world after the fall of the Soviet Union should be promising for the prospects of delivering social and economic rights.

Abrahamsen (2000) is less optimistic. She claims that after the fall of the Soviet Union there have been developments in the academic debate towards a hegemony claiming that there is no conflicts between civil/political rights and economic rights. Many African countries are extremely dependent of aid, which increasingly is made contingent on political and economic liberalisation and adaptation of World Bank suggested structural adjustment programs (SAP). These includes minimising the state and cutting state costs. This policy from international agents have according to the argument led to a wave of democratisation. But reduction of state costs hits the poor people hardest by cutting in the already limited health and education sectors. According to her argument, the African countries are therefore forced to follow a neo-liberal economic policy with a minimalist state, with very limited possibilities for a pro-poor policy, no matter what the people will vote at the polls. She therefore is quite in line with Mkandawire (1999) who writes about "choiceless democracies". Democracies like this have their hands tied because of obligations to international donors, and will not be able to meet the demands of the poor population for state intervention against poverty. This line of argument seriously challenges the western idea that "all good thing go together" and that political rights in countries where poverty is vast, will lead to policies that are to the better for the poor. Abrahamsen also warns that in African countries where expectations of economic delivery as a result or democracy fails, there is a serious danger of undermining the belief in democracy in itself.

Smith (1997) also challenges the relationship Sen puts up between democracy and poverty, and thereby the relationship between civil/ political rights and social and economic rights. He illustrates how poor people who are at times dependent on resources from relatives or any kind of a patron for the most basic items needed for survival, are in a clientilistic dependency relationship with that person. This puts them in a position where formal political rights are undermined: In return for the help the patron gives the client in times of need, the patron will expect political support, or at least that the client does not support any kind of political grouping that would challenge the power of the patron. Thereby Smith claims that poverty can undermine poor people's political rights by undermining their ability to fight for their own interests. He argues that there is a need for basic economic security and independence from one particular patron to be able to exercise the political rights. Lack of

this minimum of economic and social rights makes people unable to freely use the political rights that according to Sen are the keys to fight for a policy against poverty.

I have thus shown that the simplistic thesis that democracy and human rights are two sides of the same coin is questionable and that democracy alone does not guarantee delivery of economic and social rights.

Economic development, ideology and poverty reduction

The relationship between economic development and poverty alleviation is highly disputed. While many argue that economic growth is necessary for poverty reduction (and will trickle down to the poor), poverty may very well exist in rich countries (Wilson:1996). Some poverty research has had a focus on behaviourist explanations of poverty, blaming it on the poor themselves and thus effectively taking away any responsibility to fight poverty from the larger community[12]. In a state where ideology like this is widespread, it is not very likely that poverty will be on the political agenda, even if it is a democracy. Wilson (1996) classify the USA, the United Kingdom and New Zealand as countries where active steps, ideological and practical, to dismantle social measures originally designed to protect citizens from the worst ravages of poverty, constitutes a new assault on the poor. The poor in the USA have been hard to mobilise politically. The poor in the USA are a relatively small group, and therefore have little political power both in the form of positions and votes. As the rest of the population does not identify with the poor because they are mainly members of ethnic minorities, it makes it less likely that poverty will be put on the agenda. In continental Western Europe the poor are seen as victims. A democratic structure together with an understanding of poverty as a structural problem, has led to less poverty than other countries at the same economic level, such as the USA. This shows that democracy and a high level of economic development alone do not guarantee poverty alleviation.

Some argue that it is possible to reduce poverty without economic growth, and that this can stimulate growth. Drezé &Sen (1989 chap.12) argue that strategy chosen to combat poverty is more important than regime type for ability to reduce poverty. They distinguish between

[12] We can distinguish between structural and behavioural approaches to understanding the causes of poverty. Structural approaches emphasise institutionalised systems of inequality, macro-economic factors, exploitation and exclusion. Behaviourist explanations on poverty focus on personal atributes of the poor, their lifestyles of deprivation and misery are reinforced and continue from one generation to another. While structural approaches underestimate the significance of personal atributtes and social mobility, behaviourist approaches overlooks differences in opportunities (Banik: 2000)

the strategies of "support led security" and "growth-mediated security". The first strategy is about reducing poverty by direct support to the poor, for instance in the form of food and health schemes, before economic growth. The other emphasises that growth has to come first, and growth will trickle down to the poor. The divide is easily read as an ideological one, but they show how support-led security has been used with success both in democracies (Costa Rica, Jamaica and Sri Lanka), in communist states (China and Cuba) and in Pinochet's right wing dictatorship. How wide and targeted the programmes have been have varied: They argue that the Pinochet regime's success in lowering child mortality and bettering health conditions can be criticised for a too narrow targeting, and that it did little to reduce economic poverty for the regular citizen. A problem with his article is that it only treats success stories, and not those where a strategy for support led security was followed without success.[13]

This debate shows that a high degree of economic development combined with civil and politic rights in a democratic regime alone does not guarantee the delivery of economic and social rights. It shows that ideology, commitment to fight poverty and strategy chosen to do so is also of importance.

Does democracy require a guarantee of economic and social rights? Do economic and social rights require democracy?

As the above discussion shows, the relationship between democracy and economic and social rights are highly debated, and Beetham (1999:95pp) asks the following questions: Does democracy require the guarantee of economic and social rights for its citizens? Do economic and social rights in turn require democracy? Or is the relationship looser than that of "requirement" in either case? Beetham distinguishes between basic economic and social rights, and development, because higher GNP/capita does not in itself guarantee the delivery of basic economic and social rights. He claims the main point is not so much to secure reduction of inequality, but making sure there is basic security for all. He criticises most of the literature on the issue for treating democracy as a clear dichotomy from non-democratic rules. Following his argument that democracy is a matter of degree, he claims that how

13 Tanzania constitutes one example, where the focus for poverty reduction was building out education and healthcare. Unfortunately this happened without making sure that there was enough economic growth to finance it, and has resulted in the country being one of the most aid dependent in the world. On the other hand the country are doing better on key indicators like in the Human Development Index (based on life expectancy, literacy and income, calculated by the UNDP) than what one would expect from a country with its level of GNP/cap.

democratic a country is, has to be answered both according to the quality of the democracy, as well as its durability (ibid).

Does democracy require economic and social rights? According to Beetham (ibid), the direct consequences are upon the people that are denied these basic rights:

> What value is the freedom of expression to me if I lack the means to communicate with other citizens? What value is there in the right to due process or the right to stand for elective office if legal protection and public office respectively are accessible only to the wealthy? It is considerations like this that justifies a social agenda for democracy, going beyond the juridical defence of civil and political rights, and even the standard of anti-discrimination requirements needed to protect particular sections of the population. (Beetham 1999:96-97).
>
> The question can be rephrased to how much economic inequality is compatible with the basic democratic principle of equal citizenship…It is clear that civil and political equality does not require complete economic levelling. But it becomes severely compromised if, on the one hand, the privileged can use their wealth or status to purchase undue political influence. Or if, on the other the poor are so deprived that they are incapable of exercising any basic civil or political rights, are effectively excluded form any common citizenship…The latter, the problems of exclusion, require positive attention to the guarantee of economic and social rights (ibid).

Of the basic rights that are required, he lists the right to life that requires physical security and access to the necessities of life: To the means of subsistence, shelter, clean water, sanitation and basic health care[14]. Adding to this is education that he puts up as a key good to obtain other economic rights; the ability to get employed and thereby provide for oneself, and knowledge about how to obtain good health and to exercise civil and political rights. By this he illustrates the interdependence between different human rights. He also points to the importance of the right to work, widely ignored in the "developed" world. He claims that

> … both liberal and democratic political theories are premised on the assumption that people are capable of self-determination that they possess the capacity and confidence to take responsibility for their own lives, whether individually or collectively. A condition of long term unemployment is hardly conductive to the development of such a capacity… (Beetham 1999:98)

He thereby concludes that the guarantee of economic and social rights is necessary to democracy in order to ensure a minimum equality of access to civil and political rights for all citizens.[15] He addresses two typical objections against the provision of basic economic

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[14] These means of subsistence are overlapping with definitions of poverty based on a basic needs approach. Unlike understandings of poverty as a problem of low income alone, the basic needs approach focuses on lack of minimal requirements for private consumption and access to the most basic services as for instance health care and sanitation. There is no consensus on which needs are basic. "Firstly, they include certain minimum requirements of a family for private consumption: adequate food, shelter and clothing, as well as certain household furniture and equipment. Second, they include essential services provided by and for the community at large, such as safe drinking water, sanitation, public transport and health, education and cultural facilities…the concept of basic needs should be placed within a context of a nation's overall economic and social development. In no circumstances should it be taken to mean merely the minimum necessary for subsistence; it should be placed within a context of national independence, the dignity of individuals and peoples and their freedom to chart their destiny without hindrance" (ILO 1976: 243;and see also ILO 1977 quoted in Gordon & Spicker 1999:14) The basic needs approach to poverty is an enlargement of the subsistence approach, that usually focus on strict physical needs for survival (Gordon & Spicker 1999:133). An overview over different ways of defining and measuring poverty can be found in Gordon and Spicker (1999).

[15] As indirect effects of lack of economic rights, he mentions lower productivity, higher crime rates in the cities, and in the rural areas increased urban migration and more rarely organised rebellion and armed conflict. This increases the chances of repressive forces to control it. He also claims that unemployment makes a good breeding ground for the politics of

and social rights. One is economic in the sense that it claims there is an incompatibility between an agenda for economic and social rights and other necessary economic goals, as for instance economic development in the "development" world. He claims that the understanding of the development term is too narrowly defined in these circles, claiming that building out health and education is investments necessary for growth. In the "developed" world the contradiction is said to be within the economic rights themselves, a contradiction between demands of social protection and employment, through the burden welfare costs impose upon economic competitiveness. Thus, the argument goes, any political consequences of the political rights programme is irrelevant, because it is unsustainable. Beetham claims that this is more a question of the size of that welfare, than its existence in the first place (1999:100pp).

Beetham also questions whether democracy is a requirement for the delivery of economic and social rights. He claims that views that there is a trade-off between the two are discredited after the end of the cold war but it is interesting to see what it is with democracies that makes them better equipped to deliver economic and social rights. For right wing authoritarian regimes he shows that lack of democracy might make it easier to follow an economic policy leading to growth (because it is not so vulnerable to democratic demands for redistribution) but in this way it suppresses demands for economic and social rights. And this model does not secure that the expected growth will be spent on economic and social rights later. He thereby discredits this model. Left-wing versions of authoritarianism he gives credit for their explicit commitment to the protection of economic and social rights, but that the collapse of the Soviet Union showed that this model was unsustainable. He also points to China that due to lack of a free press and general civil and political rights, was unable to hinder a famine where millions of people died. (For a further analysis, see Drezé & Sen 1989). Beetham concludes that democracy is a necessary but not sufficient condition for economic and social rights due to its openness, accountability and distribution of political power (Beetham 1999:ch.5).

intolerance, populism and blaming of the problems on visible minorities based on religion, ethnicity, racial or language groups (Beetham 1999:99-100).

2.2 Minimalist versus maximalist understandings of democracy

Based on the above discussion, we can distinguish two basically different understandings of democracy. A minimalist understanding includes political and civil rights only and a maximalist understanding also includes economic and social rights. If we relate this to the way the TRC has narrowed down the focus of the human rights abuses that took place during the apartheid years we find that it only focused on the breaking of severe civil/ political rights, and not on the abuse of economic, social or cultural rights[16]. I will question this narrow focus in my analysis as the majority of the population in South Africa were victims of a category of human rights abuses that the TRC did not address.

2.3 Democratic transition and consolidation

Despite a vast literature on transitions to democracy and conditions for democratic consolidation (for a definition, see below), we still have not been able to prevent democratic breakdown in several of Africa's newly establish democracies. There is a large literature on conditions for democracy, including structural, cultural, economic and institutional conditions (Tørres 2000:16). This is discussed elsewhere, and this thesis particularly focuses on former human rights abuses and effects on reconciliation and consolidation. Several writers, like Karl & Schmitter (1991), point to the importance of power relations at the time of transition. They distinguish between four ideal types of modes of transition depending on who are the main actors (elites or masses), and the main strategy (compromise or force).

> …*Pact* (is) when elites agree upon a multilateral compromise among themselves; … *Imposition* when elites use force unilaterally and effectively to bring about a regime change against the resistance of incumbents; …*Reform* when masses mobilise from below and impose a compromised outcome without restoring to violence, and …*Revolution* when masses rise up in arms and defeat the previous authoritarian rulers militarily (Karl & Schmitter 1991:275)

In cases like South Africa, which went through a pacted transition to democracy, the former regime was in a position to negotiate themselves out of power. Former power-holders thereby could put up clear demands on their exit, and in several cases put restraints on the new regime. Several authors point out Chile as an example, where General Pinochet secured himself control over the armed forces and made prosecutions for gross human rights abuses impossible by an amnesty law.

[16] The issue of cultural rights was also hotly debated in South Africa during the transition. While some parties, like IFP and several parties representing the white population argued for high degree of self-determination for their ethnic groups as a

Democratic consolidation

Linz & Stephan (1996) defines consolidated democracy as a political situation in which democracy has become "the only game in town", behaviourally, attitudinally and constitutionally.

> -Behaviorally, a democratic regime in a territory is consolidated when no significant national, social, economic, political, or institutional actors spend significant recourses attempting to achieve their objectives by creating a nondemocratic regime or turning to violence or foreign intervention to secede from the state.
>
> -Attitudinally, a democratic regime is consolidated when a strong majority of public opinion holds the belief that democratic procedures and institutions are the most appropriate way to govern collective life in a society such as theirs and when support for antisystem alternatives is quite small or more or less isolated from the pro-democratic forces.
>
> -Constitutionally, a democratic regime is consolidated when governmental and nongovernmental forces alike, throughout the territory of the state, become subjected to, and habituated to, the resolution of conflict within the specific laws, procedures, and institutions sanctioned by the new democratic process (Linz & Stephan 1996:6)

Measuring whether a democracy is consolidated is hard, given the complexity of the concept, and the disagreement over the standard or quality required to qualify. Some analysts, like Samuel Huntington, use electoral criteria to determine whether democracy is consolidated: According to his "two-turnover test", a democracy is consolidated if the winners of founding elections are defeated in a subsequent election, and the new winners themselves later accept an electoral turnover (quoted in Bratton & Posner 1998:378). One of the main challenges for African democracies is overcoming ethnic voting. If people vote based on ethnic identity instead of rational interest, ethnic minorities risk being a permanent minority. This can reduce the legitimacy of the democracy in these groups, and be a threat to democratic consolidation. Many argue that elections are only a minimum of the requirements for democracy: You can have elections without democracy, but you cannot have democracy without elections (Bratton & Posner 1998).

We have outlined the debate about whether democracy only requires a minimum of civil and political rights, or if delivering basic economic and social rights also is necessary to secure the quality of democracy. But adding to this, there is an increasing literature on the relationship between how former human rights abuses have been handled and states ability to consolidate democracy.

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way to secure their unique culture, the ANC has focused on the need for nation building. Even though cultural rights are mentioned in the chapter about South Africa it is not the main focus in this analysis.

Gross human rights abuses in democratic transition and consolidation

How to deal with gross violations of human rights often comes up in connection with regime change to democracy[17]. On the one hand, bringing up the issue of past human rights offences for instance through bringing it to a national or international court can be so fundamentally against powerful political players' interests, that it might jeopardise their support for it and ultimately stop the whole transition. This is a particularly big problem in cases where the transition happens after negotiations, and former rulers can demand amnesty in exchange for giving up their power. But ignoring the abuses of the past sends out a signal that powerful people can get away with gross human rights abuses. That does not contribute to establishing a culture of accountability and respect for human rights, which are core democratic values. It can also lead to wounds that refuses to grow between victims, and perpetrators and groups of people identifying themselves with each of them. This split can be wide enough to threaten the democratic consolidation (Skaar 1994). This has raised a debate on how different ways of addressing gross human rights abuses affects reconciliation.

2.4 Reconciliation and democratic consolidation

Skaar (1994) argues that lack of reconciliation has lead to problems with democratic consolidation in Chile and Argentina. She points to inadequate addressing of former gross human rights abuses as hampering reconciliation. In Chile the new government failed to bring perpetrators to trial because the old regime secured amnesty for former violations during the negotiated settlement. In Zimbabwe no measures were taken to address former gross human rights abuses. Like in South Africa the structures of land ownership was kept more or less intact after the transition. But in Zimbabwe recent events, where so called war veterans are occupying white owned farmland, show that there is no reconciliation after the

[17] The term gross human rights abuses/violations builds on the understanding that some human rights are more basic than others (for instance the right to life) despite the human rights agendas universal aspiration for all the rights. The definition of gross human rights abuses varies from case to case. The truth commissions in Chile and Argentina limited it to disappearances, murder and torture. While some argue that the term should be limited to state abuses only (Skaar: 1994), others argue that politically motivated abuses committed also by non-state actors should be included. Skaar (1994:24) defines gross human rights abuses as "crimes against the fundamental rights of a person, as a member of humanity, defined in the Universal Declaration of Human Rights. The State commits them – directly, indirectly or by omission – under the protection of its unique power. When this occurs, the state annuls its essential purpose and puts an end to the State subject to the rule of law…" The three most common manifest violations of these basic rights (…) are political murder, torture and "disappearance". The latter term refers to people who are detained for political reasons and whose detention is repeatedly denied by the authorities, and whose current location remains unknown in spite of all efforts to find them". The main difference between this definition and the TRC's is that Skaar limits it only to actions committed by the state, like the Truth Commissions in Chile and Argentina did. For the definitions applied by the TRC, see chapter 5.

old conflicts. The government's policy of acceptance of these land occupations shows disrespect for the country's own laws and human rights (Van der Merwe 1999:ch.4.). It also shows lack of acceptance of the democratic rules as the tool for conflict management, and thereby limited democratic consolidation.

The way of understanding the concept of reconciliation and measuring it varies a lot in the literature and this clouds the debate on the effectiveness of different approaches to reconciliation. It is thus necessary to go through different ways of understanding the concept, different levels of studying reconciliation, and which of these are relevant for consolidation of democracy. Gloppen (2002) argues that political reconciliation is the degree of reconciliation needed and relevant to promote democratic consolidation. She defines this as a climate in which conflicting parties can resolve their differences through non-violent means, a political climate where former enemies may continue to disagree, but nevertheless interact and communicate on the basis of a shared normative framework and mutual reconciliation.

At the political elite level it is important that the way of handling the violations that have taken place leads to a solution were all major players accept the new democracy and the new rules for politics. This means that everybody is allowed to play the game, and that no political grouping may start using human rights violations again as a political tool.

Different levels of reconciliation

Van der Merwe (1999) has analysed different ways of understanding the concept of reconciliation in the literature, and its implication for the reconciliatory work. He uses a wider definition than Gloppen's (2002) definition of political reconciliation, by seeing it as:

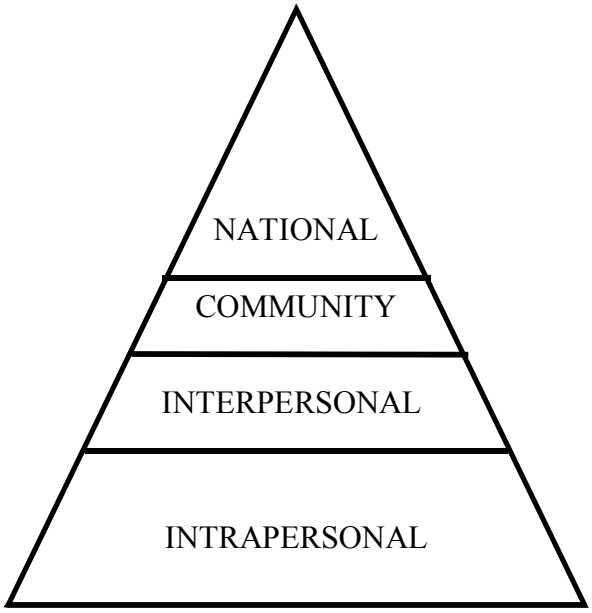
> …promoting constructive relationships among parties through changes in identity, values, attitudes and behaviour. Reconciliation is promoted through engagement with substantive issues that addresses the social needs of the parties affected by the conflict. The most notable of these are: justice, security, healing and truth. Reconciliation requires that these issues are addressed through a process of negotiation and interactive change (1999:ch.2.3b.iii)

He distinguishes between 3 dimensions of reconciliation: Spheres of relationships that can be changed, (identity, values, attitudes and behaviour)[18], substantive issues of reconciliation

18 He argues that reconciliation involves a change in relationship between groups divided by conflict- a move towards a more co-operative relationship. First is the recognition of the humanity of the other party - recognition of their right to exist. Inherent in such a change is the reconstruction of individual group identities and definition of oneself in relation to the other party. Group identity and self-image needs to be defined in such a way that it does not negatively reflect on that of the other party. Secondly, reconciliation is understood to also involve the creation of a new moral order based on consensus around values that encourage co-operation. Thirdly, an attitudinal aspect is identified – the need to adjust

(justice, truth, healing and security), and social levels of reconciliation (national, community and individual). This essay particularly focus on reconciliation at different social levels.

Van der Merwe (1999) distinguishes between three main social levels where reconciliatory attempts can take place; the national, community and interpersonal. He shows that different factors come into play in addressing each one of these levels, both of how to understand the concept of reconciliation, and how to promote it. He quotes Siesby (1996) saying that reconciliation between populations has features similar to reconciliation between persons but contains an additional element: The identification of individuals with a group, a people or a nation, an identification which may imply that a whole people may be held collectively responsible for the miseries of another people which has a corresponding feeling of suffering collective injustice (Van der Merwe 1999:ch.2.8). Adding to these three levels of reconciliation is intra personal reconciliation: The ability for people, including victims and perpetrators, to reconcile with their own past.



attitudes to overcome the fear, anger and vengefulness which characterises a conflict situation. Fourthly, patterns of interaction between adversaries are also identified as requiring a reorientation towards mutually beneficial outcomes and an engagement in risk-taking forms of interaction in order to build trust in the realisation and repetition of mutual beneficial patterns of interactions (Van der Merwe 1999:8). A change in values implies a change in the underlying attitudes and patterns of interaction. Fourthly and most fundamentally is the sphere of identity (both self and enemy). If there are clearly defined self and enemy identities in a conflict situation, especially ones that deny the humanity or the right of existence of

Figure 2.3 levels of reconciliation

Van der Merwe argues that different practical and theoretical approaches to reconciliation emphasise different aspects of the concept and that these reflect different ideological frames[19]. The top-down approaches are focusing at the national elite level, assuming that reconciliation at this level will trickle down to the other levels (community and personal). Bottom-up approaches focus on reconciliation at the personal/ community level, assuming that reconciliation at these levels will accumulate to national reconciliation (1999:ch2).

Top-down approaches se community reconciliation as a process promoted by creating a broader climate within the national political arena where leaders from the main sections in society come to an understanding, make commitments, or build public consensus on values and facts using the mass media. The communities are to absorb this reconciliation that is assumed to trickle down to this level. The local conflict should be addressed through contexualising it within a broader political narrative that explains it in terms of the divisions found at the national level. The national narrative is trying to establish a new value system based on promoting national unity through redefining political identities (Van der Merwe 1999:ch.2.9b).

The bottom up approaches prioritise reconstruction of local social networks and local political relationships through understanding the specific local dynamics, renegotiating interpersonal relationships, and addressing concerns regarding individual local perpetrators and victims. It avoids using individuals as symbols of broader processes or categories of people. The focus on inter-group reconciliation rather than intra-communal or interpersonal reconciliation might be the key difference between the top-down and the bottom-up perspectives.

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the enemy there is little scope for changes in values, attitudes or behaviour. One can thus speak of different spheres of reconciliation as well as the extent of the change in each sphere (Van der Merwe 1999: chapter 2:8).

19 The term ”ideological framework” is used because groups do not simply accept pre-existing frameworks of meaning, but combine available frameworks and adjust them to suit their particular goals and needs. It is “ideological” because it arises from situational interests rather than from universal principle (Van der Merwe 1999:chapter 2:31)

2.5 Summary

I have given an overview over the debate on the relationship between human rights and democratisation. I argued that the underlying idea behind both human rights and democracy is that each person has the same value. I pointed out a conceptual overlap between democracy and the group of human rights labelled civil and political rights, but that the relationship between economic and social human rights and democracy are more contested. I argued that minimalist understandings of democracy excludes economic and social rights, while defenders of a maximalist understanding of democracy argue that economic and social rights are needed to secure everybody's ability to exercise their civil and political rights. Lack of delivery in the field of economic and social rights are seen as undermining the quality of democracy.

Then I turned to the debate about the relationship between human rights abuses during a former regime and democratisation. I argued that the debate has been focusing on the relationship between gross human rights abuses (severe violations of certain civil and political rights), lack of reconciliation and democratic consolidation. The relationship between violations of economic and social human rights, and reconciliation and democratic consolidation has to a large extent been left unexplored.[20]

I argued that lack of reconciliation after severe human rights abuses have lead to difficulties in consolidating democracy. But the debate on how to best promote reconciliation has been clouded by different ways of understanding the concept and different beliefs over the causal relationship between reconciliation at different levels in society. While supporters of top-down approaches to reconciliation assume that reconciliatory interventions at the national level will trickle down to communities and intrapersonal relationships, the bottom-up approaches assume that intrapersonal and community reconciliation will accumulate to the national level. The approach stakeholders in the former conflict preferes is also affected by their situational interests and goals in the process.

[20] We are here talking about cases where economic and social rights have been actively violated, like in South Africa, not simply ignored or not provided in the first place, like in many other African countries.

3. ROADS TO RECONCILIATION

How can we promote reconciliation after widespread human rights abuses? There is little consensus in this debate. Elin Skaar (1994:91) introduces three concepts that are important in the handling of gross human rights abuses in the aftermath of regime change. It is the ability to reveal the truth about the violations, deliver justice, and reconciliation. Her research is as mentioned based on the cases of Chile and Argentina, were gross human rights abuses were handled by truth commissions. She assumes that the more truth and justice that comes out, the more reconciliation. The South African Truth and Reconciliation Commission is based on an assumption that truth is a necessary precondition for reconciliation. Human rights organisations, like Amnesty International, argue that there must be no impunity for human rights abuses, and demands trials. But it is debated under what circumstances trials are possible, and to what degree they are able to uncover the facts about the abuses and promote reconciliation, with their strong focus on justice and punishment. Others argue that trials and truth commissions, focusing on former abuses, will only lead to increased anger and potentially resurrection of conflict, and that "letting sleeping dogs lie" is a better way of playing down former conflicts. Van der Merwe (1999:ch.4) argues that the actual outcome of how former human rights abuses are dealt with depends more on the power situation at the time of transition than moral considerations. If there is a clear victory without political restraints, trials are a likely outcome if the new regime is committed to human rights. It is however quite common that only abuses committed by the former regime are taken to the courts. If the transition comes after negotiations between elites (pact), representatives of the old regime are often in a strong bargaining position and can make the transition dependent on amnesty for human rights violations. In these cases truth commissions, non-juridical independent commissions trying to discover the truth about the violations are common. Turning a blind eye is common in cases where no party is strong enough, or committed enough to human rights, to force through either trials or truth commissions.

Gloppen (2002:3) argues that there are five main roads to reconciliation, focusing on criminal justice, truth, restorative justice, prespective justice (institutional reforms) and oblivion (amnesia). Sub groups of these are included in the table below. Adding to these institutional ways to reconciliation, Gibson (2001A) points out that certain forms of contact

is positive for racial harmony. The general debate on how to promote reconciliation is outlined below.

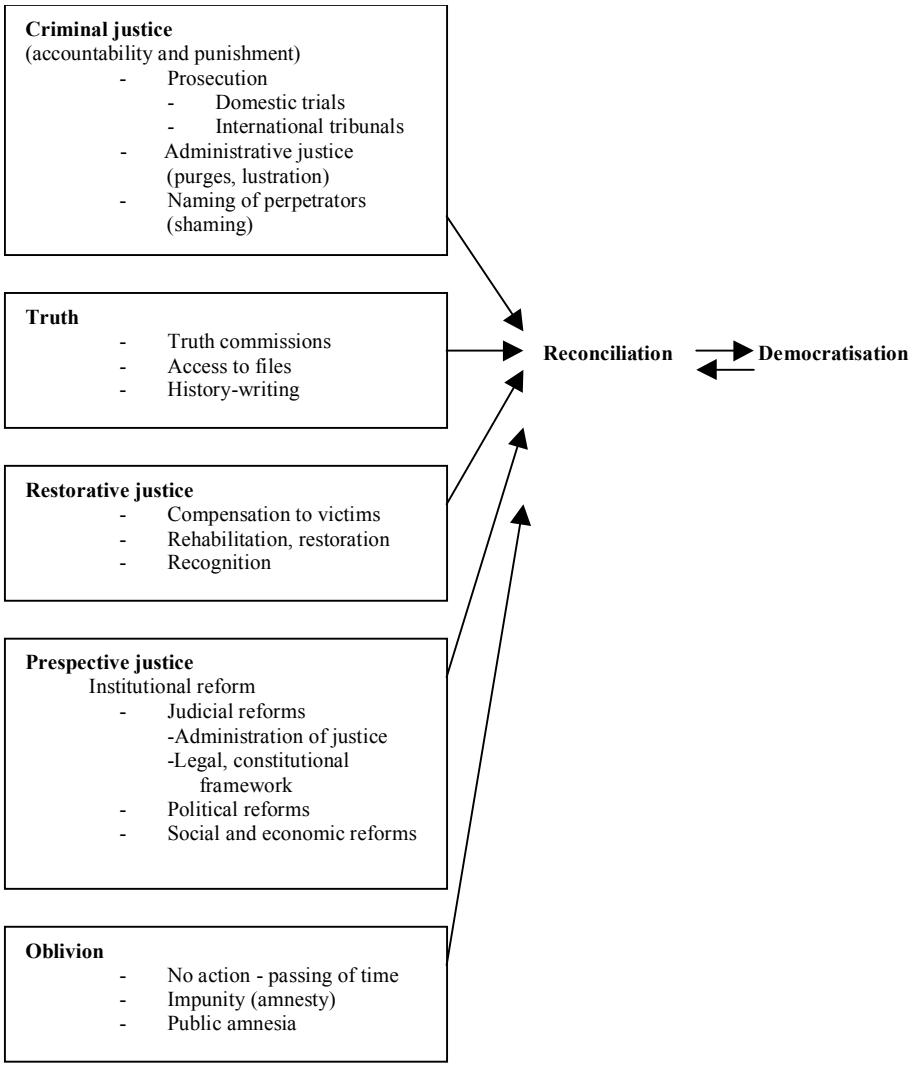

Figure 3.1 different roads to reconciliation (Gloppen2002:3)

3.1 Criminal Justice: International and National War Crimes Tribunals

We have a lot of experience in using national or international war crime tribunals to address gross human rights offences[21]. Nader and Combs-Schilling (1976) gives an overview of the functions of a justice system (quoted in Van der Merwe 1999:ch.3.2):

[21] Gloppen also mentions administrative justice as ways of promoting criminal justice. This includes lustration-administrative purges and prohibitions on holding public office to ensure some form of retributive justice where the scale or nature of abuses have made prosecutions difficult (because they are linked to the very structure and operation of bureaucratic and social structures). She also mentions social shaming, when names of perpetrators are made public (Gloppen 2002:14).

1) Prevention. Avoid escalation of the conflict through restoring the status quo or a sense of balance.
2) Rehabilitation. Reintegration of the offenders so that they regain a position of useful participant in society.
3) Restitution. Provide for the needs of victims to restore balance and maintain belief in justice of society.
4) The dramatic restatement of values. Re-affirmation of the validity of the rules and values of a society.
5) Socialisation. Educate members of rules and values and contribute to their internalisation.
6) Regulation and deterrence. Imposition of sanctions on individual to deter future behaviour.

Experiences with international tribunals

The Nuremberg trials after World War 2 and the UN's International Criminal Tribunal for the former Yugoslavia, currently trying Slobodan Milosevic, are well known examples of international tribunals. It is often seen as the winners justice: The victorious side can force their moral justice on the loosing side by taking the human rights offenders from the other side to court. Offenders from the winning side are rarely put on trial in these cases.

The Nuremberg process was only possible because there were clear victorious and defeated parties, and the allied forces prosecuted offenders from the nazi regime. Offenders from the winning side were never put on trial. By putting individuals on trial, imposing collective guilt on all Germans was avoided, which according to Goldstone (Yugoslavia War crimes prosecutor) was a reason for post-Nazi reconciliation (quoted in Van der Merwe 1999:ch.4.3.b.iii). But Reuter claims that individualised prosecutions has allowed individual citizens to avoid personal responsibility, and thereby buried, rather than dealt with their role in making the past abuses possible (ibid). While the strongest focus in trials is on justice, many argue or assume that trials will lead to some knowledge of the abuses, and that victims will have a better chance of reconciling with their own past if justice prevails.

After the end of the cold war, most armed conflicts are civil wars (Wallensteen and Sollenberg 1998:623). In these situations (for instance South Africa, the former Yugoslavia, Uganda, Rwanda and Sierra Leone) victims, perpetrators and their communities must learn to live peacefully side by side in a closer way than after international wars. The need for reconciliation between conflicting groups is therefore greater after internal conflicts than after state to state conflicts.

International war crimes tribunals have been put up after some civil wars where states have been unable or unwilling to prosecute. Currently the Arusha tribunals (prosecution leaders for the genocide in Rwanda) and the trials in the Hague (prosecuting genocide and crimes against humanity during the conflict in the former Yugoslavia) are in operation. Both are ad hoc tribunals put up by the United Nations (Van der Merwe 1999:ch.4). Joint national and international tribunals have been put up for violations taking place during the conflict in

Sierra Leone and Cambodia (Gloppen 2002:12). While a permanent international court to prosecute certain severe human rights abuses in cases where national governments fail to do so are being established, many now question whether such trials are capable of promoting reconciliation within the affected countries.

The Hague trials have been viewed as a success in the sense that they have been able to prosecute such a high profile leader as former President Slobodan Milosevic. But the process is controversial, and handing over of other prominent leaders to the courts from the former Yugoslavia have been halted due to internal stability concerns. According to Klarin the Serb reaction to the tribunal was that it was

> …an instrument for an international ruling class –a "new world order" –whose aim is not to deliver some imaginary international justice, but to execute pressure on them and extort political and other concessions (Klarin 1996, quoted in Van der Merwe 1999: ch.4p.15)

Such perceptions like can be serious hinders for the tribunals ablility to play a role in national reconciliation. As the UN was an active part in the conflict on the Balkans, perceptions of the UN lead trials as simply the winners justice over the loosing side can easily be put forward, given the organisations double role. Worries have also been mentioned over the lack of media coverage from the trials within the former Yugoslavia. If the trials don't contribute to an internal debate around the illegitimacy of former human rights abuses, it is unlikely that they will have an affect of hindering new atrocities by establishing respect for those rights.

Experiences with combinations of international and national tribunals

After the genocide in Rwanda, a combination of national mass trials and UN led international trials are taking place. The Rwanda tribunal has defined four different levels of guilt in the genocide, varying from ordering, planning and being active in the genocide, to stealing and damaging property during the genocide. As a result tens of thousands are being held for trial (van der Merwe 1999:ch 4.3b.iii). The national legal system does not have the economic recourses or capacity to give fair trials to all. Many people react to the difference in treatment between the masses, that are waiting for trial in horrible conditions within overcrowded prisons in Rwanda, and the leaders, being prosecuted by the international court in Arusha according to international standards of justice. The country is now establishing people's courts, based on tradition, to speed up the national process. In February 2002, only 8 people had been convicted and one acquitted for the genocide by the UN Arusha tribunal, despite a budget in 2001 of near 100 million US dollars, and 800 employees. This shows that

trials can be an extremely expensive exercise, making it impossible to achieve in many cases either due to lack of capacity in the legal system or economic recourses. Being held in Tanzania, the UN tribunal is criticised for being to far away from Rwanda to have a large impact on national reconciliation (Jonassen:2002). The UN also has a legitimacy problem in Rwanda, given that it did not interfere in 1994 despite strong signals of genocide. General Secretary of the UN, Kofi Annan, was at the time leader of the UN peace keeping forces and thereby responsible for the decision (Jonassen:2002). These examples show that trials, in the cases where it is politically possible to impose, don't necessarily have a reconciliatory effect.

A permanent UN international court is being established with the goal of interfering when national courts are unwilling or unable to do so. This will enable the UN Security Council to interfere in conflicts where human rights offences are taking place at an earlier stage than until now, and is a step towards strengthening international law in the area (Petersen:2002). Amnesty International sees the court as a the most important progress in international law since the adoption of the UN charter:

> …it will serve as a permanent deterrent to people considering these crimes. In most cases in the last fifty years international mechanisms to prosecute people accused of these crimes have only been set up after the crimes have occurred; it will have a much wider jurisdiction than the International Criminal Tribunals for the former Yugoslavia and Rwanda, the tribunals have been limited to crimes committed in a particular territory while crimes committed in other territories have not been addressed; and the Statute contains the most advanced provisions for the protection of victims from retraumatization as well as provision on the Court's order for a convicted person to provide redress, in the form of compensation, restitution, rehabilitation, satisfaction, guarantees of non-repetition, and any other type of reparation the Court deems appropriate (Amnesty International 2002)

It will be set up to prosecute people accused for genocide, crimes against humanity and war crimes. More than 60 states have ratified the treaty opening for the establishment of the court. This does not, however, guarantee that UN lead trials will resolve the problems faced by other ad hoc UN courts. This makes it interesting to look at a few cases where attempts of trials failed, and what effect that had on reconciliation.

Experiences with national tribunals

The repressive military Junta in Argentina in power from 1976 was responsible for widespread killings and "disappearances"[22]. The regime collapsed after the loss of the Falkland war in 1982, which resulted in democratic elections. The democratically elected President won after a campaign arguing for trials for the human rights abuses. When in

[22] While no certain figures for executed people during the regime, the official accepted figure for detained-disappeared alone is 8960. Human rights organisations and several researchers believe the true number to be closer to 30 000 (Skaar1994:61). Most of the violations took place between 1976 and 1978, but violations continued to the end of the regime (ibid).

power, however, he experienced that the army was still strong enough to stop plans of punishing perpetrators, and the president granted amnesty for the abuses. He had created false expectations of criminal justice that he was unable to deliver: The result was public outrage, and had to leave office early. A truth commission was set up to investigate the crimes, but it was unable to satisfy the needs of the victims and their organisations. This lead to low levels of reconciliation and severe problems with consolidation the new democracy (Skaar 1994).

Even though it is a national responsibility to put human rights abusers on trial, we have seen that this often does not happen. Hinders can be political restraints, political will, recourses or capacity. Some countries have adapted laws making it possible to put human rights offenders on trial for offences taking place outside their own territory.

Experiences with trials by other country

Like Argentina, Chile is also viewed as a country struggling with consolidating democracy (Skaar 1994). Chile's ex Dictator General Pinochet negotiated his way out from his authoritarian regime to reestablishment of democracy (pacted transition). Skaar (1994:42) estimates that more than 3 million people were detained, more than 200.000 exiled, over 100.000 tortured, a thousand disappeared and roughly 2500 executed[23] during his regime. Pinochet remained leader of the armed forces, and secured himself immunity from prosecution by ensuring himself diplomatic immunity for life. Legal hinders and lack of democratic control over the armed forces, still backing Pinochet, made it impossible for the new democratic regime to prosecute him or lower ranking human rights perpetrators. Trials could lead to a new military coup. Attempts were made to prosecute Pinochet by Spain, which demanded him handed over from Great Britain, for abuses where the victims were Spanish. Even though the Spanish did not succeed (Pinochet was declared medically unfit to stand trial) this sent out a signal that ex dictators might find themselves in a position as international outlaws. Even though such an effort to put up trials might have a preventive effect against future human rights abuses in other countries, it did not seem to have a positive effect on reconciliation in Chile. This failed attempt to prosecute him led to mass demonstrations and a revival of the conflict between his supporters and opponents.

These examples of attempts of bringing reconciliation through criminal justice after gross human rights abuses indicate varying success. In some cases the new regime is too weak to force through trials, and failed trials can lead to increased conflict. In other cases the trials may be perceived as illegitimate: Either because they are perceived as the winners justice over the loosing side, or being too far away from where the atrocities took place to affect reconciliation or create a debate around human rights. At other times capacity problems in the legal system can make trials impossible, and the overall costs of trials can in certain cases be hard to defend in poor countries, where recourses are very limited and other issues also pressing. But even though trials, with a focus on justice, seem to have limits in its ability to promote reconciliation, it is however the road suggested by international law. Criminal justice also serves other important functions than promoting reconciliation such as prevention of future abuses.

3.2 Reconciliation through Restorative Justice

In contrast or adding to the traditional understanding of criminal justice (focusing on punishing perpetrators), the concept of restorative justice has been used much in the academic literature on transitional justice. It focuses on the victim instead of the perpetrator, usually by compensating the victims of human rights, instead of punishing the perpetrator. Restorative justice is possible to achieve in cases where real political restraints makes amnesty impossible to avoid. This approach includes a need to decide how broadly one should define victims and address compensations (Gloppen 2002:31pp). It can for instance be argued that all non-white people in South Africa are victims of political and economic repression and thereby should have the right to compensation, and all white people benefited from the abuses and has a duty to pay reparations. This could legitimise redistribution of economic recourses, for instance through taxes, poverty reduction programmes and land reform. A more narrow understanding of victimisation is that only the most affected like victims of forced removals and gross human rights violations should receive personal compensation. This could have an important symbolic function, and cost far less money than a broader reparation policy. A narrow understanding of the violator would usually include

[23] The numbers of victims vary according to different sources. Skaar reports estimates based both on official recognised numbers and documentation from human rights organisations in Chile (1994:42)

perpetrators of gross human rights abuses, and people ordering them. This avoids the issue of collective guilt. It also takes away responsibility from ordinary South Africans that choose to ignore the human rights abuses or indirectly supported them by voting for the NP. Efforts at delivering restorative justice are often combined with truth commissions in cases where criminal justice is not achieved.

Other elements of justice

Gibson (2001B) distinguishes between different dimensions of justice that can be achieved in cases where amnesty has made criminal justice impossible: Giving compensation to victims of gross human rights abuses, giving victims a voice, social exclusion of the perpetrator and apologies for what happened. He argues that all of these elements apart from social exclusion of the perpetrator play an important role when people judge fairness in amnesty.

Many argue that sincere apologies from perpetrators can have a positive effect on reconciliation, while lack of such apologies or insincere apologies can worsen the conflict.[24] In Chile the new government apologised for abuses (committed by the former regime) on behalf of the state.

Even though Gibsons elements of justice does not serve all the purposes of criminal justice quoted above, they can provide restitution by providing for the needs of the victims and maintain beliefs of justice in society; restate that the violations were wrong and that human rights offences are unacceptable; and have a socialisation effect by educating members of society in human rights as core values that it is unacceptable to break.

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24 Van der Merwe (1999:ch.3) also discusses the importance of different concepts of justice in different cultures. Wagatsuma and Rosett (quoted in Van der Merwe 1999 ch.3:section 3b) argue that apology plays an important role in conflict resolution in Japan because it reaffirms the value of the social order, seen as providing harmony and stability. They argue that apology is not playing this role in the United States because an apology would only be viewed as admitting legal liability or an indication of personal character and thereby not contributing to the resolution of disputes in rights based dispute settlement framework. Using a Japanese model in the US would thus be hindered by implying/imposing legal liability in cases where parties attempt to apologise. Haley (1988:208) finds “considerable empirical support for the notion that encouraging remorse and restitution does tend to reduce recidivism” based on the same to cases, given Japans lower crime rate. According to van der Merwe (1999:ch3.3b) these mechanisms are thus not culture-bound, but can be incorporated into other western legal systems, and are more a paradigm choice than a culturally determined process. Nader and Combs-Schilling (quoted in Van der Merwe 1999:ch3.3b) warns about transferring restitution models to western post-industrial societies because of implementation problems where among other things most legal disputes are between people who does not know one another, legal access is largely by wealth and crime closely follows class.

3.3 Reconciliation through oblivion

Turning a blind eye (oblivion or national amnesia) to former gross human rights abuses is common in cases where powerful people in the transition process have interests in keeping the abuses in the dark or in cases where both sides of a conflict have got dirty hands. The result is impunity through amnesty or inaction. Some argue that oblivion is a way to promote reconciliation because, unlike trials and truth commissions, it does not dwell with a painful past.

Amnesia was as mentioned the solution Zimbabwe choose after the transition from Smiths white dominated Rhodesian regime to the independent formal democracy, lead by Robert Mugabe. Like in South Africa, Zimbabwe had a violent history and a general overlap between race and class, and white farmers controlled much of the land. Van der Merwe (1999) argues that Mugabe adapted a non-vengeful strategy of national reconciliation based on non-racialism, and political and economic compromise. This reconciliation was presented as a gift from the victims based on personal moral convictions. While it may have succeeded in ensuring a peaceful post-transition normalisation of social relations, it ultimately appears to have failed as a political program. The underlying assumption of (or hope for) a commitment to a redistribution of resources and the establishment of a unified African identity was not acceptable to whites. They did not perceive the existence of a covenant in which the "gift" of non-retribution was exchanged for social justice and incorporation into an African identity (Van der Merwe 1999:ch.4.3a). Carver argues that lack of prosecution of human rights abuses that took place within the Smith regime is part of the reason for the subsequent abuses committed by the new government during the Matabeleland crisis (1989:13). The governments blessing of the ongoing occupation of white owned farms, by so called war veterans, where several people have been killed, also shows that Mugabe's regime has failed to promote reconciliation, establish a regime based on respect for human rights and respect for the rule of law.

The National Party in South Africa was arguing for oblivion in connection with the transition to democracy. NP argued that South Africa had been in a state of war. Abuses had taken place on both sides, like in any war, and it was time to call it even. ANC disagreed, claiming that they were fighting a just war against an illegitimate regime. Oblivion would put the two parties on the same moral level and that was unacceptable to the ANC. But the

ANC was as mentioned not strong enough to force through trials, and the National Party was in a position to stop the democratic transition.

By not dealing with former gross human rights abuses, new democratic regimes fail to meet any of the functions Nader and Combs-Schilling pointed out as functions of the justice system. Even though some argue that oblivion promotes reconciliation, the case of Zimbabwe shows that it can also lead to continued human rights abuses, lack of respect for the law, and undermine reconciliation and democratic consolidation. But real political constraints can make prosecutions impossible. Truth commissions can be seen as an attempt to find a middle way, with a stronger focus on truth and often -restorative justice than criminal justice, and increasingly focusing on reconciliation.

3.4 Reconciliation through truth[25]: Truth Commissions

There is a growing experience with truth commissions, non-juridical independent commissions trying to establish a general picture of former gross human rights offences (Christie 2000:60-61). Truth commissions try to of uncover violations in a specific time frame, have limited time spans and usually have got some authority that gives it access to sensitive information. The goals are:

> Creating an authoritative record of what happened; providing a platform for the victims to tell their stories and obtain some form of redress; recommending legislative, structural or other changes to avoid a repetition of past abuses; and establishing who was responsible and providing a measure of accountability for the perpetrators (Popkin and Roth-Arriaza quoted in Christie 2000:61.

By establishing the truth of gross human rights abuses it is usually meant establishing for a fact that such abuses did happen, which has often been denied by powerful people and their supporters. It can mean establishing who committed the violations, and who was ordering them and who were victims of these violations. It can mean finding out the details about how particular cases happened and why. The TRC's final report distinguishes between four different notions of truth (vol.1 ch.5):

Factual or forensic truth is about what happened to whom, where, when and how, and who was involved, and requires extensive verification and corroboration policy to make sure that

[25] Adding to truth commissions, Gloppen mentions access to files (like the opening of the Stasi files), and history writing, as ways of making the truth about human rights abuses come out (2002).

findings were based on accurate and factual information, and find the contexts, causes and patterns of violations. In the words of Michael Ignatieff:

> All that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse. In Argentina, its work has made it impossible to claim, for example, that the military did not throw half-dead victims in the sea from helicopters.In Chile, it is no longer permissible to assert in public that the Pinnochet regime did not dispatch thousands of entirely innocent people... (quoted in TRC final report vol.1 ch.5).

Personal and narrative truth was about giving people an opportunity to tell their stories and the truth as they see it. These personal truths were communicated to the broader public by the media and sought to contribute to the process of reconciliation by ensuring that the truth about the past included the validation of the individual subjective experiences of people who had previously been silenced or voiceless.

In recognising the importance of social or 'dialogue' truth, the Commission acknowledged the importance of participation and transparency. Its goal was to try to transcend the divisions of the past by listening carefully to the complex motives and perspectives of all those involved. It made a conscious effort to provide an environment in which all possible views could be considered and weighed, one against the other.

Healing and restorative truth is the kind of truth that places facts and what they mean within the context of human relationships - both amongst citizens and between the state and its citizens. What is critical is that the facts be fully and publicly acknowledged. It is not merely the actual knowledge about past human rights violations that counts; often the basic facts about what happened are already known, at least by those who were affected. Acknowledgement is an affirmation that a person's pain is real and worthy of attention. It is thus central to the restoration of the dignity of victims.

South Africa, Chile, Argentina, Chad, the Philippines and Uganda are examples of countries that have tried truth commissions (a list of truth commissions and their mandates and findings is added in appendix 3). In some cases obstacles faced by truth commissions become too large to overcome, and some commissions, like the Philippinean, have never been able to deliver a final report (Christie 2000:58). In other cases reports have been publicises, but ignored by governments (Uganda's first commission, Uruguay's commission) (Christie 2000:54, 58). Chad, Chile, Argentina and South Africa's truth commissions all documented large-scale abuses, but had mixed results. In Chad, where 40 000 killings were reported, the abuses continue. According to Christie (ibid), the commission was mainly a PR stunt for the new government.

In Chile and Argentina the commissions managed to start a discussion around the issue of state terrorism and gross human rights violations. They gave victims a first chance of being heard and taken seriously by the government. The reports consciously listed the names of the victims of gross human rights violations, but failed to account for a large number of other serious violations, such as torture and exile, which affected large parts of the population. The reports failed to reveal the names of the perpetrators[26] (Skaar 1994:107).

> …the attempt at "truth telling" had a much more positive effect in Chile than in Argentina even though the strategies regarding the issuing of the government reports was almost identical in the two countries(Skaar 1994:130)

She argues that the disappointment was bigger in Argentina as people had expected the military to be punished for their crimes. The transition here came (as mentioned) after the military had been defeated in the Falkland war. The new president Alfonsín was known for his commitment to human rights and boldness in politics. When he failed to deliver his promises of criminal justice people felt let down. In Chile the transition was more controlled, the army was stronger and still controlled by Pinochet. President Aylwin was careful not promesing too much in the field of human rights, learning from the Argentine experience. The disappointment over failure of delivering criminal justice was therefore smaller in Chile.The time factor is also very important. The worst human rights violations in Chile had taken place fifteen years prior to the transition, allowing time for the blunting of feelings and the partial healing of wounds. In Argentina the wounds were still wide open, as large-scale violations were fresh in most peoples memories (Skaar1994:131).

Both cases gave compensation to victims, but they were more extensive in Chile than in Argentina. Skaar also argues that civil society played a different role in the two countries. The extra pressure from the Grandmothers[27] in Argentina has presented the authorities with an ongoing problem absent in Chile. Moreover, Alfonsín faced much more opposition from non-military actors than Aylwin. This indicates that one ought to take into account the position of civil society as well as the position of the military when judging the result or effects of human rights policies. Alfonsín lacked the adequate backing from the human rights organisations and the political parties on the Left to carry his policy through. This offered the military an opportunity to close ranks and strengthen their position (Ibid).

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26 Skaar seems to use the term Gross Human Right Violation in a different way here, by not including torture, like she did in her definition of the term, referred to above

The Chilean case had a little bit more success than the Argentinean in discovering the truth and promoting reconciliation. Problems connected to the Chilean and Argentinean approaches were that offenders of human rights did not get a good reason to talk: They got amnesty anyway, so why let people know what they did? This problem is even clearer when it comes to trials: Then perpetrators have greater incentives to hide their crimes, in fear of punishment.

The South African Truth and Reconciliation Commission was different because it avoided giving Blank amnesty to people who had committed gross violations of human rights. Amnesty was used as a carrot to make perpetrators tell the truth about the violations: Amnesty was only supposed to be given in exchange for the truth. The victims were to get compensation from the government in return for accepting amnesty. This was built on an assumption that truth was a necessary precondition for reconciliation, and restorative justice could to a certain extent compensate for criminal justice.

Can truth commissions fill the functions of a justice system, in cases where criminal justice is of limits? The cases above suggest that truth commissions have had varying success at preventing future abuses. Rehabilitation and reintegration of offenders are parts of the fundamental focus on reconciliation in the South African case. By combining truth commissions with reparations to victims, some restorative justice were achieved for instance in Chile, Argentina and (to some extent) South Africa. The focus on human rights can contribute to re-affirm human rights as important norms, promote socialisation and internalise human rights as core values among members in society. Truth commissions can thus to some extent fill some of the functions of justice systems. But given that truth commissions often (but not necessarily) are put up in connection with amnesty, it is questionable to what extent truth commissions can deter future violations to the same extent as criminal justice.

[27] The grandmothers of Plaza de Mayo is a family based human rights organisation in Argentina, specifically devoted to the search for disappeared grand-children (Skaar 1996:144)

3.5 Reconciliation through prospective justice/ institutional reform

The argument for Institutional reform or prospective justice is that reconciliation depends less on how to address the past than the fairness of the present and future terms of social co-operation. Past repression should be addressed with social reform and affirmative action programmes, rather than compensation to individual victims. The focus is shifted from handling gross human rights violations to addressing past repression of equality, social and cultural rights. If pursued alone, this strategy would ignore the problems connected to impunity, the need to restore a sense of justice after gross human rights abuses, and can jeopardise the rule or law. But this can be avoided by following the strategy in combination with other strategies, such as criminal justice or truth commissions (Gloppen 2002:34)

3.6 Reconciliation through contact?

The roads to reconciliation discussed above all focus on institutional ways of promoting reconciliation. Some theorists argue that contact between the races will lead to greater understanding and racial harmony, under certain conditions: This suggests a possible non-institutional road to reconciliation in cases where the conflict has partly been a racial one as in South Africa. Gibson (2001A:12-13) quotes Pettigrew saying the contact have to include:

> equal status –the expectation and perception by parties of equality in the interaction(…) common goals –sharing a common objective (as in athletics or in the military) (…) intergroup cooperation –interactions based around cooperative rather than competitive circumstances; and (…) support of authorities, law, or custom – the presence of authoritative norms encouraging acceptance.

The importance of personal experiences through daily contact between former conflicting parties has to a largely been overlooked in the debate on roads to reconciliation. We need to know more about the relative importance of institutional approaches to reconciliation compared to other elements that can affect reconciliation, such as contact. If this works in favour of reconciliation, it is clearly a low cost way (in both time and effort) to promote reconciliation, either alone or together with institutional paths to reconciliation. We will take a closer look at this in chapter 6

3.7 Summary

We have identified five roads to reconciliation adding to a hypothesis that the experience of everyday contact between conflicting racial groups will affect reconciliation. We saw that none of the institutional paths are best under all circumstances. While criminal justice,

oblivion, restorative justice and truth commissions focus on how to address former gross human rights abuses, prespective justice (reform) focus on the result of repression of the rights to equality, social and cultural rights.

Even though international law obligates governments to prosecute after gross human rights abuses, restraints on new democratic governments can limit the policy options after democratic transitions (even in cases where the new government is committed to human rights). Such restraints can a.o. include promises for amnesty made as part of a negotiated pact during the democratic transition, fears that trials might trigger attempts of coup détàt in cases where powerful antidemocratic enclaves exists within the new regime, and these groups see trials as a threat to their interests. Lack of institutional or financial recourses can make (fair) trials impossible to implement.

In some cases where new governments show little will or ability to prosecute, international actors have been involved either through international war crimes tribunals, joint tribunals or prosecutions abroad. The examples discussed indicate that these have had a limited effect on reconciliation. Lack of local ownership of the process and located away from where the abuses took place has limited the ability to promote a local human rights debate. Furthermore, in cases where the party prosecuting can be seen as having a role in the former conflict, the trials can be perceived as biased and the winner's justice and limit its local legitimacy.

But the criminal justice approach have other important features apart from effect on reconciliation that cannot be overlooked. These include ability to prevent and deter future abuses, rehabilitating the perpetrator, restitution towards victims, socialisation of the population in basic rules and restate the validity of rules and values in society. We argued that it is questionable whether oblivion leads to reconciliation and this strategy fails to fill any of the other functions of criminal justice.

Truth commissions and measures of restorative justice can to some extent compensate for lack of criminal justice after gross human rights abuses. These approaches shift the main focus from perpetrators to victims, acknowledgement and tries to reinstate the values of human rights. Successful truth commissions might have greater chances of uncovering violations than trials, because trials give perpetrators greater incentives to cover over abuses in fear of punishment. Still many truth commissions are unsuccessful due to lack of

recourses, accusations of bias, are unable to publish a report or their reports are ignored. The South African TRC, by many viewed as a possible model for future truth commissions, showes that contingent amnesty can be a powerful tool to make perpetrators speak and uncover the truth about the abuses. But it is still an open ended question to what degree such revelations promote reconciliation. This will be discussed in chapter 5 and 6.

We saw that social/ institutional reform can be a supplementary road to reconciliation by addressing the result of general repression of social, economic and cultural rights. But that all these institutional roads to reconciliation fail to take into account the effects of peoples daily experiences with former enemies through contact. How this affects institutional attempts at promoting reconciliation at the community level will be addressed in chapter 6.

4. THE SOUTH AFRICAN CASE

South Africa is often seen as a success case in democratic consolidation despite conditions of a violent past where human rights violations were widespread, and the mode of transition to democracy put restraints on how former human rights abuses could be addressed. To avoid resurrection of old conflicts and democratic deterioration, reconciliation was put on top of the political agenda. In order to understandbetter the various reconciliatory attempts that were initiated, I will in the following briefly present some background information on the conflicts and the legacy of human rights abuses in terms of poverty, extreme inequality and political cleavages[28]. We look into which restraints the negotiated transition put on choice of reconciliation strategies. The main challenges South Africa was facing and how these were addressed is presented. I question whether South Africans have an instrumental view of democracy and whether limited delivery of economic and social rights is undermining the consolidation of democracy in South Africa.

4.1 Human rights abuses under Apartheid and their legacies

Racial discrimination was already widespread in South Africa under the British colonial rule. In 1913 the Native Land Act limited land purchases by Africans (70% of the population) to 7 percent of the land, within special reserves. In 1948, when the Afrikaner[29] dominated National Party came to power, the system of apartheid was institutionalised whereby the various racial groups were to develop, and be awarded rights, separately (Deegan 1999:xi). The ideology and policy of apartheid was developed to secure white people's economic and political domination over the other population groups. In the early 1960s the UN declared apartheid a "crime against humanity" (Christie 2000:19).

28 There exists extensive literature on the structures and ideological background of apartheid system. A brief historical context is added in appendix 2.

29 The Afrikaans speaking population are mainly descendants of European settlers, and has developed a self-image as a haunted people, first fleeing Europe to settle in Africa, and later oppressed by the new British Cape Colony. In the "great treek", farmers (Boers) tried to escape British colonial rule by moving inland. The treek Boers arrived in an area where the Zulu expansion under king Shaka had lead to migration of large population groups resulting in further conflicts. In the Anglo Boer war, many Afrikaners were killed in British concentration camps, and strengthened the Boers self image as a haunted people. By securing themselves power over the state through the National Party they saw an opportunity of safety for their own group, and control over the major economic recourses for the white people.

The population was divided by skin colour. The majority of the population was classified as black/African. The racially mixed population and descendants of the indigenous Khoi-san population were classified as Coloureds and were given some more privileges than black people. Asians and whites[30] as the other two groups were recognised even more status and rights. After formal democracy was established, 11 languages were recognised as official languages, with Zulu and Xhosa being the largest ones.[31]The regime subdivided the population by ethnicity and actively played out a policy of divide and rule. Cross-racial marriages were banned. The main African ethnic groups would each get their own self governed homeland[32] and this was enforced by forced removals[33]. As the homelands were too small and situated on marginal land unable to uphold the populations, the homelands served as labour reserves for the white people, and a system of migrant workers took form. The pass laws made sure that black people without jobs were not allowed to stay outside the homelands. Only the white part of the population enjoyed full political rights like the right to vote under apartheid, while the black population was supposed to exercise their political rights only within their own territories, the Bantustans.[34] By the early 1990s, 70 percent of the land was owned by a little over 50 000 white farmers, in a country with more than 40 million inhabitants.

By breaking basic human rights the whites took control over most of the land and economic recourses. Access to equal education was hindered by the Bantu education act, the press was

[30] The white part of the population is divided between Afrikaners and the English speaking population (descendants of people immigrating when South Africa was a British colony). While the Afrikaners have mainly been rural farmers, the British have been urban with control of commerce and the rich mining industry.

[31] The 11 language groups are: Zulu (22%), Xhosa (18%), Afrikaans (14,5%), North and South-Sotho (15,5%), English (8%), Tswana (8%), Tsonga (4%), Siswati (3%), Venda(2%) and Ndebele (1%) (Gloppen 1997:18) Adding to this is the language of the indigenous KhoiSan population.

[32] Ten homelands/Bantustans were established, four so-called independent and the rest so-called dependent homelands. The prior were set up with separate foreign policy, military etc., while the latter shared these tasks with the white South Africa while carrying independent responsibilities for health, education etc. Even the prior depended however, heavily on transfers from the apartheid government.

[33] 3,5 million people have been estimated to have been removed from their homes in order to fit into their "right" area in terms of these laws from 1960 to 1983 (du Toit 1996:309, Tørres 2000).

[34] The government introduced voting rights also for the Asian and coloured population for separate chambers in the Parliament after a referendum in 1983. The legislature, i.e. Parliament consisted of three houses or chambers: a House of Assembly (for whites), a House of Representatives (for "coloureds") and a House of Delegates (for Indians) (Tørres 2000). The distribution of tasks between the chambers in Parliament followed a separation between "own" and "general" affairs. "Own affairs" were matters that affected one specific population groups, while "general affairs" were all matters that were not "own affairs", i.e. such as defence, foreign affairs, law and order, transport and the like. If disagreements occurred between the chambers in parliament, the Presidents Council had the final say. Elections were also introduced in several townships outside the urban areas, but were widely boycotted.

censured hindering access to information, and many of the most attractive jobs were reserved for whites only. The banning of the main opposition groups like the ANC and PAC and widespread gross human rights was a part of the government's oppressive policy. This made it possible for a minority of whites to hold on to their economic and political power. The unequal distribution of economic privileges resulted in a white population enjoying a standard of living comparable to any first world county while the black population enjoy a standard of living comparable to South Africa's neighbouring countries (Gloppen 1997:27). Simultaneously, about half the black population is living in poverty, and public services like roads, water and sanitation are mainly built out to service the white population (May 1998) (An overview of basic needs in South Africa at the time of the transition is added in appendix 1). Poverty is extremely unevenly distributed between the population groups: 61% of the black population, 38% of the coloureds, 5% of the Indians and only 1% of the white population live in poverty (measured by the national poverty line). Women are more affected by poverty than men: 60% of female-headed households, and 31% of male headed households live in poverty. Poverty is most widespread in rural areas. The poorest 40% of the households (50% of the population) receive only 11% of total income, while the richest 10% of the households (7% of the population) receive over 40% of the total income (May 1998). Many commentators suggests that customary law is still a potent force in the lives of rural women despite the Bill of Rights and the governments commitment to gender equality (Deegan 1999:88).

> The main resource for rural women is land, to which their households have access under traditional customary arrangements. White points out that under customary law, women obtain land only through a male relative or their husband. So although they may be sole cultivators of the land "they may not make any important decisions about its use or disposal (White 1995). Equally, under the African communal system, grazing rights and rights to live and grow crops on portions of land are allocated by the chef to male heads of household…because alternative forms of paid work are rare, women are dependent on the remittance sent to them by their spouses (Deegan 1999:88).

Social identities and political cleavages in South Africa

The apartheid years to a large extent determine the present political cleavages and formed social identities in the South African population. The regimes division and sub division of people into racial ethnic groups[35] (largely overlapping with language groups[36]) combined

35 The root of all statutory discrimination was to be found in The Population Registration Act, which laid the basis for classification according to race. Classification did little justice to the cultural complexity of SA or to people's self-definition. It became a function of administrative decisions, and for allocations of rights and duties, but mostly for allocation of privileges and resources. The Land Act and The Group Areas Act (36 of 1966) regulated residence, property, and use of land and business premises in respectively rural and urban areas. The Separate Amenities Act (49 of 1953) gave regions and localities access to regulating access to and use of amenities like hotels, transport, restaurants, etc. according to race. In addition, to these laws, thousand of other restrictions regulated apartheid segregation and discrimination (Tørres:2000) All in all, Horrell (1979) argues that there were 331 different enactments directing race relations. Giliomee

with rights being connected to this classification has led to a general overlap between class and race, strengthening the divide. There are also lines of division based on geography, religion, age, gender and education in South Africa. Gender is an important social identity that has shaped peoples ability to make choices in South Africa.

South Africans still to a certain extent identify with the racial categories created by Apartheid, even though many identify themselves as South African[37]. Voting patterns to a large extent overlap with race and class, but the IFP is the only party based on ethnic identity. In the second elections in 1999 there were tendencies of three major parties (ANC, NNP and DP, representing 83% of the votes) becoming more cross cutting in terms of racial support, even though their policy platforms are not (Reynolds 1999:177). Due to class differences and separation of residential areas between these groups, South Africa is still a highly segmented society, where there is very limited contact between the groups.[38] After the end of apartheid a newblack middle class has emerged, and some whites have become poorer. But according to Tørres (2001;forthcoming) there are indications that inequality has grown between the races after the end of apartheid, as has inequality within the racial groups.

The Bantu Education Act made sure black people received lower quality and lower level education than whites. Many young South Africans quit school to join the liberation movements or got their education disrupted by schools boycotts or close downs due to the political situation. As a consequence the younger generation is often labelled "the lost generation". Unemployment is nearly 32 percent using a strict definition, and 45 percent if

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(1979) refers to another estimate, which suggests that by 1978, there were 4000 laws and 6000 regulations affecting the private sector of the economy.

36 An ethnic group is often viewed as a group that sees themselves as a unity based on for instance common historical background, language, religion or culture (Gloppen 1997:12). It is debated how important ethnic identity is in South Africa. The ANC has claimed that the divisions between different ethnic groups were created or enforced by the Apartheid government's divide and rule tactic (Gloppen 1997: 18).

[37] The importance of ethnic and racial identity is heavily debated in South Africa. For a thorough discussion, see Gloppen (1997:17pp)

38 The separate development programmes resulted in a strong segregation of the country. While it resulted in different residential areas for the various population groups which still constitutes the major cleavage to be crossed for normal social contact to be established, other racial residential patterns should also be noted. The racial politics of The Afrikaners had established independent settler republics before conquered by the British colony and have their strongholds in the Free State. English speaking liberals have a stronghold in Western Cape, as this used to be the regional centre for the British colony in South Africa. Together with the Northern province it was a coloured labour preference area, which means that black people were not allowed to work there if there were coloured people available. As residence permits were connected to being employed, these are the only regions in South Africa where the majority of the population is not black but coloured.

those who have given up finding jobs are included. It hits Blacks, youngsters, women and rural dwellers the most, and white people the least (Tørres 2001:8). There is a large informal economy on the side of the formal, with cleavages between people with access to formal jobs and rights connected to this, and people working in the informal sector (Tørres 2001:16-18). The drop in political violence has been followed by a dramatic increase of violent crime making safety an issue at all times in South Africa today (Deegan 1999:164pp).

Racial group to a large extent still determines political preferences (Reynolds 1999:176-187). Most black people support the ANC, while the white vote still goes to the new National Party (traditionally mainly supported by the Afrikaners) and the liberal Democratic Party (traditionally supported by the English speaking population)(Raynolds 1999). While ethnic conflicts has been widespread in many African countries, such conflicts between various African groups have been by and large absent in South Africa. But the ethnic mobilisation conducted by the Inkatha Freedom Party should be mentioned. Inkatha mobilised under apartheid specifically in the homeland KwaZulu, which is the region where it still regains most of its votes[39], with ethnicity and defence of the "Zulu nation" as the main driving force. IFP has been fighting to preserve Zulu national identity, hindering nation building and preserve local power based on ethnicity, and the power base of traditional leaders. Yet, IFP has little support from non-Zulu's and most Zulu's support ANC (Gloppen 1997:22). The ANC and IFP were engaged in an armed conflict mainly in the KwaZulu-Natal province around the time of transition, but this politically motivated violence has decreased. The Conservative Party is the last major white party, adding to several small right wing Afrikaner groupings, struggling for an Afrikaner homeland.

While race and class seem to be major determining factors for identity and political preferences, religion has less impact on politics.[40] While the urban-rural divide to some

[39] We have seen that Inkatha accepted the homeland status awarded by the apartheid government (as compared to the ANC and PAC who refused this system any legitimacy). While primarily mobilising in KwaZulu, it also tried to mobilise some support in the townships around Johannesburg from the late 80's. Today, Inkatha has majority in the same region, now re-named KwaZulu Natal.

[40] Christianity is the dominant religion but there are a variety of different churches. They have a history of social and political engagement against apartheid, particularly in the times when opposition groups were banned. The Afrikaner Dutch reformed church (NG kerk) stands out because it legitimised Apartheid religiously. The Dutch reformed church also had churches for coloured and for black people. These were opposing Apartheid. (For an overview of other churches and religious communities, see Tørres 2000:499). The Dutch reformed church have acknowledged that apartheid vas "church policy", the church pushed hard to get the NP to enact laws against racially mixed marriages, establish group areas, Bantu education, and received secret state funding for propaganda purposes. The church even acknowledges that is provided theological and biblical justification for apartheid (Botman 1999:129)

extent reflect the previous divide between the former homelands and the former white areas, and still reflects major differences in living standards, urban versus rural seem to also have less impact on political priorities.

4.2 Transition to democracy by negotiations

Towards the end of the 80s, the cost of the apartheid system was beginning to take its tolls also on the apartheid state. While the struggle and military encounters in the frontline states had achieved limited military success, there is no doubt that the liberation movements had won the international opinions to their side. International sanctions and disinvestments, combined with a general economic downturn due amongst others to decreasing international prices for gold and diamonds also had its impact. The economy was also suffering long term effects of the costs of upholding the repressive state apparatus. Internal turmoil contributed further to lack of stability and predictability for employers and the state alike. These factors, combined with the collapse of the Soviet Union, and hence the "communist threat" laid additional bases for the "talks about talks" and the negotiations to start.

Informal talks between the government and imprisoned ANC leader Mandela lead to Mandelas release in 1990 and the unbanning of the liberation movements. 1990 saw the real dawn of political change in South Africa (Tørres 2000). Several apartheid laws had been lifted in the late 80s and more followed in February 1990.[41] In 1991 formal negotiations over the establishment of democracy started (Convention for a democratic South Africa, CODESA), where the government and opposition groups were present. The outcome was agreement of a two-stage process: First the main political groups negotiated an interim constitution as the basis for national elections for a constitutional assembly. This assembly drafted the final constitution. This strengthened ANC's influence over the final constitution, as the elections marked a change of power between the NP and the ANC. The influence of the South African negotiated pact on the final constitution were thus less restrained then for instance in Chile, where undemocratic enclaves of power (the military) still exist, hindering democratic consolidation (Skaar 1994). Free parliamentary elections took place for the first time in 1994 and local elections were to follow in 1995 and -96. The Constitution was finalised in 1996 and

[41] President De Klerk opened Parliament on February 2nd 1990, announcing the unbanning of the African National Congress, the South African Communist Party and the Pan Africanist Congress.

new, fully democratic elections held in 1999. This transition is an example of a pacted transition to democracy, discussed in chapter 2.

The negotiations leading up to the new constitution and the elections took place in a setting where political violence escalated, particularly between ANC and IFP supporters in KwaZulu Natal. Inkatha and PAC boycotted the talks[42]. How to handle former human rights abuses was a hot potato and threatened to break down the negotiations. NP demanded amnesty, and as a compromise between amnesia and trials the parties agreed to put up a truth commission. 27th of April 1994 South Africa's first fully democratic elections were held, and Inkatha, that had decided to boycott the election, decided to join in the last minute.

ANC won a clear majority of seats in the parliament, but did not have a qualified majority. Together with the NP and Inkatha it established a Government of National Unity (Reynolds:1999). On top of the agenda was reconciliation and creating a final constitution that established democratic conflict resolution mechanisms that were perceived as legitimate by all major parties (Mandela 1995:744-5). ANC voters expected improved living conditions and addressing of injustices from the past. The deep cleavages between different groups had to be addressed. While reconciliation was seen as essential to avoid resurrection of violent conflict and democratic deterioration, the means to achieve this were controversial.

The final constitution borrowed, as mentioned in chapter one, from both the majoritarian and Consociational models[43]. The constitution cannot be changed without a qualified majority and includes a bill of rights with a strong focus on human rights including economic and social rights. It not only established that the state did not have the right to take away these rights (negative right), but also the states obligation to try and deliver these rights (positive rights). This made the South African constitution one of the most progressive in the world when it comes to human rights. Included in the bill of rights was the right to property, which made radical redistribution of land impossible.

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[42] According to Mandela, the PAC decided to boycott the talks, accusing the ANC and the national Party of conspiring together to set up a multi-racial government. The PAC feared democratic elections because they knew that such a vote would expose their meagre popular support. Chief Buthulezi also boycotted the talks on the grounds that he was not permitted three delegations: for Inkatha, the KwaZulu government and King Zwelithini (Mandela 1995:713, Tørres 2000)

43 For an extensive debate on the South African transition and the democratic institutions, see Gloppen 1997

This election system gave the ANC majority at the national level, but not enough seats to change the constitution alone. It also controls all provinces apart from the KwaZulu Natal (IFP), and Western Cape, where (N)NP[44] governed alone after the first election, and in an alliance with the DP after the second election. The IFP/NP wish of preserving group identities and only changing rules for intergroup behaviour was thereby partly met by establishing a certain degree of local self determination. Both parties did, as mentioned, manage to get into government in a region each, (possibly strengthening commitment to democracy, because minority parties has a fair chance of local power even though no party is in the foreseeable future in a position where they can challenge ANC at the national level). Both parties got some influence at the national level through access to the GNU, even though the NP decided to drop out in 1996.

4.3 The new government: Challenges and policy

After the democratic transition, the expectations of what the new democratic government could achieve were high, both within South Africa and abroad. There was a need to de-escalate the former conflict, create stability and consolidating democracy, and reconciliation was seen as essential to reach these goals. The part of the population that had been oppressed during the apartheid regime expected improved living conditions, which put the social and economic conflict on the agenda. At the same time, the government was afraid to alienate the white population in fear of revival of armed conflict or mass emigration which could lead to brain-drain and loss of necessary capital in South Africa. The negotiated settlement of the old conflict also put restraints on the policy options for the new government. Finding a balance between these goals within the policy restraints from the negotiated settlement was problematic: While radical redistribution of wealth (for instance through large scale landreform, taxes or appropriation of private owned companies) might have lead to improved standard of living for the black majority, it was excluded as a policy option: The right to private ownership was established in the new constitution, and the new government adapted a long term policy for dealing with the social and economic conflict through gradual redistribution of wealth through redistribution of state recourses and growth (discussed below).

[44] The National Party has changed name to the New National Party (NNP).

Although apartheid laws had been formally lifted, the cumulative weight of apartheid racism still marked every aspect of society.[45] Enormous differences in *real* distribution of socio-economic resources remained. Access to education, infrastructure, health- and social services varied according to residential areas, which again to a large extent overlapped with race and population groups. South Africa has one of the highest degrees of inequalities in wealth and income in the world. There were also differences in distribution of resources between rural and urban areas and between groups living in the ten old traditional "homelands" established under apartheid and people living in other areas.

The ANC was struggling with how to adjust from being a liberation movement to a democratic party in government. At the same time as it had to deal with the process of nation-building and building of democracy, and trying to redistribute recourses from one powerful group represented in their government. There was a violent conflict it KwaZulu-Natal, and former gross human rights violations had to be addressed. Social problems like high unemployment rates together with raising crime and violent crime rates, a growing AIDS crisis, widespread poverty and lack of skills had to be addressed. Lack of infrastructure in former disadvantaged communities hampered the delivering of basic needs, and the limited economic growth made it impossible to grow out of the economic conflict and avoiding economic redistribution. The adaptation of a neo liberal policy has lead to an increasing tension within ANC and its allies, such as the trade union movements COSATU.

4.4 Consolidation of democacy in South Africa?

To what extent is the South African democracy consolidated? Reynolds (1999) uses electoral (minimalist) criteria as indicators to degree of democratic consolidation in South Africa, while we can also use Linz and Stephans (1996) 3 criteria for consolidation of democracy (behaviour, attitudes and constitutional to indicate degree of consolidation.

Much of the analysis of the 1994 election revolved around whether the results demonstrated a mere "ethnic census" of the electorate -black voters voting for black parties, and white people voting for white parties, and voters choices made by ethnic affiliation and kinship ties instead of their interests. Such ethnic voting has long been cited as the bane of

[45] See Tørres (2000) for a substantive discussion of these challenges.

democratisation attempts in Africa. Reynolds (1999:176) argues that the high correlation between voting behaviour in -94 and ethnicity did not imply "irrational" voting: Both on pocket book and social issues, it was highly rational for non-white South Africans to vote for the ANC. The ANC won an estimated +/- 80 percent of the black votes, less than 30 percent of the coloured and Indian votes, and a handful of white votes only (Reynolds 1999:180).

According to Reynolds (1999), South Africa's second election received so little international coverage because it was moving towards democratic consolidation and multi-party competition as the "only game in town". South Africa had passed the first of the two criteria in Huntightons "two-turnover test" for democratic consolidation (quoted in Bratton and Posner 1998:378). Despite minor hiccups, the Association of Western European Parliamentarians for Africa said the elections had set a high standard, and 96% of the voters in an exit poll believed the elections to be free and fair (Reynolds 1999). The ANC under Mbeki's leadership thus strengthened its position as a dominant party, and missed the magic 2/3 majority by one seat. The next day it went into an alliance with the MF[46]. The ANC has not used this power to dramatically rewrite the constitution. The Democratic Party increased their position from 7 to 38 members of parliament, taking over the NPs position as main opposition with most of the white votes, with their "fight back" campaign. The NNP lost most of the votes to the DP, and the IFP kept their position as the third largest party in the parliament. Three of the main parties have as mentioned become more multiethnic and cross cutting in their support than in the 1994 elections, even if their policy platforms are not. Ethnically rooted parties together represent less than 15% of the vote. This shows that South Africa is moving away from the African trend of ethnic voting, and increases the chances of democratic stability (ibid)[47] These election results indicate that South Africa is moving

[46] The MF (Minority Front) only got one representative in parliament (Reynolds 1999:186)

[47] In the second election the ANC won some less black votes, but more successfully managed to appeal to the educated middle class voters in Western Cape, that had voted for NP in 1994, got more white and Zulu votes. During apartheid's white only election, the DP/PFP[47] had never received more than 20% of the votes, and in -94 it got only 10%. In 1999 it got an estimated 55% of the white vote in 1999. It was now gaining support not only from white die hard liberals as in -94, but from coloureds around Cape Town, Indians in Durban, and an estimated 12% of the DP's vote came from blacks. The IFP kept their main support mainly in KwaZulu-Natal. It lost about 2% of their votes from conservative white and Indian voters, and more or less split the Zulu votes with the ANC (ibid). The NNP lost over half of their national vote, 54 MP's the province they had controlled outright, 2/3 of their white vote, and 1/3 of their coloured vote. The party upholding apartheid now get more votes from non-whites, struggles to win a 5th of the white vote, and lost grip of its strongholds in Transvaal and Free State. NNP was reduced to a regional party in the Western Cape, where it gathers more than half its votes (Reynolds 1999).

The ANC strengthened its position also in the provincial elections, winning 23 extra seats. It became the largest party in Western Cape, even though an alliance of NNP-DP took over government form the NP. In Northern Cape, the ANC turned

towards in the direction of consolidation when only looking at the most minimal criteria. Whether it is moving towards a qualitative, deeper, maximalist democracy is more controversial.

Constitutionally[48]

South Africa's constitution is as outlined above based on human rights, including civil and political, economic and social, and cultural rights. The impact of the negotiated, pacted transition on the final constitution was made somewhat smaller than it could have been due to a two stage process in the transition, where the final constitution was not written until after multi party elections. But the negotiated pact did put some limitations on policy options. Such as ruling out criminal justice after gross human rights abuses by agreeing on amnesty, and radical redistribution of land. The establishing the right to private ownership of land and property effectively secured the white population continued control over key recourses; recourses other population groups to a large extent had been denied access to due to apartheid policies. These limitations had large impact on choices of reconciliation strategies, discussed below.

The existence of customary law, parallel to state laws, can hinder rural women's rights to control over the land that is crucial to support their families. Customary laws can undermine the formal rights stated by the constitution and the bill of rights to the extent they are practised, and based on undemocratic principles. This can be seen as a hinder for the depth of democratic consolidation.

After the second election the ANC in co-operation with a minor party got a qualified majority in parliament. This enables them to rewrite the constitution, an opportunity they have not used: This might indicate that the limitations of the power of the democratically elected government imposed by the pact and constitution has been acceptable to the ANC

a minority government into a majority one and made strides in the KwaZulu-Natal region. In Gauteng it increased share of votes with 10%, and in the rest of the 5 provinces it still dominated with 74-88% of the votes. In Eastern Cape ANC was challenged by the UDM, and in North west by UCDP, loosing 10% and 4%. Contrary to -94, there were no requirement of power sharing at the provincial level, leaving the ANC in charge of all cabinet portfolios outside Western Cape and KwaZulu-Natal. The IFP kept its control over KwaZulu-Natal. The NNP was declining also at this level. It had held sole government in Western Cape, and now had to go into coalition with the DP, forming the Democratic Alliance (DA). It had also been the official opposition in all other provinces but KwaZulu-Natal, and was only keeping its position as official opposition in Northern Cape (Reynolds 1999)

[48] For an extensive debate on constitutionalism in South Africa, see Deegan 1999

leadership. This suggests that constitutionally, South Africa is moving in the direction of consolidation of democracy, even though it is too early to make a final judgement about the democracy's depth and durability.

Behaviourally

To what extent anti-democratic forces are working against the government is hard to tell, but the major political groups seem to accept the new democratic conflict resolution mechanisms even though some militant right wing Afrikaner groupings exist. The political violence South Africa experienced during the time around the democratic transition has dramatically decreased which suggests movement in the direction of consolidation. Reynolds (1999) points out that the second election had a sense of routine and lack of drama completely different form the atmosphere around the time of the first election, and the second election was to a large extent was judged as free and fair.

Attitudinally

Mattes et.al (2000) analyses South Africans attitudes towards democracy. They found that only roughly half the South African population agrees or strongly agree that democracy is always best, while over a third of the population supports the thought of a strong leader if democracy does not work. These numbers are fairly stable over time varying between 47 and 56 % being committed to democracy.

Table 4.1: Commitment to democracy in South Africa (1995 to 2000)

	1995	1997	1998	2000
Democracy always best: Agree/ strongly agree	47	56	47	55
Need strong leader	43	30	38	38
Don't know	10	14	15	5
Agree with neither (volunteered)	NA	NA	NA	3

Sometimes democracy does not work. When this happens, some people say that we need a strong leader who does not have to bother with elections. Others say that even when things don't work, democracy is always best. What do you think? With which statement do you agree with most: Need Strong Leader or Democracy Always Best? (Mattes et.al 2000:6)

There are however some differences between the races: While the black population is most committed to democracy, white and black coloureds respondents show lower and more fluctuating levels of commitment. Since 1997, Indian South Africans shows the lowest level of commitment.

Table 4.2: Commitment to democracy by race

	Sept/ Nov. 1995	June/July 1997	November 1998	July/August 2000
Black	46	61	49	60

White	46	39	43	36
Coloured	35	53	44	52
Indian	54	27	33	33

(Mattes et.al. 2000:6)

Mattes et.al (2000) also found that a majority of South Africans rejects some non-democratic alternatives. (These included one party elections, rule by elders, traditional leaders or chiefs, abolishment of parliament and parties for presidential rule, and a government by the army). But only 1/4 of South Africans would reject that economic experts rather than elected government or parliament made all important decisions about the economy. While 3/4 of the blacks would reject return to previous regime, only half of the coloureds and less than a third of white and Indian South Africans answer the same. Between 48 and 62% South Africans answer that they are willing or very willing to live under an "effective" authoritarian regime, if that regime was able to impose law and order and deliver houses and jobs (2000:17). These findings indicate that South Africa has a long way to go in consolidating democracy in the dimension of attitudes. This makes us turn to the question of whether South Africans have an instrumental view of democracy, and that lack of delivery in the field of economic and social rights are undermining the consolidation of democracy.

4.5 Minimalist or Maximalist views of democracy in South Africa?

We argued in chapter two that democracy and civil and political rights conceptually overlap, so no democracy is possible without civil and political rights. Understandings of democracy based only on civil and political rights can be labelled minimalist. The relationship between economic and social rights and democracy are disputed: Maximalist understandings of democracy also include economic and social rights. While some argue that civil and political rights will lead to economic and social rights, others argue that there is no automatic connection between them. Beetham (1999) argues that lack of delivery of economic and social rights will affect the quality of democracy, and Abrahamsen (2000) argues that Africans have an instrumental view of democracy, and lack of delivery in the field of poverty alleviation undermines the new African democracies. We therefore need to take a brief look at South Africans understandings and expectations of democracy.

Table 4.3: Understandings of Various components of Democracy in South Africa

Majority Rule	38.4
Complete freedom for anyone to criticise the government	34.9
Regular Elections	37.3
At least two political parties competing against each other	29.1
Basic necessities like shelter, food, and water for everyone	67.2
Jobs for everyone	73.4
Equality in education	65.7
A small income gap between rich and poor	34.5

People associate democracy with many diverse meanings such as the ones I will mention now. In order for a society to be called democratic is each of these:(...)Per cent responding "Absolutely Essential" (Mattes et.al 2000:12)

The first four meanings in the table above focus on a civil/ political components of democracy, the next four on economic components. Of the latter, two focuses on access to economic rights, and the two on equality in that access. It shows that South Africans put strong weight on economic components of democracy: Jobs, basic necessities and equality in education are rated as absolutely essential for a society to be called democratic by about two out of three South Africans. Each of the political components and a small income gap are only seen as absolutely essential by a third[49]. This shows that South Africans are closer to a maximalist understanding of democracy than a minimalist understanding. This supports Abrahamsens (2000) assumption of an instrumental view of democracy.

As reports emerges (Tørres 2001; forthcoming) on problems of delivery in the field of economic and social rights, at the same time as South Africans view these as the most important part of democracy, we need to know how satisfied South Africans are with democracy. The table below shows that satisfaction with the way South Africa's democracy works have varied between 39 and 63%, which is fairly low. Blacks are most satisfied and whites and Indians least satisfied. The trend over time is too unstable to say anything definitive about long term trends, but the overall low level of satisfaction with democracy combined with a maximalist, instrumentalist view of democracy seems to leave the South African democracy in a vulnerable position.

Table 4.4: Satisfaction with Democracy in South Africa (by race)

	Sept./Nov 1995	June/July 1997*	November 1998	July/Aug 2000
Black	47	45	73.5	59.3

[49] Mattes et.al found some racial differences in these perceptions: black, coloured and Indian South Africans are more likely to see the economic components as essential to democracy than whites. Still even white South Africans attach more importance to economic components (with the notable exception of a small income gap between rich and poor) than to any political component (2000:14).

White	23	7	27.6	25.9
Coloured	40	25	43.7	40.3
Indian	38	13	33.1	10.9
Total	41	38	63	52

Overall, how satisfied are you with the way democracy works in South Africa? Per cent very or fairly satisfied (Mattes et.al 2000:21)
**5% scale*

4.6 Reconciliation policy

South Africa had to address the results of Apartheid abuses including inequality, poverty and open wounds after gross human rights abuses at the same time as trying to promote reconciliation between population groups. This was made particularly difficult due to the overlapping lines of division in South Africa (discussed in chapter one and above). The negotiated settlement also put restraints on the government's policy options for reconciliation: Criminal justice after gross human rights violations was given up to secure the democratic transition. To avoid oblivion/ national amnesia the new government chose to address former gross human rights violations by the Truth and Reconciliation Commission. The TRC opened up for trials in cases where the perpetrators did not apply for amnesty. Although large scale trials after the closing of the TRC process seem unlikely, victims and their families can sue their perpetrators in cases where the perpetrators did not apply for amnesty. Mixed with the truth commissions attempts at promoting reconciliation through truth, were attempts at delivering restorative justice by recommendations on individual compensation to victims identified by the commission. But the government has only partly implemented the reparation policy, thereby undermining this attempt to help the victims, acknowledge their suffering and use the full potential of restorative justice to compensate for lack of criminal justice. By establishing democracy, civil and political rights were formally recognised and protected. The major strategy to address economic and social rights, reducing poverty and inequality, was the Reconstruction and Development Programme. Its main focus was rechanneling state recourses to the former disadvantaged communities, which can be seen as an example of prospective justice through social and economic reform. Before turning to the work of the truth commission in the following chapters we will briefly look into other roads to reconciliation in South Africa.

Prospective justice: The Reconstruction and Development Programme

We have seen that addressing the enormous inequality/ class conflict created by apartheid was made difficult because of the need to de-escalate the overlapping racial conflict at the same time[50]. Radical redistribution of wealth was excluded as an option, because of fear from reactions within the white community. There was fear this would trigger resurrection of violent conflict, mass emigrations of the educated white elite and lack of needed foreign investment resulting in possible break down of the economy, and democratic deterioration. In the international setting, market economy was the only option. RDP was a large scale programme intended to channel public recourses, earlier focused on providing services to the white population, to former disadvantaged people and areas. As large scale land-reform was ruled out, addressing inequality and poverty had to be done through economic growth and redistributing of recourses through taxes. Problems with this approach was limited state recourses and growth compared to the enormous needs. The RDP was based on a "basic needs" approach to poverty reduction, where poverty is seen as lack of income/economic recourses and lack of access to public services. The role of the state was seen as securing macro economic conditions for employment and growth, and building out public services to reach former disadvantaged communities with schools, health care, clean water, houses, infrastructure (roads, electricity, sanitation, telephone networks etc). The major policy areas of the RDP were meeting these basic needs of the people, developing human recourses, building the economy, democratising the state and South African society and implementation of programmes (Deegan 1999:121). The economic strategy adopted in 1996 to achieve the goals was the Growth, Employment and Redistribution Programme (GEAR). GEAR aimed to double the annual real GDP growth to around 6 percent by the year 2000, giving emphasis to the role of market forces and reducing the role of the state. Reforming the labour market was seen as a crucial tool in creating a better functioning labour market while discussions around flexibility and reduced protection has also put severe strains on the alliance between the ANC and the labour federation COSATU (Deegan 1999:139,140). ANC is increasingly being criticised from its own ranks for following a neo-liberal policy creating a jobless growth.

[50] As part of the strategy of building down the overlapping lines of division, the ANC led government adapted a long-term strategy of nation building, while still leaving room for differences. The new national anthem has lyrics in several languages, 11 languages were recognised as official languages and "the rainbow nation" was adapted as a slogan. This was an attempt to create an overriding national identity adding to and toning down racial ethnic identity.

The right to land had been restricted by race during Apartheid, and thereby securing most of the land for the white population. To separate residential areas by race, the apartheid regime had used forced removals. Land is also a valuable economic resource in South Africa. The ANC had a history fighting for radical redistribution of land, but this was given up, and the negotiated outcome was that the constitution established the right to private property. The policy chosen to deal with the land issue was a very limited land reform based on voluntary sales of land to the programme and the possibility of compensation to people that had lost their land for instance through forced removals. The programme is struggling with limited access to land, as not enough people are willing to sell land to the programme. Its limitations make it unlikely to have any larger impact on the distribution of wealth in South Africa.

These strategies for poverty reduction and redistribution of wealth without worsening race relations have had limited effect. Tørres (2001, forthcoming) suggest that economic inequality has increased after apartheid. Tørres material suggests that about 10% of households receive some 50% of overall household income, while about 50% of households receive only roughly 10% of total household income. Only Brazil has higher levels of inequality than South Africa (measured by the Ginni index). While Africans on average make R1638 per month, whites earn R6131. There is a much smaller gap between coloured earnings (R1929) and Africans. Indians make R3799. Men on average make twice as much as women. Tørres finds that whilst there have been improvements in the income fortunes of higher earning Africans, most other African employees have not benefited to the same extent (2001). This policy has thus managed to produce a new black/ coloured middle class that several writers point out as a buffer between the poor black majority, and the white minority even though it has had limited success at reducing overall poverty and inequality.

This suggests that in spite of a strong focus on economic and social rights in the constitution and a declared policy to reduce the widespread poverty and enormous inequality, restraints from the negotiated pact and needs for reconciliation has made delivery of these rights difficult. Given South Africans instrumental view of democracy this lack of delivery seems like the most direct threat to democratic consolidation in South Africa now.

Cross racial contact and reconciliation in South Africa

As one of the main intentions of Apartheid was to keep racial groups separate and hinder assimilation, there is limited contact between racial groups. 55% of Africans have no contact

with other racial groups at work, and over 60% of this group have no contact across the race border outside work. Over 80% of the blacks have never eaten a meal with someone across the race-line. Less than 2% of the blacks claims to have quite a number of "true friends" from other races. The minority white, coloured and Asian populations report some more contact, but only about 7% of whites, 18% of coloureds and 15% of Asians say they have true friends across the race-line (Gibson 2001A:45pp). He finds that cross racial contact is statistically connected with more reconciled attitudes, except when the contact happens at the workplace (ibid). This might suggests that contact has a potential of promoting reconciliation, but as contact remains highly limited, the potential effect becomes smaller. There is also a problem in determining the causal direction between contact and reconciliation: One can argue that contact can lead to reconciliation, or that it is more likely that people that have reconciled have contact across the race border.

4.7 Summary

We have argued that even though South Africa is generally seen as a success case in transition to democracy despite a violent past where gross human rights abuses were frequent, the country is facing challenges in terms of consolidating democracy. The legacy of human rights abuses includes extreme inequality and widespread poverty, and deep cleavages between different racial groups that have limited contact due to the overlap between class, race and residential areas. I argued that the transition form, pact, put restraint on the government's policy options when looking for different reconciliation strategies. It made criminal justice impossible because of amnesty for gross human rights abuses, and as a compromise a strategy of truth commission and compensation to victims was set up. I argued that South Africans have an instrumental view of democracy focusing on economic and social rights more than civil and political rights. The lack of delivery in this field seems to be the biggest challenge for democratic consolidation in South Africa. I argued that even though the South African Constitution is one of the most progressive in the world when it comes to including positive economic and social rights, restraints due to the pacted transition has hampers the delivery of these rights. As the right to private property was included in the constitution, radical redistribution of wealth was ruled out, and the governments policy of social and economic reform through the RDP has so far proved inadequate to address the results of apartheid human rights abuses in terms of poverty and inequality reduction. These

findings suggest that the democracy that seems to be consolidating in South Africa is of a minimalist kind, despite the people wanting a maximalist democracy. We saw that cross racial contact might have a positive effect on reconciliation, this contact is highly limited due to the apartheid legacy of racial segregation. It is against this background we in turn to TRC's work as an institutional road to reconciliation, and question whether addressing former gross human rights violations was enough to promote reconciliation in South Africa.

5. THE TRUTH AND RECONCILIATION COMMISSION

This chapter presents the work of the South African Truth and Reconciliation Commission and reactions from the political elite and the general public, and explores to what degree the commission was able to promote reconciliation at various social levels. First TRC's work is outlined: How it was established, its mandate, composition, institutional arrangements, and implementation and its main findings. Second I address questions as to what extent the TRC was a success at uncovering the truth, deliver some form of justice and contribute to reconciliation and consolidation of democracy.

5.1 Background on the TRC

The negotiated Interim Constitution stated that amnesty should be given for politically motivated offences during the former conflict, but it left the establishment of procedures and mechanisms to the first democratically elected government. This resulted in the 1995 Promotion of National Unity and Reconciliation Act. Briefly stated, the Commission was given four major tasks in order to achieve the overall objectives of promoting national unity and reconciliation. These were:

> …to analyse and describe the "causes, nature and extent" of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations; (…) make recommendations to the President on measures to prevent future violations of human rights;(…) restore the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;(…) grant amnesty to persons who made full disclosure of relevant facts relating to acts associated with a political objective (TRC final report vol.1, ch.4)[51]

Gross violations of human rights were defined to include politically motivated killings, torture and severe ill treatment, committed either by the state or non-state actors.

> … 'gross violation of human rights' means the violation of human rights through - (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to 10 May 1994 within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive (TRC final report vol.1, ch.4)

The commissioners were selected in an open nomination process, and a multi party panel held public interviews with about 45 out of around 200 candidates. The panel suggested 25 names to the President who after consulting his Government of National Unity appointed 17 commissioners. The commission was balanced in terms of race, gender and geographical

[51] This was however not the first experience with human rights commissions in South Africa. For an overview, see Appendix 3

origin (Tutu 2000:64). They were "persons of integrity without high party political profile", and the commission was lead by Archbishop Desmond Tutu (Gloppen 2002:23). TRC divided its workload between three committees, the Human Rights Violations Committee (HRVC) with 8 commissioners, the Amnesty Committee (AC) with 3 commissioners and the Reparation and Rehabilitation Committee (RRC) that had 5 commissioners. Adding to this it had an own investigating unit that was led by a Commissioner.

The commission had a staff of more than 300, with a budget in excess of US $35 million, which were mainly funded domestically. The HRVC was responsible for investigation, documentation and reporting of violations. It collected statements and held five types of hearings, most of which were public with cameras present, including victim hearings, event hearings, special hearings, institutional hearings and political party hearings. At the victim hearings, it attempted to create a welcoming environment for the victims to tell their story, with comforters engaged to support them during the hearings. It established the identity of more than 20 000 victims, and these were the only ones to qualify for reparations. The institutional hearings looked into the roles different institutions in society played in gross human rights violations, including business and labour, the faith community, the legal community, the health community, media, and prisons. The special hearings particularly looked into the roles of compulsory military service, women, and children and youth. At the political party hearings, the main political parties were invited to give their story of the past. The event hearings included among others the Caprivi hearing[52], hearings on chemical and biological warfare, the Helderberg flight[53], the Mandela United Football Club[54], State Security Council (consisting of key cabinet members and leadership of the security forces) and Trojan horse[55] hearings (TRC homepage).

[52] The South African Defence Force, SADF, was found to have secretly trained IFP hid squads in Caprivi. Chief Buthulezi later challenged the findings on his involvement. See footnote below on TRC and Inkatha court-case.

[53] This hearing looked into a plain crash: On 28 October 1987, the SAA *Helderberg,* a Boeing 747, crashed into the sea off the coast of Mauritius. All 159 people on board died. Almost immediately after the incident, allegations of foul play were made. A year later, in January 1989, the South African government established a commission of enquiry headed by Justice Cecil Margo to determine the cause of the crash. The Margo Commission found that the crash was caused by a fire on board, but that the cause of the fire was undetermined. Many people rejected this finding, including investigative journalists who insisted that there were strong indications that the fire was caused by dangerous substances on board. Allegations were made that South African Airways (SAA) passenger flights were used to courier arms components and explosives in sanctions-busting activities by the parastatal Armscor (TRC final report vol.2 ch.6b).

[54] A group of young men connected to Winnie Mandela was accused of gross human rights violations including killings of alleged informers and arson in Soweto in 1988-89 (Tutu 2000:98)

[55] Trojan horse was an ambush tactic used by security forces.

The Reparation and Rehabilitation Committee was established to recommend compensation and restoration for victims and policies to facilitate reconciliation and prevent recurrence. In its work, it arranged a few post hearing community programmes to locate the needs of communities affected by TRC's work (discussed in chapter 6). As it didn't have any implementing powers, the victims had to wait for the parliament to reject or accept these recommendations. During the work of the commission it became increasingly clear that the government was not prepared to pay large sums in reparation, and the committee started looking for symbolic signs of reparations such as memorials (Orr 2000). Even though the commission made it clear that it was essential and urgent to implement the suggested reparations policy, only small interim reparations have been given to victims. In spite of the mandate only including gross human rights violations, the committee highlighted the need to address the social and economic situation created by the apartheid system.

The Amnesty Commission was headed by judges that heard amnesty applications, mainly held in public. Of the roughly 7000 applications received, most were from convicted criminals, some from police and military and few from political leaders. No applications came from members of the National Intelligence Service (TRC Final report vol. 5 ch.6). By November 2000, the Amnesty committee had granted 849 amnesties, and refused 5392, mostly because no political motive was found to be behind the act[56]. After the process is ended, it is unlikely that prosecutions of perpetrators who either failed to apply for amnesty or were denied amnesty will follow.

The TRC was the first truth commission with the power to grant amnesty to individual perpetrators, as amnesty was made contingent on telling the truth about the violations. The South African mandate had the advantage of elicited detailed accounts from perpetrators and institutions, unlike commissions elsewhere, which have received very little co-operation from those responsible for past abuses. The commission had access to greater recourses than earlier truth commissions and was granted the power to compel witnesses or perpetrators to come forward with evidence. This meant that the TRC had greater access to official written records from government and armed forces, despite the widespread destruction of state records taking place before the democratic transition.

[56] As the work of the Amnesty committee continued after the delivery of the "final" report, this is probably not the final number of perpetrators granted amnesty.

The South African process was more open than former commissions as many hearings were public and some broadcasted[57]. Public hearings had been used in Uganda earlier, but on a smaller scale. In Latin America, the testimonies had been private, and no information was released before the final reports. The openness of the process was a part of the strategy of communicating the findings to the general public. The TRC's arrangement of institutional and special hearings allowed for NGO's and those involved in specific areas of activism to contribute. Few other commissions have included such interaction with "non-victim" public actors. To protect the witnesses, a witness protection programme was set up, which strengthened the TRC's investigative powers and allowed whiteness to come forward with information they feared might put them at risk (TRC final report: vol.1:ch.4).

Main findings of the TRC

The primary findings of the TRC are that all the major stakeholders in the former conflict were involved in gross violations of human rights, but to various degrees. The State was found to be the primary perpetrator.

> …the South African State in the period from the late 1970s to the early 1990s became involved in activities of a criminal nature when, amongst other things, it knowingly planned, undertook, conducted and covered up the commission of unlawful acts, including the extra-judicial killings of political opponents and others, inside and outside of South Africa. In pursuit of these unlawful activities, the state acted in collusion with certain other political groupings, most notably the Inkatha Freedom Party… (TRC final report: vol.5.ch.1).

Other abuses it found the state responsible for included torture, abduction, juridical and extra juridical killings. It found that when the conflict intensified in the 1980s, the State Security Council launched a total strategy including counter-revolutionary warfare and adopted it within South Africa. This included giving orders perceived as permission to kill political opponents, and the SSC were found to be responsible for gross violations of human rights (TRC final report vol.5 ch. 5). Former NP leader, President and leader of the State Security Council P. W. Botha refused to appear before the Commission. He was found guilty of:

> contributed to and facilitated a climate in which (…) gross violations of human rights could and did occur, and as such is accountable for such violations (TRC final report vol. 5 chapter 1).

Several state agencies were found guilty of systematically destroying official records to avoid disclosure of ways the apartheid regime had operated. The findings about F.W. De Klerk (President of South Africa during the negotiated transition) were censored from the

[57] This included extensive coverage of the hearings in the daily news, and in the weekly *TRC Special Reports* on national television. There were 81 programmes, totalling more than 100 hours of prime time documentary. These were widely watched (Gloppen 2002:26)

final report[58], due to a court decision (Orr 2000:347-348). The homelands were found to be a part of the government's tactic of divide and rule, with the dual aim of diverting the struggle by Africans for democratic rights inside South Africa, and preserve the economic and social privileges of the white minority (TRC final report:vol.5.ch.1). The administrations and homeland governments were found guilty of being a cornerstone of the apartheid policy, and for widespread gross human rights abuses mainly against political opponents. Within the KwaZulu homeland, lead by IFP leader Chief Buthulezi, the TRC found that the IFP and local government were indistinguishable, and a far larger numbers of violations were committed by members, supporters and office bearers of the IFP, unlike the other homelands where the security forces were the main perpetrators (ibid).

IFP was found responsible for some 3800 killings in the KwaZulu and Natal area. TRC statistics suggest that IFP was responsible for 3.5 killings per every killing attributed to the ANC[59]. Members of four right-wing opposition groups, including the Afrikaner Volksfront, was found to be responsible for gross human rights violations against political opponents around the time of the transition to democracy. The commission also found some evidence of "third force" activity including the security forces being involved in destabilising the homelands and providing weapons and training to the IFP, without the government taking sufficient steps to stop it (ibid).

The TRC recognised the ANC and PAC as legitimate liberation movements fighting a just war against an illegitimate regime, but distinguished between legitimate aims and means. The ANC leadership took collective responsibility of activities that happened outside established norms, including MK activities. The TRC found that, although it was not ANC policy to target civilians, MK operations were responsible for killing more civilians than security force members. It holds the ANC responsible for gross human rights violations. These included cases where the MK did not distinguish enough between civilian and

[58] The so-called Final Report of the TRC was delivered to the president to fit the deadline of the work of the commission. But the Amnesty Committee was allowed to continue its work, and complete the final report with added material/ appendixes, including lists of the names of all victims. Commissioner Orr (2000) suggests that this extra material will be about the size of the original report. At the time of writing, the publication of this Final and extended report has been halted because Buthulezi is challenging the TRC's findings about him and his party in court. After a resent settlement, the TRC has agreed to "minor changes" in the report regarding the IFP. This opens up for the publication of the last version of the report and possibly reparations to victims (Durban :2003, Sole:2003).

[59] As mentioned, the IFP discouraged its members to report violations to the TRC. It is therefore likely that there is an underreporting of violations against IFP supporters. The TRC claims that this finding, however, is supported by other national and international publications. The TRC still agreed to modify these findings after the IFP/TRC settlement.

military targets, including a landmine campaign resulting in civilian losses. ANC was also held responsible for not discouraging supporters form committing gross human rights abuses in the "peoples war" against apartheid. It also holds ANC responsible for abuses outside South Africa, including torture, executions and severe ill treatment within ANC camps. In the time after the unbanning of the ANC, it was found to be responsible for contributing to the spiral of violence, particularly by creating and arming self-defence units (SDU), which lead to gross human rights violations.

The special hearing on the role of Winnie Madikizela-Mandela and her football club, found that the club was responsible for killing, torture and arson and assault in the community, without Madikizela-Mandela taking the necessary steps to stop it. It found that dissidents were labelled as informers and killed. The TRC held her responsible for gross human rights violations.

On the United Democratic Front[60], the commission finds that members and supporters were responsible for killing (often necklacing[61]) and severe ill treatment of political opponents, members of state structures such as black local authorities and SAP, and burning and destruction of homes and properties. Violent enforcement of boycotts lead to killings and severe ill treatment, and lack of political tolerance led to violence between a.o. UDF, AZAPO and IFP. The UDF leadership accepted political and moral responsibility for the acts, and the TRC found it responsible for them, and for not trying hard enough to stop them (ibid).

The TRC holds the PAC responsible for gross human rights violations taking place during the "land war", where white civilians, members of the police living in the townships, dissident members of the PAC and representatives of traditional authorities in the homelands were victims. After 1990 it targeted whites at random, and the Commission rejects PAC's position that this was legitimate in war. The TRC also holds PAC and APLA responsible for extra juridical killings in exile. The IFP claims that over 400 IFP office bearers were killed

[60] The United Democratic Front was established in 1983 as allies of the ANC and supporters of the freedom charter (Tutu 2000:32, Guelke 1999:54). In Western Cape the UDF and ANC virtually became indistinguishable (TRC final report:vol3 ch.5)

[61] Neclacing, putting petrol inside a car tire, putting the tire around the victim's neck before lighting it, so the victim would die from burning, was used by some members of the liberation movement as punishment for believed traitors, like for instance police informers.

by ANC and its affiliates. The Commission found that the number was much lower, and held the ANC/UDF/MK structures responsible for 76 of the alleged killings.

Adding to these findings on the key stakeholders in the conflict, the TRC made findings on the role of civil society, the health sector, faith communities, business sector, media and the judiciary (for a summary see TRC final report: vol.5.ch.1). It also outlined the special victimisation of children and youth, which was the largest group of victims. It a.o. holds the state responsible for forcing many young into exile, and for denying them adequate education. Through banning legitimate political activity, the state encouraged the youth to turn to violent protest. It is held responsible for militarising young men through conscription. The liberation movements are held responsible for arming young people and giving them military training. The TRC holds the ANC and IFP responsible for failing to reintegrate youth into society, which has lead to criminalisation of many young people (TRC final report: vol.5 ch. 1). It also found that women suffered from gender specific gross human rights violations including severe ill treatment in the form of sexual abuse both in exile and by the security forces (ibid).

As this overview shows, all the main stakeholders in the apartheid conflict were involved in gross human rights violations, with the state being the main perpetrator group.

5.2 To what extent was the TRC a success?

The whole process around the TRC was (and still is) highly controversial within South Africa and in the academic debate on transitional justice. The process has been criticised from human rights organisations, such as Amnesty International, on principle grounds. Amnesty's position is that amnesty never should be granted in cases of gross human rights violations (Amnesty homepage). In the academic debate there seems to be general agreement that the TRC was successful at playing a reconciliatory role by being a part of the compromise that made the democratic transition possible, but much of the agreement stops here. Here I will present the main reactions to TRC's work in South Africa among the political elite, research on reactions on the grass root level and community studies. We question to what extent the TRC was a success at delivering any form of justice, uncovering the truth about former gross human rights violations and promote reconciliation at various levels of analysis.

On the national political arena the TRC was criticised from all major parties. The criticism from supporters of the old regime (like the National Party, the Afrikaans speaking community and Right Wing groups) was that it was a witch-hunt on the Afrikaner, and biased in favour of the ANC. The IFP saw the TRC as a part of an illegitimate nation-building process by trying to write an authoritative common version of the truth about the past and biased in favour of the ANC (Christie 2000). The ANC was from the start positive towards the TRC, but Thabo Mbeki (now president) rejected that the actions of the liberation movement could be defined as gross human rights violations because they were fighting a just war (TRC political party hearing, transcript: TRC homepage). By defining the ANC's actions in the same way as those of an illegitimate regime was seen as putting the liberation movement at the same moral level as the regime. The ANC lead government has to a very limited degree followed up the policy recommendations of the TRC, which has been a large disappointment to victims and people believing that reparations is necessary to justify amnesty.

Elements of criminal and restorative justice

As pointed out previously, the negotiations that lead to democracy in South Africa, made prosecutions for gross human rights violations impossible, and amnesty was to be given against disclosure. Criminal justice was therefore not achieved in South Africa. Many of the amnesty applicants were convicted criminals that had little to loose from an application. At the time of writing, it is very unlikely that any systematic follow up work or trials against revealed perpetrators who either failed to apply for, or were refused, amnesty will take place. Many has pointed out that the TRC dealt only with the direct abusers, not with the beneficiaries of the apartheid system who did nothing to change it and the TRC thereby took away the focus of ordinary South Africans role in the abuses.

Theissen (1999) looks into public opinion surveys et al. on reactions to amnesty and found that:

> There is no consensus who should benefit from amnesty and who not. While white South Africans are more willing to excuse the human rights violations of the old apartheid security forces, most black South Africans have the opposite opinion. There is also no agreement on how the liberation struggle should be judged in moral terms. Most white South Africans still believe that the struggle over apartheid was like a war, in which both sides hove done wrong. This perception is not accepted at all by most black South Africans (Theissen 1999:78)
>
> Most South Africans feel (…) that people that did not apply for amnesty should be prosecuted. While the public agrees, that the state may refrain in certain cases from punishing alleged perpetrators, most South Africans feel that victims should be entitled to sue perpetrators for damages. They want restorative justice see done. The public sentiment is: Justice is not sacrificed by granting amnesty, justice is sacrificed, when victims are not restituted (ibid).

Gibson (2001B) has investigated South Africans attitudes towards amnesty and found that South Africans generally did not perceive amnesty as fair. He also found that compensations to the victims were the single most important way to increase perception of fairness. Sincere apology and voice to the victims' family also increased the perceptions of fairness, but the reactions of the perpetrators families had no effect. The were little differences between the different racial groups, apart from the whites. They generally saw the process as more fair, to be less influenced by compensations and apology to the victims, and more affected by how severely the perpetrator was punished by his family. He concludes that most South Africans oppose granting amnesty to those who committed gross human rights violations during the struggle over apartheid. The failure to achieve any sort of retributive (criminal) justice is deeply unpopular. But justice matters: Whether people are willing to tolerate amnesty depends in part on whether other forms of compensatory justice are received. That acceptance of amnesty changes by nearly 40 percentage points - from the condition under which no justice is received to that in which all four types of justice are received- is highly significant for the politics of amnesty. Still only half of the South African population approves of amnesty even if all Gibson's four forms of compensatory justice (apology, voice to victims, reparations and social exclusion of the perpetrator) are present. He concludes that the failure to satisfy expectations of justice can quite readily undermine the legitimacy of the regime, and ultimately the democratic transition itself (Gibson:2001B:25-26).

By asking victims what they were hoping the state could do for them in terms of reparations, it raised expectations among victims. As the AC had implementing powers, the perpetrator receiving amnesty was immediately free. But as the Reparation and Rehabilitation Committee only had powers to recommend reparations, the victims often had to wait in uncertainty for reparations from the government. Many argue the unfairness in that perpetrators may benefit while victims are imposed a second set of violations.

The governments lack of/ limited implementation of the policy of reparations towards the victims that the TRC suggested is further undermining the South African populations perception of fairness in granting amnesty. TRC suggested individual compensations as well as symbolic compensation, whereas the government has paid some victims small interim compensations and highlighted the work of public reforms, to benefit everybody that suffered during apartheid, not only gross human rights victims. This seems to be a lost opportunity for the South African government to achieve some justice. Many point out that

asking the TRC to recommend policy of reparations, and thereby raising expectations, and then failing to implement them created anger and can possibly be a more dangerous road than never promising too much.

Truth

The TRC distinguished between four types of truth about gross human rights abuses: Factual and forensic truth; personal and narrative truth; social truth and healing/restorative truth (TRC final report vol.1ch.5). At an individual level, the Commission was required to make findings on particular incidents and in respect of specific people. In other words, what happened to whom, where, when and how, and who was involved. It also sought findings on the contexts, causes and patterns of violations. However, all truth commissions have their limitations. In the words of Michael Ignatieff (quoted in TRC Final report vil.1 ch.5):

> All that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse (ibid).

The TRC established for instance that some disinformation about the past that had been accepted as truth by some members of society lost much of its credibility, including that:

> …the practice of torture by state security forces was not systematic and widespread; that only a few 'rotten eggs' or 'bad apples' committed gross violations of human rights; that the state was not directly and indirectly involved in 'black-on-black violence'; that the chemical and biological warfare programme was only of a defensive nature; that slogans by sections of the liberation movement did not contribute to killings of 'settlers' or farmers; and that the accounts of gross human rights violations in the African National Congress (ANC) camps were the consequence of state disinformation (ibid).

The TRC thereby did succeed in drawing a rough picture of the past abuses, even though it was more successful in some fields than other. Theissen (1999) reviewing public opinion surveys on attitudes towards the TRC concludes that:

> Most South Africans are relatively satisfied with the performance of the Truth and Reconciliation Commission. Especially in comparison with other legal institutions, the TRC has fared well in public opinion. Most South Africans believe that it has done a good job for the country. They are confident that the commission has indeed succeeded in uncovering past atrocities (Theissen 1999:78).

But as most of the amnesty applicants were the "foot soldiers", while most of the "big fish" like political and other leaders did not apply, the commission uncovered less about their role. The IFP discouragement of their supporters to co-operate with the TRC also made it difficult to access their version of the truth, resulting in a self- fulfilling prophecy from the IFP leader Buthulezi, that the TRC was biased towards the ANC's version of the past. The findings on former president De Klerk was censored from the final report by a court decision, and as mentioned, at time of writing the publishing of the rest of the final report is halted due to a lawsuit by the IFP, claiming that the TRC's finding that the IFP was the main non-state perpetrator is unjust. Van der Merwe (1999 ch.8) also argues that there was disappointment in local communities because of the TRC's limited capacity of following up individual cases

by investigations. Many local people attended the hearings to clarify what had happened in a special case. Only in a few cases did the TRC have the capacity to follow this up.

The Commission also sought to capture the widest possible record of people's perceptions, stories, myths and experiences. As such, the Commission sought to recover parts of the national memory that had been officially ignored. The public storytelling in the human rights commission, in a victim friendly environment, was due to capacity only accessible for some of the victims. The TRC tried to pick out stories that were to some degree representative, or illustrating of the conflict. Van der Merwe (1999:ch.8) argues that in the communities he studied, victims that were not chosen for public hearings felt that their stories were censored because they did not fit neatly into the picture the TRC wanted to draw of the South African past. He argues that the TRC was trying to illustrate the broad national conflict through local hearings, and thereby ignoring local conflict dynamics, that in many cases diverged from the national picture.

The TRC did succeed in establishment of a forum to discuss the past, and its work and findings were widely debated within South Africa.

> It made a conscious effort to provide an environment in which all possible views could be considered and weighed, one against the other. People from all walks of life were invited to participate in the process, including faith communities, the South African National Defence Force (SANDF), non-governmental organisations (NGOs) and political parties. The public was engaged through open hearings and the media. The Commission itself was also subjected to constant public scrutiny and critique(...) The process whereby the truth was reached was itself important because it was through this process that the essential norms of social relations between people were reflected. (TRC final report, vol.1 ch.5)

But throughout the process the TRC kept pointing out that the white community was less present in the process. Theissen (1999) argues that white people are in a state of denial about the past abuses, which suggests that the TRC has had limited success in communicating its findings to this particular group. Commissioner Wendy Orr also points out that one of the Afrikaner Commissioners, Wynand Malan, was so much in opposition to the rest of the TRC that he withdrew from the writing of the report, and wrote a minority report (Orr 2000:344). In 1998 44 % of the surveyed (whites only) thought apartheid was a good idea, but badly executed (Theissen 1998). 51% of whites answer the same in a survey conducted by the Institute for Justice and Reconciliation in 2001 (Gibson 2001A). This indicates that TRC's work has not been successful at entirely discrediting the former regime as illegitimate based on revealing the truth about its human rights record.

TRC's work was built on an understanding that truth can have a healing and restorative effect in human relationships, including the relationship between citizens and between the state and citizens.

> 'Acknowledgement' must be emphasised. Acknowledgement refers to placing information that is (or becomes) known on public, national record. It is not merely the actual knowledge about past human rights violations that counts; often the basic facts about what happened are already known, at least by those who were affected. What is critical is that these facts be fully and publicly acknowledged. Acknowledgement is an affirmation that a person's pain is real and worthy of attention. It is thus central to the restoration of the dignity of victims(TRC final report vol. ch.5).

Whether establishing the truth about former gross human rights violations in fact is healing is widely debated in the academic literature. Many have pointed out the therapeutic effect for victims in telling their story, and having their version acknowledged. It is also often pointed out that lack of remorse, insincere apologies or lack of apologies from the perpetrator can have a negative effect on the victim. Some argue that revelation of the truth alone can be destructive if there is no reestablishment of the violated norm through apologies or reparations. It is an important question how the perpetrators community react to truth telling about violations. If the perpetrators are seen as heroes by their own communities when the truth comes out, the violated norm is undermined, and it is likely to have a negative effect on inter group reconciliation. But if the perpetrators own community distance themselves from the violation, it can confirm the validity of the broken norm. People favouring an "amnesia" approach would argue that focus on the truth of former abuses could lead to a revival of anger and destruction of relationships. A lot of the debate is based on theoretical arguments more than empirical research on to what extent truth leads to healing (reconciliation) and if that is so at various levels of analysis. Below we look into what we know about the TRC's effect on reconciliation.

The TRC's ability to promote reconciliation

We have seen that reconciliation can be measured at various levels and is a matter of degree[62]. Theoretical understandings of the concept vary, as does operational definitions, and this cloud the debate on whether truth commissions promote reconciliation. We go through political reconciliation, reconciliation at the political elite level, and mass levels[63], between the races and at the community level. We argued in chapter 4 that choosing a truth commission and amnesty was a reconciliatory compromise that made the transition to

[62] For an extensive literature on reconciliation in South Africa, se homepage of the Centre for the Study of Violence and Reconciliation, and the Institute for Justice and Reconciliation homepage

[63] Theissen (1999) has examined the findings from 20 public opinion surveys about different aspects of the TRC's work.

democracy possible in the first place. South Africa is seen as a success story in the literature about African transitions to democracy after the end of the cold war in the sense that the democratic regime has not seen attempts of irregular turnover of power, and the democratic rules are mainly respected. While there was a lot of international attention during the first national election, the second was considered a routine event, suggesting political reconciliation. The political violence that torn the country before (and in KwaZulu-Natal some time after the first election) decreased, even if the regular crime rate has gone up, including violent crime. Theissen draws the following conclusions on the TRC's role of promoting reconciliation at the national level after investigating public opinions on TRC's work (1999):

> The Truth and Reconciliation Commission was an important step in the consolidation of South Africa's first democracy. For many people it was the first time that a state institution expressed respect for their suffering and acknowledged the violation of their human rights. It would however be wrong to believe that an institution like the TRC can itself change deeply rooted attitudes and believes. Reconciliation needs the active participation of ordinary South Africans, many further local and national initiatives. But reconciliation cannot be achieved without social justice. Many people will only be able to reconcile with the former beneficiaries of the apartheid system, after they have been compensated and some of the wealth of this country has been redistributed. A human rights culture can only unfold, if the public is educated continuously about past and current human rights issues and the criminal justice system made more efficient and human rights conscious (Theissen 1999:79-80).
>
> Although the Truth and Reconciliation Commission has without doubt made an important contribution to the human rights culture of the new South Africa, human rights awareness remains low across all population groups. In the wake of a high crime rate, the use of force against suspected criminals is supported by a large percentage of the population. Public support for the reinstallation of the death penalty is extremely strong, despite its political misuse during the Apartheid past, and most people believe the new constitutional order protects better criminals than ordinary people. Political intolerance is still high, especially in the rural areas of KwaZulu Natal, in Gauteng and in the Free State and violence against women is openly conducted by many male and female South Africans. Many South Africans would support it, if the government would prevent citizens from expressing negative and unpopular views, and over 20% of all South Africans would refuse to provide an illegal immigrant with free emergency health care after an road accident (Theissen 1999:79).

At the political elite level the major players accepts the new democratic rules: The fears of right wings grabbing arms leading to civil war did not come through. This suggests at least a limited political reconciliation. When it comes to the way the political elite's reacted to TRC's work, the picture slightly changes. The three major parties, all present in the government when the law leading to the TRC was established, had objections to the actual work of the commission. Former President of South Africa and former leader of the NP, Botha, refused to appear before the commission. President during the time of transition negotiations, and Nobel Peace Prize winner De Klerk did co-operate by giving submissions before the TRC on behalf of the NP. But he later went to court against the TRC to hinder it from publishing its findings on his own role in the abuses, as member of government and as state President. He won the case, and the TRC had to take out the findings. The NP leadership also refused to take any collective responsibility of former state violations.

The ANC put in submissions before the TRC, by then deputy President (Now President) Thabo Mbeki. But the leadership insisted on taking on collective responsibility for the ANC

abuses, and thereby not following the procedure of the TRC, which was based on individual responsibility and applications for amnesty. This was accepted by the amnesty committee, and resulting in the TRC taking its own, independent committee to court to reverse the verdict. Many supporters of the leader of the ANC's women's league, Madikizela-Mandela reacted on how she was treated by the truth commission and the ANC. Being the most prominent ANC leader to appear for the commission defending herself, many saw it as scapegoating and an attempt at discrediting her politically. There were several incidences that showed co-operation problems between the ANC and the TRC (Orr 2000, Tutu 2000:71,152). The most striking might be how the law requested the TRC to give policy suggestions on reparations for the victims, but the ANC government did little to implement these suggestions.

The IFP and Buthulezi was openly quite hostile to the TRC process. They accused the TRC for being biased against the IFP and discouraged its members from appearing before the TRC, even though the victims could loose an opportunity for reparations. This lack of co-operation made it difficult for the commission to take IFP and their supporters views into account, resulting in a self-fulfilling prophecy. Shortly before the deadline, a rush of statements came from IFP supporters, giving the TRC little time to investigate them (Tutu 2000:168).

These conflicts between the political parties and the TRC can be interpreted in different ways: It can be seen as a failure of the TRC to write an official record of the past abuses that was acceptable to all the major parties. On the other hand, it also means that the major role-players saw TRC's work as so important that they tried to influence its work to their own benefit, and the TRC was successful in the sense that its findings were seen as of great importance by the political elite.

Van der Merwe (1999) argues that the establishment of the TRC was possible because different stakeholders had different expectations to TRC's work. He points out the following differencesin understandings of democracy and views on how to promote it:

> some saw the process as one that would neutrally grant amnesty without making moral judgements (while others saw moral judgement as a crucial part of the construction of a new human rights and non-racial culture)(…) some saw it as a body that would promote greater mutual understanding of the moral basis of the other parties motives during the conflict (while others saw it as a way of discrediting past moral justifications).(…)some saw it as a was of distancing political leaders from the actions of the torturers and other "deviants" within their own ranks (while others saw it as a way of calling leaders to account)(…)some saw it as an opportunity for parties to close the book on the past (while for others it was a way to open up the debate) (Van der Merwe1999: ch.13.2)

He argues that the TRC adapted an understanding of reconciliation that was closest to the understanding of the ANC. Rather than a body that had party-political or racial bias, the TRC was a body that manifested a specific interpretation of reconciliation (a mix of certain reconciliation ideologies) that were seen as threatening by certain political parties and whites. He claims the commission had not sufficiently understood the divisions in political vision that faced the country (ibid).

Did the TRC help build relations and reconciliation between the races? A survey in July 1998 indicated that a large majority of South Africans felt that the process had increased racial tension (Gloppen 2002:27). We have seen that some groups including the IFP saw the TRC as a illegitimate attempt of nation building by writing a common history for the whole population of South Africa. Theissen found that almost half the white population surveyed (46%) saw the TRC as an ANC inspired witch-hunt to discredit its enemies (1998).

> From the very beginning of the TRC process most white South Africans were not in favour of the Truth Commission. They tended to claim that the process was biased towards the ANC and former liberation movements, and were less confident that truth would emerge. White South Africans were also quite pessimistic about reconciliation. Most believe that the TRC has not contributed to reconciliation at all. In contrast to their fellow citizens they believe that the TRC has made race relations worse (Theissen 1999:78)

He found that 23% of white South Africans claimed that they had heard of the apartheid abuses for the first time through the TRC, 55% that they knew about abuses, but not about their severity, and only 22% that they were more or less fully aware of the abuses (ibid). This means that the TRC did uncover some facts that make violations hard to deny. Still he found that white people are in a state of denial about their role on the abuses, and that the abuses were morally wrong[64].

> Furthermore, many Africans people do not believe that white South Africans are serious about reconciliation. It appears that only very few white South Africans are committed to share some of their wealth. Firstly, most whites do not see themselves as beneficiaries. Only 18% of all white South Africans claim to have benefited from the apartheid system. Secondly, only a small minority (9%) of white South Africans supports redistribution and Affirmative action policies. Although 48 percent of white South Africans concede that land forcefully removed during apartheid should be restituted or the victims compensated for their loss of property, less than a third of all white South Africans are in favour of compensating victims of past human rights violations (Theissen 1999:79).
>
> Indeed, respondents from all racial groups show only very limited appreciation for members of other racial groups. While black South Africans have only strong negative perceptions about white Afrikaans-speakers and do in average not express negative sentiments about other population groups, white South Africans tend to dislike all other South Africans than their own. Against this background it does not wonder, that 61% of all South Africans claim that "blacks and whites will never trust each other". Although social interaction has changed in the new South Africa, white South Africans tend to socialise rather seldom with people from other cultural or ethnical backgrounds. They are also less positive about the idea of a rainbow nation (Theissen 1999:78-79).

Community level reconciliation can be studied both within and between communities (for instance between different racial groups living in the same town). Most of the research on

[64] This survey was however based on a relatively few respondents, as an explorative study. It was conducted by telephone interviews with 124 white South Africans in 1996, shortly after the first public hearings of the TRC.

the effect of the TRC is done at the national/ regime/ political elite levels. During the process, many claimed that the TRC was like a circus, coming to town, turning everything upside down to leave the next day. Van der Merwe (1999) has studied how two local communities were affected by TRC's work. He argues that the TRC was a top-down process, focusing more on national needs, than the needs of the local communities it operated in. Reconciliation at this level was assumed to trickle down to the community levels. This meant that each communty's special needs to promote reconciliation were overlooked, and opportunities lost.

> Local communities had expectations that the TRC would substantively contribute to uncovering the truth about local human rights abuses, assist in rebuilding the fragmented war-torn community, and help victims recover from trauma and socio-economic marginalisation. These expectations were too vast for a limited body such as the TRC to address, and more significantly, this agenda was not at the core of the TRC's interpretation of its mandate…its limited attempts to engage local communities and victims ultimately served to create unrealistic expectations…the lack of delivery in its (explicit and implicit) promises ultimately undermined the TRC's credibility in these communities (Van der Merwe1999:ch.13.2.b).

Van der Merwe finds that local conflict dynamics rarely fit neatly into the interpretation of the conflict as one between black and white people. The perpetrators and victims in his casestudies were usually both black.[65]

> From the victim's perspectives, the issue of race is thus not necessarily directly involved in addressing gross human rights violations. While, for most of the victims there was a clear connection between their victimisation and the question of race, this was not the usually the primary social division highlighted by their victimisation (…) most victims did have a political understanding of the victimisation that places ultimately responsibility for the suffering with the apartheid government and/or its security apparatus. Their victimisation was, however, perpetrated through intermediaries such as black police, local informers, another political party, etc. the community as a whole was also fragmented by suspicion and fear. This isolated people and sometimes turned a community against an individual (a suspected informer) or made the intolerant of a particular group(…) The relationships, which they most desperately wanted to mend were these local ones on which they were dependent for daily survival. Rebuilding a local sense of community was, for them, the essence of a reconciliation process (1999:ch.13.3-4).

He gives the TRC credit for opening the reconciliation debate, and giving victims a chance to be heard and organise themselves. But he also highlights the dangers of mainly focusing on gross human rights violations as the route to racial reconciliation:

> Gross human rights violations provides a spotlight that leaves most of the suffering caused by apartheid in the dark. The suffering of those subjected to legal forms of oppression (forced removals, pass laws, inferior education etc.) is not addressed. The fact that whites were given vast privileges under apartheid through a system that determined access to recourses and power on the basis of race, and the present inequalities are a direct result of these allocations, it is not a part of the TRC's mandate. The research demonstrated that much of the racial tension still exists at community level (and probably at other levels) is because these inequalities (and attempts to maintain them), rather than resulting from gross human rights violation (Van der Merwe ch.13.4A).

Van der Merwe thus suggests that the TRC was trying to promote intergroup reconciliation, while the communities felt the need for intragroup reconciliation as most relevant. We still have limited knowledge on how to promote intergroup reconciliation and whether a group react to revelations of perpetrators within own group by shaming or by seeing them as heroes. We will come back to this in chapter 6.

At the interpersonal level we can study how TRC's work affected the relations between victims and perpetrators of violations, as well as the relationship between individual members of victimised groups and groups benefiting from apartheid. The TRC didn't have the capacity to follow up most cases in this respect. There were, however, some meetings set up, some with cameras present. Different outcomes of these meetings were broadcasted. Two of the most famous cases included the Amy Biehl case where apologies from perpetrators were accepted by the victims familiy[66] and a case where apologies were perceived by the victims families an insincere, resulting in physical attack on the perpetrator[67]. This shows that the desired outcome, reconciliation, is an empirical question, and it seems we need to know more about under which circumstances truth has a healing and reconciling effect. Many have also pointed out the need to follow up the work the TRC initiated in this field[68].

The TRC argued that giving voice and acknowledgement to the victims, and establishment of the facts about the violations, could contribute to intrapersonal reconciliation. Tutu (2000) argued that the violations had dehumanised the perpetrators and that confession could have a therapeutic effect for the perpetrator (many perpetrators were diagnosed with Post Traumatic Stress Disorder). The TRC points out some "success stories" where people felt such a therapeutic effect[69], but there were many stories of the opposite (Tutu:2000). Many victims were angered by the lack of compensation and follow up work from the TRC, for instance in investigating their cases, or longer term help like medical or psychological treatment for

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[65] Van der Merwe studied two communities, one where the main conflict was between black IFP and ANC supporters, the other between ANC supporters and the security forces.

[66] Amy Biehl was a young American student, engaged in the anti-apartheid struggle, that got stoned to death in the township of Gugulethu in 1993. The panafricanist organisation PASO and the ANC friendly Congress of South African Students (COSAS) were arranging a campaign with street protests in Cape Town, throwing stones and using slogans as "one settler, one bullet". Her parents followed the amnesty hearings and embraced the perpetrators' families. They support the work of the TRC and established the Amy Biehl foundation working to help young people in Gugulethu. One of the people granted amnesty for the murder is now working for the foundation (Tutu 2000:113).

[67] An Afrikaner member of the security forces asked the family of a victim for forgiveness for killing him. For years after the disappearance of the victim the police had harassed the family, that did not know what had happened to him. The policeman kept referring to his Christian duty to ask forgiveness, and the family's religious duty to forgive. The younger son in the family knocked him in the head with a vase, in front of the camera team. The scene was widely broadcasted in South Africa (Long Nights Journey into Day, movie)

[68] Some NGOs like the Centre for the Study of Violence and Reconciliation are working with these issues.

[69] Tutu highlights the importance of the philosophy around Ubuntu, a Nguni word indicating that we are people through other people: A person that has ubunti is generous, hospitable, friendly and caring. Ubunti is about being a person through belonging. He sees restorative justice as part of the Ubunti spirit, with its focus on healing and reconciliation (2000:42-43,56).

damages due to their victimisation. It seems like TRC's work with its focus on the truth has only started scratching the surface of the needs of the people directly affected by abuses to be able to reconcile with their own history, even though TRC's work has been very important in identifying people struggling with problems after violations.

5.3 Summary

We have outlined TRC's work and pointed out that it stands out from former truth commissions in terms of size, contingent amnesty, the broad involvement from society at large and the thorough documentation and publication of its work in the mass media. The TRC drew a broad picture about past gross human rights violations, acknowledge the abuses and tried to compensate for the lack of criminal justice by suggesting a policy for reparations. The establishment of the truth commission was a reconciliatory compromise that made the democratic transition possible, but its role in promoting reconciliation and democratic consolidation is disputed. At the political elite level all major parties seems to have had different views of the role of the commission. They all accused the TRC of bias, and the commission was involved in court cases against all three major parties (or key people in their leadership), challenging their work. Amnesty still angers the South African public. The government's limited implementation of the suggested reparations has undermined the acknowledgement for the victims suffering and the attempts of compensating for lack of criminal justice, and caused a lot of anger from and on behalf of the victims. The commission succeeded at starting a human rights debate in South Africa, but still the overall level of commitment to human rights remains low. There are indications that the work of the commission has worsened race relations, at least in the eyes of the white population. Even though the commission has succeeded in being an eye opener among whites for the fact that violations has taken place, they tend to be in denial about their own involvement, and does not necessary deem the violations as morally wrong. At the community level the TRC did little to follow up their hearings to promote community reconciliation. Van der Merwe (1999) criticises the commission for not taking local perspectives and needs into account, and thereby not having a large impact on reconciliation at the community level. He argues that at the community level, people felt greater need for help to reconcile within their own group than help with reconciliation between conflicting groups. The commission also had limited capacity to follow up reconciliation between

individuals and intrapersonal reconciliation. It is however apparent that the commission has been able to identify a large need for continued work in these fields, and that revealing the truth about former abuses alone is only a small start in the work for reconciliation, at all levels.

6. THE COMMUNITY STUDY OF OUDTSHOORN

6.1 Research needed on TRC's ability to promote reconciliation

We have seen that here is little consensus on how to promote reconciliation. There is little consensus on how truth and justice after gross human rights violations are connected with reconciliation, both between main stakeholders in South Africa, and in the academic debate. This points to a need for more empirical studies. There is quite a lot of knowledge of how the TRC made the transition to democracy possible, and how it worked with the political elite and controversies at this level (Stene 2002, Orr 2000). At the same time many surveys has focused on TRC's effect on the individual level. But we need more knowledge on how TRC's work affected local communities, and what would be needed to promote reconciliation at this level. We know little about the relationship between reconciliation at various social levels, and little research has been done to understand how affected local communities react to the handling of gross human rights abuses by truth commissions. Do public hearings trying to establish the truth about former gross human rights abuses promote reconciliation at this particular level? Or are other or additional roads to reconciliation needed?

The TRC has had problems involving white South Africa in spite of its efforts to do so (TRC post hearing community programme). We have seen that white South Africa is still in denial about their role in former gross human rights abuses. Even though the TRC had some success in opening the eyes of many white South Africans for the fact that such violations have taken place, they are still unconvinced that they played a role in apartheid abuses and that these violations were wrong (Theissen 1998). Gibson points out that particularly Afrikaans speaking whites are notable for their distinctive rejection of racial reconciliation (2001A:79). The Afrikaners were blamed for the violations given their association with the apartheid regime. It is particularly interesting to see how the Afrikaners as a community responded to TRC's work, and why they were alienated and did not accept its findings. We need to know more about how beneficiaries of violations react to revelations from truth commissions, and how it affects self-perception and relationships within this group and the relationship to other groups. We also need to know more about how revealed perpetrators were treated by their own community: As heroes, and thereby undermining the human rights

norm and the reconciliatory work towards victimised people and groups, or with rejection of the perpetrators actions, and thereby contributing to upholding the norm.

The following part of this essay is a study of how an Afrikaner dominated community[70] affected by widespread gross human rights abuses reacted to TRC's work. Van der Merwe (1999) pointed out that the TRC's main focus was on national reconciliation and did not take local reconciliatory needs into account. Which steps does members of the community suggest are needed to promote reconciliation here, and what are seen as hinders of reconciliation? Was the TRC enough to promote reconciliation given the limited success at addressing violations of other human rights? Violations of economic and social rights affected most of the population, and resulted in poverty and inequality and overlap between race/ class that still prevails. Is reconciliation possible without a broader addressing of poverty and inequality, the result of economic and social human rights abuses? We also want to look into how the former abuses affect contact between the races, as this is a suggested non-institutional path to reconciliation.

First the historical context of the Oudtshoorn case is outlined. We trace TRC's work in Oudtshoorn including victim hearings in the Human Rights Violation Committee (HRVC), and the Post Hearing Community Programme (PHCP) that was put up by the Reparation and Rehabilitation Committee to promote reconciliation. We look into the community's reaction to TRC's work, and question to what extent it contributed to uncover the truth about former abuses, and to what extent it achieved any form of justice. We look into the TRC's ability to promote community reconciliation; input from the community on hinders for reconciliation and ways of promoting it. We question to what extent community members felt that reconciliation is possible without addressing poverty and inequality, the result of violations of economic and social rights. Last we look into how former abuses affected the contact between racial groups in Oudtshoorn, and to how this daily contact affects reconciliation.

[70] As the Afrikaners rarely are a majority group anywhere, Afrikaners do not numerically dominate Oudtshoorn, but it is Afrikaner dominated in terms of economic power, cultural dominance, language etc.

6.2 Background on Oudtshoorn

Oudtshoorn is an isolated little town located inland in Western Cape, living of ostrich farms and tourism. This was one of the main centres of oppression in the province during the Apartheid years and Oudtshoorn was among the most conservative in the Cape Town area[71]. It was a coloured labour preference area, which meant that black people were not allowed to occupy jobs unless there were no coloureds suitable for the job. This resulted in a coloured majority (PHCP transcript). The municipality estimates the population to about 8000 blacks, 17000 whites and 48000 coloureds (interview). The coloureds, like the Afrikaner community, speak Afrikaans as the mother tongue. The black population mainly speaks Xhosa.

In 1961 the Group Areas Act was imposed in Oudtshoorn, resulting in extreme social and spatial engineering. The township of Bridgeton was put up outside town to house the coloureds. Black and coloured people were forcefully removed from their homes in town. In 1963 alone, 325 families were moved. In 1966 Bongulethu was put up next to Bridgeton, to house the black population formerly living in a shantytown. The forced removals continued until 1969 and the pass laws were strictly implemented. Residents in Bridgeton had to obtain permits to visit relatives in Bongulethu and registration at the Labour Bureau was compulsory. In 1973 the Karoo Bantu administration Board took over control of Bongulethu from Oudtshoorn Municipality, and after this followed sky-high rent increases without any improvement for residents (PHCP transcript).

Between 1973 and 1983 there was a growth of community organisations leading to politicising of the area. Leaders experienced constant police harassment and arrest. In 1976 an uprising starting with a student boycott at the university of Western Cape spread to Oudtshoorn with widespread marches, arson, shooting injuries and one death. In the rural areas in Western Cape all but one of the people killed were coloured (ibid).

In 1985 open political conflict broke out. Students at a local school were detained, resulting in a school boycott and 155 students arrested in April. In May the SADF (South African Defence Force) and SAP (South African Police) moved into Bongulethu. Several people

[71] The TRC a.o mentions that a church minister barred coloured mourners from the funeral of their white farmer boss because coloured people were not welcome in the white church as a manifestation of this conservative attitude.

were shot. In June three children (Felize Hanze (14), Andile Majola (13) and Patric Madikane (14)) were shot dead and others injured at the black policeman Mngoma's house. This became internationally known as the Bongulethu 3 case. The conflict escalated after this between the residents in the township and everybody seen to be working for the state. All black policemen were driven out of the townships. A bus driver, believed to be a member of the security police, was killed in connection with a bus boycott. The community newspaper Saamstaan alleged that at least 600 people were injured by police shootings in 1985. Between 1987-88 at least 6 activist injured by kitskonstables in Oudtshoorn[72] (PHCP).

> This can be seen as part of the government's strategy of black on black violence. Community members also complained that one of their problems was that the area was - hardly had any legal assistance…and local attorneys refused to represent people who were arrested for unrest related charges. (Mr Pienaar, PHCP transcript).

The NP ran the municipality in Oudtshoorn until 1994. There were separate councils for coloureds and blacks in Bridgeton and Bongulethu, but they had to come to town to get their decisions approved. After the 1995 local election there was a transitional council with an ANC majority. After the local election in 2000 the Democratic Alliance (an alliance of NNP and DP) took over control at the municipality with the support of independent candidates (formerly ANC representatives). The ANC has 10 councillors, DA 10, Action 2000 two and one councillor is independent. There are according to the municipality less differences between the ANC and the NP in Oudtshoorn than at the national level (interview municipality). Even though the ANC are on the sideline in local politics now, the party is in charge of national development policies that the local municipality to some extent implement.

72 In 1987 and –88 so called kitskonstables, or "instant police" were sent to Bongulethu: with only six weeks of training, they got weapons and authority to police the township. And they were often people from the area who were poor, largely untrained people. At least 16 kitskonstables were operating in the townships surrounding Oudtshoorn. Police records suggested trouble with the discipline of the kidskonstables: One of them fired at his brother with a shotgun, apparently while drunk; another reported for duty drunk and was sent home; another shot himself with a shotgun; another exploded a grenade by accident in his hand; that another was hit by a shotgun after a shuffle at the water tap, and altogether there was a picture of disorderly and undisciplined conduct (PHCP).

Poverty and Inequality in Oudtshoorn

As a result of the apartheid policy in Oudtshoorn, economic and social cleavages developed between the different racial groups in town. The legacy of this policy is still stark in Oudtshoorn, where the residential areas to a large extent still overlap with class and race: The white population dominate in middle class homes in town, and controls most of the businesses and the ostrige farms. In the black township Bongulethu the living standard is the lowest. Large area of shacks, informal houses with little access to public services, have grown up[73]. In the coloured township Bridgeton the standard is in between those found in the other areas, but with visible differences between the majority, and houses owned by the new emerging coloured middle class.

National strategies for poverty and inequality reduction have had some effect in Oudtshoorn. One of the main goals of the RDP was to redistribute public recourses to the former disadvantaged communities, including building out infrastructure in these areas. Bridgeton and Bongulethu have seen improvements in infrastructure such as some asphalt roads and streetlights (interview, municipality). Still there is a problem with marked failure: Even though water to a large extent has been provided to the houses in the townships, the poor are unable to pay for the service, so the water often has to be closed off (ibid). The informal settlements have access to water, but not other public services. Between 1994 and -98 the Masikani Programme was implemented to stop rent boycotts and make people pay for public services, which was seen as a success by the municipality (ibid).

926 new houses had been built by 2001, and the municipality had been granted state funding for another 660 houses[74] (ibid). Adding to this a new fond (Equity Share Fond) has been put up by the provincial government to subsidise the poorest of the poor households. 1500 families in Oudtshoorn had applied for support in the form of cash support (70-80 Rand a month,) and reduced prices on public services. Local Economic Development Fonds (LED) support municipality projects, and has resulted in some small companies in Oudtshoorn. The

73 I have been unsuccessful at finding statistics on poverty, inequality and unemployment for Oudtshoorn specifically, but we know from national surveys that Western Cape has a lower level of poverty compared to the rest of South Africa (May:1998). Poverty is still highly visible in Oudtshoorn, together with social problems like dagga smoking, begging, prostitution etc. Many also pointed out the problems connected with AIDS, that is taking its toll in Oudtshoorn (interviews).

74 About half of the money is granted to the municipality to build infrastructure, and the other half to start building houses. The land is provided for free to people who apply, and does not already own a home. The houses are 27square meters, and are delivered with outer walls and toilet. The rest has to be provided by the new owner (interview municipality).

fund also support Oudtshoorn Economic Initiative, an NGO providing advice for people wanting to start small businesses.

Land claims from people that were victims of forced removals were being treated at the time of my stay, but people were worried about the process. The land reform is based on people voluntarily selling land to the programme, and this land should be redistributed a.o to people that had lost their land during forced removals. But only a small proportion of the land needed has been made available, and nearly every one interviewed feared developments in similar to those in Zimbabwe: Violent attacks on white farmers and illegal occupation of white owned farms.

6.3 The Commission's work in Oudtshoorn

Victim hearing

The Human Rights Violations Committee (HRVC) started collecting statements in the region in 1996 and its research team held discussions with community members about the history of the town. It held hearings in neighbouring George and one day (June 18.th 1996) only addressed gross human rights violations that had taken place in Oudtshoorn. These included torture, killings, abductions and severe ill treatment, and had mainly taken place in the 1970's and 1980's. Other issues that had been important locally, like forced removals, non-political violence (the violence white people were most affected by) and general repression of economic and social rights were excluded from the agenda. As for all the hearings, the TRC did not have the capacity to hear all the cases that were brought to the commission, but tried to hear a few, representative cases. The hearing was being translated to the three major languages in the area, Afrikaans, English and Xhosa. This made it possible for people testifying to speak their own language, and understand what was being said by listening to translations through headsets.

The HRVC heard several cases involving people being shot and wounded or killed by the police or kitskonstables (a.o the Bongulethu 3 case). Police beating, bribing and torturing to get information was covered. In one case a man, Michael Lucas, was sentenced to death for murder on the bus driver based on information achieved under torture (including torture against the Mayor of Oudtshoorn at the time of the hearings). It also heard a case where the police forces were not the offenders. A community councillor in Bongulethu was attacked

with an axe and then necklaced in the township for co-operating with the regime, in front of his young son.[75] After finishing the statement taking and hearings, the HRVC was to decide whether applicants were to be defined as victims of gross human rights abuses. The RRC was then to take appropriate action with those cases.

Findings based on the hearing

The commission concluded that the Bongulethu 3 case was a police ambush carried out on children and youth. While an eyewitness testified that people believed the policeman's house to be empty, shots started going of from inside the house when a young boy approached the door. The police was accused of filling a Fanta bottle with petrol and leaving it next to the body of a child. The police claimed to have acted in self-defence after the house they were guarding was attacked by a crowd: They claimed a youth had sprinkled petrol on the carpet in the house, and the police had shot to prevent a youngster to lighten a match. They claimed the other two children were shot in the process of fighting the crowd that had gathered outside the house (victim hearing transcript, TRC homepage). The TRC found the use of the "Trojan horse" ambush tactics by the security forces to be entirely inappropriate for dealing with civilian unrest. It was used to lure civilians deliberately into situations that then resulted in fatalities and injuries. Relying on concealment, speed and surprise, it resulted in indiscriminate shootings by the security forces, injuring bystanders and protestors alike, many under the age of 18 (TRC final report. vol. 3 ch. 5). It established that torture had been used at least in two of the cases to force the signing of statements to implement Michael Lucas, a friend of the people tortured, in the death of a local security policeman during the bus boycott. Lucas had later been sentenced to death for this and hanged. The commission found that execution for politically motivated offences constituted a gross human rights violation (ibid). The commission found that this period saw the most widespread perpetration of torture in this region during the period of the commission's mandate. The two groups tortured most consistently were individuals suspected of public violence activities, and individuals suspected of belonging to MK. Separate accounts of similar means employed

75 Neclacing, putting petrol inside a car tire, putting the tire around the victim's neck before lighting it, so the victim would die from burning, was used by some members of the liberation movement as punishment for believed traitors, like for instance police informers. This issue was central in the case against Winnie M. Mandela, President Mandelas ex wife and leader of the ANC Women's League. The TRC criticised the leadership in the liberation movement for not distancing itself from neck lacing (Tutu: 2000,TRC final report, vol3 ch5).

in either the same premises or by the same named perpetrators lend authenticity to these accounts (TRC final report. vol. 3 ch.5).

> The commission finds evidence of widespread torture in rural areas, predominantly at police stations…and security branch headquarters…and several police stations in the southern cape…the motive for such torture was often intimidation or the forcible extraction of confessions…such torture was committed with the complicit knowledge of the superiors of the individuals associated with acts of torture (TRC final report. vol. 3 ch.5).
>
> The commission finds as consistent pattern of members of the security forces lying in court by denying involvement in acts of torture…magistrates and judges were singularly reluctant to accept or believe allegations of torture (ibid).

In the case of the necklaced councillor, the TRC found that he fled when youth had burned his belongings in the street. When he returned he was chased and killed by necklacing. About twenty people were charged with murder. Three people had been sentenced to death; three others got long prison sentences. It found that the use of necklacing that took place in the region between 1985 and 1989 was an expression of rage towards opponents, perceived collaborators and representatives of the state. It was used by various groups with different political affiliations, but became associated with UDF supporters, and that the leadership should have acted more vigorously to indicate disapproval (ibid). The other cases brought before the TRC in Oudtshoorn were not commented in the final report.

No job for the Amnesty Committee

In the community there were no knowledge of anybody involved in local abuses applying for amnesty[76]. This means that the local perpetrators view of the conflict, why abuses had taken place, details about who was involved, who gave the orders, and details about the abuses that the victims families and the general community didn't already know, did not come out. An opportunity for perpetrators to come forward and acknowledge that violations had taken place, and possibly plea for forgiveness, which many point out to be positive for reconciliation, was lost in Oudtshoorn.

The post hearing community programme

To prevent a "circus left town" syndrome, the Reparation and Rehabilitation Committee (RRC) put up at least 11 Post Hearing Community Programmes (PHCP) throughout South Africa, including in Oudtshoorn. These were attempts to follow up of the victim hearings

[76] I was unsuccessful at verifying this with the TRC, but if anybody connected to Oudtshoorn did apply for amnesty, it still did not have an effect in the community, as it was not generally known.

and focussed on getting input from the community on their needs in the reparation process, and the mobilisation of the community toward a healing process.[77]

Members of different sub communities, NGO's and local faith communities were invited to the programme, but many people commented the general absence of the white community in Oudtshoorn. The programme included a submission from the TRC on their work in the area, and submissions from the community of how it was affected by the gross violations of human rights that had take place there. There were submissions about youth and education, women, the churches, the media and the family. Workshops were put up discussing where the community needed to go from there, where also mental health workers had input. Discussions included strategies for improving the quality of life for Oudtshoorn residents, the process of healing and joining together, and reconciliation. The programme also included putting up an exhibition in the local museum documenting the history of Oudtshoorn during the conflict. The RRC used the input from various such community programmes to make suggestions on national reconciliation and reparation policies. At the time of my visit, some victims had received small interim reparations, and it is still unclear whether the government will pay further reparations. The RRC did not have the recourses to follow up any of the suggestions from the programme locally. The PHCP seems to have had a more important function in enlightening the Reparation and Rehabilitation Committee on obstacles for reconciliation at the community level, than been a tool to start working for community reconciliation in Oudtshoorn. This support Van der Merwe's view that the TRC worked from a top down perspective on reconciliation, instead of a community based bottom up approach.

6.4 TRC's ability to promote truth and justice in Oudtshoorn

To what extent did the TRC uncover the forensic truth about local violations?

It is obvious that the TRC did succeed in its hearing to uncover some of the "forensic truth" about the violations that had taken place in Oudtshoorn. It uncovered that gross human rights violations took place in Oudtshoorn, identified many victims and acknowledged that the violations were wrong. We have seen that lack of amnesty applications limited access to facts about abuses held by perpetrators. I asked people in the community to what extent the

[77] The main source about the PHCP is the transcripts form the hearing at www.truth.org.za/reparations/oudshoo.htm

findings of the TRC were common knowledge, or news to people in Oudtshoorn until the hearing. The general opinion was that the black/ coloured population was familiar with the violations, but opinions varied on to what extent the white population knew:

> Oudtshoorn is a small community, but it was completely divided by the apartheid rule, so it was not really one community. Some communities did not have a clue about what had been going on, and it was a big shock to them what came out in the TRC hearings. Particularly white people did not know. Still many white people do not want to believe what happened. Many still sees the TRC as an instrument for the ANC. Whites did not know the things that were common knowledge in the coloured community. The coloureds are without a voice, as whites control the media. News travel by word of mouth in the coloured community. News about human rights violations are particularly blocked out of Afrikaans newspapers (Afrikaner).
>
> We never knew what a large role the security police played. And nobody would say they were members of it. But when the TRC came, it was revealed (Afrikaner).
>
> It was covered by the Saamstaan (newspaper run by the liberation movement). But white people did not read that. White newspapers would just put in a notice. But the people in the involved communities did know. But for many whites it was new information when the TRC held its hearing here. I think the TRC was an eye-opener for the ones that were not involved. I was even surprised about who had done what… Within the Security branch we did not talk about what was done. If somebody had done something, it was not something that they would brag about. So most people within the security branch did not know what others were doing (former security police).
>
> It was a familiar picture the TRC drew of Oudtshoorn. People knew what had been going on, because it is a small community. We also knew via the media…White people also wanted to know, but they had a different perspective. A lot was kept away from the white general public, and they did not know(...)There is a saying that "nobody is as blind as the man that does not want to see". So I think the TRC was an eye opener for many people, particularly white people. I think the TRC made a difference here…myself I was always in the middle. Many people has come to me after the TRC and said they had no idea…So there has been a change in attitude (retired army officer, coloured).
>
> When the UDF was established, I was in the leadership… White people ignored me, and I was seen as a troublemaker. Now they say "we did not understand", suddenly they didn't understand anything?…people knew. Everybody (UDF/ANC leader).

Suspicions and rumours about people being involved in abuses or threats of abuses are still widespread in Oudtshoorn, which shows that the TRC only seems to have uncovered the top of the ice berg of forensic truth about local abuses.

> No one in the police here asked for amnesty. And it is not common knowledge who was behind various things here. Some of the people that were in the struggle think they might know (ANC leader).

According to one of the community leaders active in helping the TRC put up the community programme, people named as perpetrators in the hearing had all left town after this (interview). But other people I interviewed pointed out several known perpetrators still living in the community:

> I think I know who tried to kill me. The man walks the streets of Oudtshoorn today. I had my car for repair. A guy from the security police asked the man repairing it for the key. He refused to give it, but the security policeman threatened him, so he gave the key. The next day he comes back with the key, tests the duplicate key in the lock. The white man who was repairing the car tells me this when I am picking up the car. Only days later he dies in a mysterious car accident…Some chemicals were put on my car: My whole family got sick, but we were lucky to survive. The car had to be contaminated…the man I think was behind (…) he knows that I know (UDF/ANC leader)
>
> A policeman .. had personally called me death threats over the phone, saying he would "wipe me of the earth", (I knew it was him, because I recognised his voice) (ANC).

Many cases were for various reasons not brought to the attention of the TRC. Several of the people I interviewed in Oudtshoorn did consider themselves as victims of gross human rights abuses, or had information about such abuses, but chose not to bring their cases before the commission and thereby limited the TRC's information about abuses in the region.

> At the end of the day, I choose not to go to the TRC. I am willing to discuss it, the past, with anybody in my office, but I did not want to put my family through the pressure and the attention…I had gone through so much social exclusion when I quit the police. I could not go through all that again. I figured it would have lead to some positive reactions about it being tough coming

> forward, but also negative reactions like "he is lying" or "he is only doing it to promote his career" (former security police, Afrikaner).
>
> When the TRC put up the Post Hearing Community Programme, I was contacted, but skipped because none of the police people had given testimony, and nobody asked amnesty…I feel now that the TRC was a mistake…the TRC did a bad job. But the TRC was the right way to go in the transition to democracy (ANC leader, victim)
>
> I was not involved with the TRC. I need to overcome some things for myself first, before the real (own name) comes out. I have not had enough time to deal with the trauma I went through (ANC/UDF leader, victim of several attempts of murder, police harassment, forced removal, detentions and house arrest).
>
> I was a victim myself, you know. But I choose not to go to the TRC. It would be harder for me to forget it then. It was the police that was behind it. And they are still working in the police here. We have a working relationship now, and I did not want to put them in that position (Black Sash, statement taker for the TRC in the region).

The TRC thus managed to draw a broad picture of a pattern of abuse. Still many cases were not brought to the attention of the commission and it did not have the capacity to follow up more than a few cases. Suspicions on concerning violations thus remains widespread.

Personal, narrative and social/dialog truth

The people that did testify in the hearings got a chance to bring out their "personal/ narrative" truth. But criticism was raised over "who's truth" the TRC highlighted and acknowledged. This raises the question of social/ dialog truth: Which groups in Oudtshoorn got their version of the truth verified or rejected by the TRC? Were important groups excluded in the process? We also need to know how sub communities reacted to the information provided by the TRC and whether it contributed to change people's perceptions of the past.

From the coloured community the TRC was criticised for picking out cases illustrating the conflict as one between black and white people, and thereby not giving coloured people credit for their involvement in the struggle. It was claimed that this gave a wrong impression of the composition of the resistance movement in the area.

> I had friends that testified. Few coloureds did. Only whites and blacks were taken to the for-front (by the TRC). But coloureds were important in the struggle. I was myself classified by the old system as a coloured man, even though I see myself as a black man (ANC victim).
>
> In other parts of the country, the TRC succeeded in bringing about a lot of the truth, but here in Southern Cape, it had little success in bringing the real stories (ANC victim who followed the hearing in George).

In the Afrikaner community, the version of the truth presented by the TRC was very painful. People tend to get very uncomfortable whenever the issue is being brought up, and many refuse to talk about the TRC at all.

> The Afrikaner people saw the TRC as a bad thing (Afrikaner).
>
> It was like it was blocked out. There were few whites at the meetings…It was talked about, because it was hard to ignore. Many people did not want to accept that it was true, what came out. Most Afrikaners now know it was true. And there is a feeling of shame (Afrikaner priest)
>
> Most whites did not find the TRC objective…the TRC was the wrong body. It should find out what happened, and that was good, but the reconciliation process should not have been lead by the same organisation. Not many Afrikaners had faith in it (retired security police).

> Two people named in the TRC hearings as perpetrators were in my congregation. I happened to be together with one of them, when we heard a program in the radio, where his name was mentioned as a perpetrator. He got so upset that he called the radio station to explain (Priest, Dutch reformed church).

Some Afrikaners thought the TRC was an eye opener:

> It was hard for us to let everything sink in. It's like seeing yourself in the mirror and see somebody you didn't recognise (Afrikaner).
>
> People have a better image of it now than in the start. It did some good work. And it has helped some. And the larger community seems to think it was all right. And a lot of things came out that would have otherwise remained hidden away (Afrikaner).
>
> When the TRC came, nobody was immune. People had to listen…some people still say the TRC was biased. But if some people were perpetrators, it would be almost impossible when the TRC came, not for them to feel that the TRC was after them. We must accept what was been done in the past. But many are looking for flaws in the work of the TRC, and they find it, and use it as an excuse to disregard it (Priest Dutch reformed church)

This shows that TRC's work was painful in the white community, that responded by looking for excuses to block out the findings or disregard them. Still some "forensic truth" seems to have come through, which have been hard to deal with in this community.

The reactions among white people that were directly involved by working for the security forces like the police or army seems to have been less favourable among the whites than among coloureds and black people:

> I was not myself involved (with the TRC). But there were reactions within the forces. White people did not like it. There were people there that had been doing things that were not allowed. There was fear. But generally speaking it was accepted. But the effect was mainly that white people were afraid of the consequences, while coloureds were more positive generally speaking, also towards appearing for the commission (retired army officer, coloured).

An Afrikaner who had quit his job as a captain in the security branch of the police, told me:

> Everything was rough here. There was a rent boycott and the struggle was hard here. I felt that I should not have been here. But changing a job was not part of the tradition. It is a tights community within the police. If you quit, it is like betrayal…I was deserted, particularly related to the security forces.

He described fear among the security police after the announcement of the TRC:

> People said "why here, why not in Namibia?" It was a new start with a new government. And there was fear what would come out. Everybody was afraid that it would be a one way communication, and that it was only the police and the ones that was in the war was to feel it. It should have looked to the tops, to the leaders (former security police).
>
> The leader of the security branch came over here to me…he advised me to stop being an informer (retired security police).

This shows that both the general white community in Oudtshoorn, and the security forces were hostile to TRC's work from the beginning, and that the security forces feared what might come out. As there were no amnesty applications in connection with violations in Oudtshoorn, or people from the security forces that testified at public hearings, it seems like this group closed ranks and rejected TRC's work. Still it seems like the TRC has had an impact on discrediting the Apartheid regime, at least among some whites:

> After the TRC both English and Afrikaners said "No, no, no, I did not support Apartheid". If you ask now, nobody supported it. It is not true. Most people supported Apartheid. The Afrikaners are lying about this now to cover up. They make a new image where they themselves were innocent. I think it is better to be honest. There were some liberals, particularly British and Jews that never supported Apartheid. But the majority did. I think it is better not to lie. To say that "yes, at that point in time, I did support Apartheid, but I have changed and I no longer believe in it. All this hypocrisy makes me sick (former security police).

Feelings of victimisation in the white community were not taken into account: The Afrikaners have a self-perception as a victimised group that the TRC did not acknowledge:

> If you ask me it all started in 1899 with the Anglo-Boer war. The Transvaal and so on was taken over from the Boers because of the diamonds. For three years the British used coloureds and blacks against the Boers, and that is how the racism started. 30-40 000 Boers, women and children died in concentration camps. My own grandfather was in that war. This led to a "never again" attitude among the Boers. Not because the Boers were racist, but because they felt threatened (Afrikaner security police).
>
> Most white families here have been victimised. Everybody has a sister that has been raped, boys that have been sent to war, been violently mugged or had burglaries in their house (Afrikaner priest).
>
> Most whites have seen things, like in the war in Angola. This is very important when it comes to reconciliation: Everybody has been involved: It was seen as a war (Afrikaner).

These violations fell outside the TRC's mandate because of the limitation to politically motivated violations, and only violations taking place after 1960. The victimisation of white people in general and Afrikaners specifically were excluded from the TRC agenda. The Afrikaners thus had little to gain and much to loose from the TRC process. This can be a part of the explanation of why the Afrikaners were alienated from the process and thereby limited the potential effect on intergroup reconciliation.

The overall reactions to TRC's work in Oudtshoorn thus seems to be that white people were alienated from the process because there was little in it for them, as their own perceptions of victimisation was not taken into account. It seems that the TRC would have had to go further in acknowledging some of the views of reality and feelings of victimisation in the white community to involve them in the reconciliatory work. The security police and the Army seem to have closed ranks and thereby not contributed to the work of discovering the truth about the violations or acknowledging the abuses.

TRC's work in Oudtshoorn could have been the start of a public dialog around the past It did fill this role at the national level, but seems to have done so less at the local level in Oudtshoorn. The local media reported bitterness against the TRC for holding the hearing in George, when Oudtshoorn had been the regional centre for oppression. The TRC had made the decision to place the hearing based on logistics (Oudtshoorn Courant 21.06.1996). Some argued that this made the possible impact of the work smaller:

> My personal opinion, and I say this as a private person, not as a member of the ANC; I had little faith in the TRC and the hearings. First it was wrong for the hearings to be held in George: It would have had a lot better effect here (victim that followed the hearing).

Even though the hearing was covered in the local media, these failed to report controversial information like names of perpetrators that were named in the hearing (media archives, local museum). This might have lessened the impact of the hearing locally, even though national media revealed this information. As the major local newspaper, the Oudtshoorn Courant,

have chosen a so called "non-political" profile, this has not been a forum for debate after the revelations of the TRC or the community programme (media archive, Transcripts from PHCP) The role of the local media will be discussed further below. The Post Hearing Community Programme also had a limited effect as an arena of discussing different sides of the past, as the white community was to a large extent missing. We wanted to know why the white people did not attend the post hearing community programme, and thereby excluded themselves from this reconciliatory initiative made by the TRC:

> We (the Dutch reformed church) did not go to the TRC meeting, because we did not have the support for it in the congregation. You must understand that the TRC programme was an invitation to come and discuss the past. People are not going to come when they invited us to come and feel bad. That does not promote reconciliation (Afrikaner priest, Dutch reformed church)
>
> I think this (contact) has greater effect than TRC programmes. They are all "lets talk about racism". That makes people uncomfortable. We do not want to dwell with the past; we want to work for the future (former police, white)

We have thus seen that both coloureds and whites, together constituting a large majority in Oudtshoorn felt excluded in connection with the victim hearing. The forensic truth presented by the commission was very painful in the white community, and many looked for flaws in TRC's work to disregard it. The security forces reacted with fear and closing ranks. Still some Afrikaners saw the TRC as an eye-opener, and it has had an effect on discrediting the apartheid regime. But the TRC had trouble involving the white community in discussing the past, and thereby in trying to find common ground across the race-border about the past and how to build the future and promote reconciliation in Oudtshoorn. To what extent the truth telling lead to healing will be addressed under reconciliation (6.5).

Reactions to amnesty and lack of criminal justice in Oudtshoorn

As South Africa gave up criminal justice after gross human rights abuses in the name of reconciliation, this form of justice was not achieved in Oudtshoorn. As local perpetrators didn't apply for amnesty, none of the perpetrators took the opportunity to tell their version or apologise to the victims. That could have served as a form of restorative justice by restoring the norm, acknowledging that it had been violated and accepting responsibility and accountability for the crimes. Many were also upset over amnesty.

> I am very uncomfortable with amnesty. Even though I see that it was a necessary compromise at the time, it makes me sick (UDF/ANC leader, victim).
>
> People here were very upset over amnesty (liberation movement).
>
> (amnesty) was very sad. I was a statement taker for the TRC in this area. And when I heard the stories people were telling me. They were crying. And I felt the same way (Black Sash).
>
> I think the (TRC) exercise was good, but without the necessary conclusion. It was like we had to impress the world about how South Africa was dealing with the past. But at the same time there was a need for conclusion. There is an absolute need for prosecutions. They were guilty of killing us (ANC victim).

One respondent argued that the South African amnesty has been accepted by the world community because there is an international difference in the evaluation of the value of black and white people:

> I do not see any difference between Hitler's Nazi Germany, Milosevic and what happened in South Africa. Only the setting is different: Here the victims were not white…I do not think I am short sighted if I say I am very unhappy about the situation in Zimbabwe. But Great Britain is opening the doors for the white farmers, but what happened during the Angola war? And in Mozambique? And the genocide in Sierra Leone? When Africa is in a crisis why is it so difficult then? Why are only white people getting help? Now I understand why Americans refuse reparations for the slave trade. White people were not victims. When human lives are at stake, there is a distinction between blacks and whites in the world (UDF/ANC leader, coloured).

Prosecutions of named violators that did not apply for amnesty can in theory still happen. Victims can bring the cases where nobody applied for amnesty before the court, but no large-scale persecutions have taken place. It seems that the only form of justice that the Oudtshoorn perpetrators (and only a handful of them) had to face was potential ostracism by their community. While several people pointed out that most perpetrators had left the area, suggesting that is was impossible for them to live in Oudtshoorn after the TRC revelations, others described the following reactions towards perpetrators still in the community:

> The perpetrators here were closed out socially. It was hard to be a priest for them. Some ostracised them. But some stood up for them, the conservatives (Afrikaner priest).
>
> The reactions (towards named perpetrators) were negative (within the defence forces). But the defence forces were not that involved. It was mainly the police, particularly the security police. One guy in the security police still lives here. But generally speaking, people are not here anymore (Retired army officer, coloured).
>
> (the TRC) has changed some things. Last week we had a new member (of the ANC). A white person that used to be with the Democratic Party, then the National party, and now the ANC, because that person did not want to be associated with what happened. But many people are turning a blind eye. It is not being talked openly about (ANC leader).
>
> Some of them are still here or near by. Some live a little closer to the sea. They have this attitude that we should just forget about what happened (ANC leader).
>
> Even if names were mentioned in the TRC hearings, there was little focus on people that were perpetrators. It was hushed down by the TRC. I do not think that these people have been confronted by the TRC. Maybe it is because of the TRC's short life span. (ANC leader).

It seems that dealing with the perpetrators have been difficult, particularly in the white community. While coloured and black people tend to be outraged about perpetrators still present in the community, the whites seem to be split over how to handle it. Many perpetrators seem to have left town which might indicate that they have felt socially excluded, which can be a sign that people have distanced themselves from the perpetrators or their actions, and thereby acknowledged that the violations were unacceptable. But as some stood up for them, it seems as if the white population is sending out mixed messages in this field.

Restorative justice?

The TRC recommended that the victims got compensations from the state as an attempt to create restorative justice. When I visited Oudtshoorn, some of the victims had got interim

reparations of a symbolic amount, and were still waiting to get to know whether there would be more coming. Several people I interviewed saw this waiting without any message about how long to wait for a decision about reparations or reparations actually being given, was worse then getting to know right away if there would be no reparations at all. Commissioner in the RRC, Wendy Orr, writes that in the early hearings, like in Oudtshoorn, the commissioners asked the victims what they wanted the TRC to do for them. They later stopped doing that to prevent expectations to get too high, as the TRC did not have the recourses to give reparations, but only the power to recommend it to the President (2000:80). The lack of following up of individual victims by giving reparations is widely being criticised for victimising this group again. As the TRC got political signals that it should search for symbolic reparations as an addition for expensive individual reparations for victims, it asked the community for suggestions. Oudtshoorn asked for some sort of memorial, which could have given acknowledgement to victims for their suffering, without costing much on a highly restrained nation budget. This was not implemented, and was another lost opportunity for acknowledgement and restorative justice. The acknowledgement from the TRC was thereby not completely sanctioned by the ANC led government that did not follow up the commission's recommendations. With the TRC model, the perpetrators already got off lighter than in successful trials while without reparations the victims got little out of the process but a place to speak up.

Prospective justice?

We have seen that government programmes to promote reform (prospective justice) has had an impact in Oudtshoorn in the form of a small direct support to the poorest of the poor, affirmative action programmes, and a building out of houses, public services, infrastructure in former disadvantaged communities. Still the general picture of poverty and inequality stays intact: Even though a new coloured middle class is emerging, the majority has seen few improvements, the poorest cannot afford to access public services when provided, and unemployment is widespread. How this affects reconciliation is discussed in section 6.6.

We can thereby conclude that the TRC was successful at revealing a rough picture of gross violations of human rights that had taken place in Oudtshoorn. Still a lot of facts are unknown, suspicions are widespread, and important groups felt excluded in the process. The commission seems to have alienated the white community and thereby failed to involve this crucial group in a debate around the past. The TRC was not very successful at promoting

any form of justice in Oudtshoorn. Lack of implementation of individual reparations to victims or symbolic reparations, as memorials have not helped sweeten the sour taste of amnesty in Oudtshoorn. With continued problems in reducing poverty and inequality the attempts of creating reconciliation through reform/ prospective justice does not seem to help in the work for reconciliation in Oudtshoorn.

6.5 Community Reconciliation?

When I did fieldwork my major impression was that nothing had happened since the TRC left, as it had not put up an implementing body. Opinions vary in the community on how far reconciliation has come, the role the TRC played and what is needed to promote reconciliation. This can partly be due to different understandings of the concept, and which level of analyses the respondents were focusing on. We will therefor go through the main input from the community on the degree of reconciliation at different levels. First we discuss the degree of political reconciliation as that is the form of reconciliation usually considered nessesary for consolidation of democracy (Gloppen 2002). Then we turn to intergroup reconciliation (between the races), intragroup reconciliation (within racial groups), interpersonal reconciliation (between individuals involved in violence on opposing sides) and last, intra personal reconciliation (how people have reconciled with their personal history). I also go through the depth of the reconciliation in Oudtshoorn.

Political reconciliation

We have defined political reconciliation as a climate in which conflicting parties can resolve their differences through non-violent means, a political climate where former enemies may continue to disagree but nevertheless interact and communicate on the basis of a shared normative framework and mutual recognition. Oudtshoorn has seen a de-escalation of political violence even though violent crime is high enough for safety to be an issue at all times. At the municipality the different political parties work together, and the DA is now in charge because of support from former ANC councillors. This indicates that Oudtshoorn has moved in the direction of political reconciliation.

Cross racial reconciliation

How far has Oudtshoorn come at reconciliation across the race line? In the streets or in restaurants, you do not see people from different race groups socialising. Residential areas

are mainly kept separate between the races by class differences, even though some members of the new coloured/ black middle class is moving into residential areas formerly reserved for whites only. While some highlight a change in attitudes and the start reconciliation and even racially mixed friendships, others argue that only members of the new middle class get access to the same arenas as the whites. Some also claim that there is an uneven balance of power in these relationships:

> When you look around, you do not see social contact between the races in the streets or in restaurants. But you do not see the change, you should have seen how it used to be…Now we can walk freely in town…I have many friends from both sides of the conflict…We play golf together…Things are different now, we are more equal. Many white people came to me after the TRC and said they had no idea what it had been like…the TRC was an eye-opener for them. (retired military officer, coloured)
>
> Some people are moving into the white areas, and they are welcomed there, because the ones that can afford it is not an embarrassment to the white community (coloured, involved in the liberation movement).
>
> We are working on integrating the NG Kerk with the brown and black sister churches. In the start, reconciliation and making us understand what we had done to them was always on top of the agenda in our meetings. It is still on the agenda, but it is no longer always on the top (Afrikaner priest).

Other people interviewed objected to views of progress in reconciliation between the races:

> At the service clubs, there are now both black and white members, but they do not make best friends with each other every day. It is not just a black and white thing. The Afrikaners stay together by themselves, as does the Jews and the English (Afrikaner).

One claimed that the power-balance in cross racial relationships was an important element other respondents had overlooked:

> To me reconciliation is not about blacks and whites going off to the golf club together and being friends…it is about sharing with each other and being part of one another's lives. We have to share in all spheres of life… We must be able to do things without restrictions. It most be possible. But reconciliation is an inner thing. White people must themselves see that they have to change. We have already gone far enough to meet them (ANC/UDF leader).
>
> These signs of reconciliation is not real reconciliation. We are only accepted by the whites if we do things their way. We are only welcomed into their communities if we accept their culture, values and ways of doing things, and slide into the white middle class. The same goes for the golf club. If the owner of the place came in now, he would give us a free round. But that is not because he likes me or we are reconciled, but because power has changed, and he knows it (UDF/ANC leader, coloured).

Others also commented a change in power relations, but then as a positive thing for reconciliation:

> …things have changed some. Particularly for the blacks. They were always on the bottom, but now they are on the top. Then it is easier to open up…before, the whites knew they were on top, and then it was easy for them to be rude. They were lacking respect. For instance, they would use our first names instead of our family names. Now white people have to open up. Nobody is untouchable now. White people are down on the ground. They are as politically bankrupt now as I used to be. So we are on an even foot now. Then it is easier to open up. Time leads towards reconciliation, because it opens up people. It is also due to the commission that people are more on an equal foot now (coloured)
>
> I want to tell you a story. It is about my boss in the defence force. He was a Colonel. In 1994 when the MK and the APLA and the other military wings of the resistance movement were integrated in the army, we had a long talk. He did not want them in. They got ranks. He said it was unacceptable. When I first started in the defence force, he said: You cannot trust these people to do anything but driving a lorry, and only if there is a white man to watch. We were constantly pushed around and transferred in the start. Nobody wanted us. So I told my boss that before he did not accept me. Now you have to accept these new people (coloured army officer).

Many pointed out lack of trust between the races and indicate limited overall reconciliation:

> Coloureds and black people don't trust white people. The only way for us to address this is by giving something, to rebuild. For example by giving to the poor. We don't stand up with our opinions, because everything we say is being perceived as racist. They do not take criticism well. This leads to us not speaking up, even when we see things are going wrong (Afrikaner).
>
> I have black and coloured friends, we work together, but too much have happened here for our generation to change (former security police).

> If you listen to elderly Afrikaners they will say that there is no way in hell that coloureds, English or Blacks are to be allowed to take over (Afrikaner).
>
> A lot of (white) people are pretending like nothing (ANC/UDF).
>
> People do not understand that all are equal…There is acute racism now (ANC/UDF).
>
> I am worried (about reconciliation). There is a move, a rising mood of resentment, of anger. It can be avoided by addressing the race issue as it should have been done. Now it is so touchy. People are afraid of confrontation (ANC/UDF leader)

Some highlighted the importance of Mandela's role in promoting cross-racial reconciliation:

> Mandela was of great importance when it came to the issue of race relations. Even his enemies see him as a great leader. If he had said "to hell with whites" when he came out of prison, South Africa could have been worse than Rwanda. But he just put the focus straight on reconciliation. And people are grateful for that. There are many black leaders that the Afrikaners do not accept as good leaders. For Mbeki it is difficult to try and fill those large shoes. The leader in South Africa must have the trust of all groups, like Mandela managed to get. My daughter wrote an essay for school about Mandela when he was here. We went to see him at the airport. There were 4-5000 people there. He went into the crowd to greet the people, and made the security police quite upset. He passed my wife and kids and greeted them. My daughter put the picture in with the essay. I helped her with the essay that praised him. I told her that if she had asked me about Mr. Mandela 10 years earlier, every word would have been the exact opposite. Then I would have told her that he was like the devil himself. And she put that in at the end of the essay (Former security police, Afrikaner).

These differences of opinion indicate both different views of what reconciliation is, and how far it has come. It seems apparent that there has been a shift in power relations at the local level, at least between the whites and the blacks/ coloured people in the new emerging middle class, which are over represented in my material.

Intragroup reconciliation

Intragroup reconciliation can be studied both as how a group reconcile with its own history and degree of reconciliation with perpetrators and their own communities TRC's work seems to have been particularly painful within the white community, as this was the sub community that had perpetrators revealed in Oudtshoorn.

> The perpetrators here were closed out socially(…) It was hard to be a priest for them; can you imagine being a priest for somebody you know is a murderer? (Afrikaner priest).
>
> When you quit the police, you get isolated from your old friends. When I quit…I was deserted, particularly related to the security forces(…)I would not mind taking up contact with the friends I used to have in the police…(Former security police).
>
> Some of the named perpetrators moved. Some have quit their jobs. Many of these people were just following orders. They were fighting terrorists and communists. Others were brutal murderers (Afrikaner).
>
> Nobody knew how to handle murderers in our own congregations. Many people have just shot themselves in, old members of the security police and the defence force and so on (Afrikaner).

We have discussed above that there was a split between the people standing up for the perpetrators, and the people distancing themselves from them. The implications of the hearing for reconciliation within the coloured and black communities seems to have been smaller, as the focus of the local hearing was mainly on violations committed by other groups.

We have seen that during the struggle, policemen living in the townships were driven out in Oudtshoorn. And it was in this setting the Trojan horse ambush, (the Bongulethu 3 case), took place at the house of a black policeman. He was mentioned in the hearing as present

during torture against members of the liberation movement. He is now back living in the township. This can either be seen as a sign of reconciliation, or that the process has had very little impact.

Many coloureds pointed out that the coloured identity was very difficult because coloured people were always in the middle between black and white people (interviews). The Apartheid regime had given coloured people more priveleges than black people, and some saw coloureds that were fighting against the system as troublemakers (victim hearing transscript). Some also pointed out that coloureds in Oudtshoorn had identity problems conected to their mother-tongue being Afrikans, as they had felt shame for what the Afrikaners had stood for. One pointed out the need to take back the language as their own.

Interpersonal reconciliation between ex-combatants

In such a small community, people involved as victims or perpetrators regularly will experience some contact with each other. While one respondent argued that he had reconciled with many people that were directly involved on the opposite side, others expressed feelings of anger and hostility in spite of acting "civilised" towards people involved on opposing sides.

> …he is in the ANC. He was in the struggle on the opposite side of me, but now we have got to know each other better, and we talk to each other when we meet. We are not angry with each other anymore. I think that people that were involved in the struggle on either side understand each other better. I think white people that were not involved understand less. There is more trust between people that were directly involved, even if on opposing sides (former security police).
>
> …people that were directly involved can never put it behind. People like David Piet, Mandela and Sipo Khroma (Mayor in Oudtshoorn). I arrested Khroma. He confronted me with it here, but I did not remember it. It was in connection with a house being burnt down. But he was released. He is a strong councillor and an excellent man. We are not angry anymore. We reconciled and stretched out our hands. We will never forget, but we will forgive (Former security police).

Another leader in the liberation movement rejects this security policeman's views on reconciliation between former combatants. Some also indicate that there is no acknowledgement among people working for the security forces that they had done anything wrong, and that this is negative for reconciliation:

> You saw my meeting with (…), and he claims we are reconciled… One day he came to my house with another man form the security police. I had a visitor that I was just taking to the door, which I was not allowed to (he was banned and restricted), I ran in just in time. That man came with a machinegun to my house. They would even come into my bedroom where I was with my wife. You saw him now. He is all "I want to help you". He is still patronising. And I don't think that is the solution…there is no grudge, because revenge does not solve anything (UDF/ANC leader).
>
> Around 1995 Mandela was visiting Oudtshoorn. A policeman who had personally called me death threats over the phone, saying he would "wipe me of the earth", (I knew it was him, because I recognised his voice). He was now a security guard for Mr. Mandela when he visited Oudtshoorn. I confronted him about the irony of this, and he just said the times had changed (ANC).
>
> I think I know who tried to kill me. The man walks the streets in Oudtshoorn now…(he) came to my office asking for help once…he never asked for apologies, and pretended like nothing, but he knows that I know…There was also an attempt of driving over me with a car by a man in the security police. He is still working here. (ANC/UDF leader, target of two attempted murders).

This illustrates that even though Oudtshoorn has moved away form a pattern of political violence, and ex-combatants from opposing sides are handling unavoidable contact, the wounds of the old conflict is hard to remove. As no perpetrators grasped the opportunity for apologies, acknowledgement or truth telling offered by the TRC, it is unlikely that the TRC has had any effect on improving the relationship between ex-combatants, victims and perpetrators. Still the democratic transition and the revelations about abuses have changed the power-balance between ex-combatants, in favour of the people supporting the liberation movement.

Intrapersonal reconciliation

Many people in Oudtshoorn were struggling to deal with their own personal histories.

> Before I always got uncomfortable if I met a group of white people. I got scared and needed to get out of there. Now, if I go into a cafe in town, and there are many white people, I do not get scared anymore. I can sit down and have a drink (victim, black).
>
> I still haven't had enough time to deal with the trauma I went through…there was always the humiliation…there was the humiliation as a young boy when we were thrown out of the area I was born to a dusty area with no recreational facilities at all…There was the humiliation as a teacher that I was forced to teach with a curriculum that was against any forms of good education system…I was taken to prison. I had to take off my clothes. Once it happened together with a minister of religion. -To see him as a fool. It was humiliating. It was painful. I cannot take it when control is taken away from me, and that was the intention of the state. That was fundamental to their policy(...)I had to make many strategic decisions, because we were dealing with the lives of young people. We had to be responsible. It was expected of us, but none of us were trained for decisions like that (UDF/ANC leader)
>
> A friend of mine (…) was assaulted in Jo'burgh together with Sipho Kroma (…) (he) did not go to the TRC. He was studying to be a teacher, but he had to stop. But he is still affected by it. He just walks the streets, as a street boy (ANC).

My material is not large enough to say to what extent the TRC has had an effect on people's ability to reconcile with their own past. It is, however, clear that the trauma many people have suffered in Oudtshoorn is so deep that short term interventions as the TRC is far to little to heal the personal wounds. But TRC's work did put the existence of these wounds on the agenda, even though it did not have the capacity to follow up individual victims.

The depth of reconciliation

We have argued that Oudtshoorn has reached the level of political reconciliation, but people disagree over how far reconciliation has come in other fields. We argued in chapter 2 that reconciliation is a matter of degree. Van der Merwe (1999) measures degree of changes in attitudes, behaviour, values and identity to determine the depth of reconciliation. We will not look into changes in all these spheres in Oudtshoorn, but scratch the surface by looking into whether reconciliation has come far enough for there to be friendship across the race boarder.

> I have got some white friends, but we don't discuss political issues. There are some cross racial relationships, but they never last…my nephew married a white girl, but we never see them anymore (liberation movement, coloured).
>
> I have a white friend from the arts festival, but we also have privacy from each other. We talk about race relations with friends across the race border. They usually get embarrassed (coloured).

> My child goes to the former white only high school. The teachers are all white and always harder on the coloured children, and many will not take it and drop out. Our children are invited to parties with the white children, but they don't go, because the white children would never come to our home. So they stick to themselves (ibid)
>
> The coloured children have lower academic standards and keep dropping out. We invite them, but they choose themselves not to come (Afrikaner father)
>
> At the service clubs, there are now both black and white members, but they do not make best friends with each other every day. This is not just a black and white thing. The Afrikaners stay together as does the Jews and the English (white)
>
> (White people) are nice to other people that are well off. But there is no change in attitude towards the poor (coloured).

Still we have seen that some felt that there had been improvements in cross-racial relationship, resulting in friendships:

> When you look around, you do not see social contact between the races in the streets or in restaurants. But you do not see the change, you should have seen how it used to be…Now we can walk freely in town…I have many friends from both sides of the conflict…We play golf together…Things are different now, we are more equal (retired military officer, coloured).
>
> If I look back, something has started in Oudtshoorn where people work together. For instance at the tourist bureau and so on. When people work together, people get to know each other and become friends naturally. Another example is the golf club. About a third of the members are coloured. And those who play together become friends. I think this has a greater effect than TRC programmes. They are all "lets talk about racism". That makes white people uncomfortable.

We have seen that there is generally little contact across the race-border, but some friendships are being established across the race-line particularly in the middle class. Still these friendships are controversial and complicated by political issues. It seems like little has changed in this field for the poor majority.

6.6 Hinders for reconciliation

The post hearing community programme a.o. looked into community views on hinders for reconciliation. Special emphasis was put on the role of the family, women and youth, the religious communities and the press. Main views are presented below together with findings in my follow up interviews on the same themes. The main input lacking from the community programme was input from white people. When interviewing whites in Oudtshoorn, I found that the emphasis on how to promote reconciliation was on improving the relationships through contact between the races in a "natural", or non- forced way, as in opposition to the institutionalised attempts by the TRC. How cross-racial contact affects reconciliation in Oudtshoorn is addressed in section 6.7.

The role of women, family, youth and education

The women's group focus was mainly on development and intragroup reconciliation. It discussed the role of women by reaching out to victims and their families, and look into their needs. They wanted a monument risen for the people that died in the struggle. They pointed to a need for funding for NGO's that can keep the young people occupied and a need for education and funding for poorer peoples education.

> Many of our children have the desire to go and work, but they cannot come out there, because they are afraid that because of their Xhosa accent and Xhosa names they are immediately turned away (submission by women's group, PHCP)
>
> The women also feel that they can go to the banks and apply for loans to launch small businesses, but as soon as we go to the banks we are turned down. Money is not made available to us because we cannot explain to the banks or assure them to how we are to repay them. So the women of Bongulethu would like to mean something to their people but they cannot, because the money is out of their reach (ibid).

There are no adult education initiatives taken in Oudtshoorn, but there are several training programmes via the district municipality (interview municipality). The establishment of Oudtshoorn Economic Initiative (OEI) is an attempt to create a low threshold offer of help and advice on how to start up their own small-scale businesses. It receives about R400.000 annually from the provincial government, and has resulted in some new companies. But of the about 400 people (mostly women) seeking advice a year, many do not come back. And many people seeking help are still unable to get loans to start up despite practical help and recommendations from the OEI (interview OEI). The human rights organisation Black Sash confirmed this picture. The focus of the organisation in the region had shifted from gross human rights abuses to social issues including lack of access to capital:

> We are facing a huge problem with loan sharks. Poor people cannot get loans in the bank, and it is impossible to live of regular pensions. So a lot of people have to take up loans with loan sharks that charge a 30% interest per month. So we are working on a project about that now (Black Sash).

In an interview it was also pointed out that local black and coloured people had problems benefiting from the RDP projects in terms of getting jobs, because of lack of knowledge and capital (ANC leader).

The family group emphasised the need for the perpetrators to come forward and explain the reasons for the violations, apologise and ask forgiveness. The need for reparations was raised. They suggested a mediation rehabilitation forum to teach people their rights and a local memorial, for instance a sports stadium with names of victims. They pointed to the need of training the police to work <u>with</u> the community, and to address perpetrators in the community:

> There are people who were killers, the people that were perpetrators. They are still around, they are still working even today, some of the perpetrators. Some of them like threatening people even right now…we want those people to be retrenched (family group, PHCP).

The need to bring the perpetrators back into the community was also emphasised by the youth group.

> …also for the sake of the perpetrators we must find ways of bringing them back into the community…there was the idea of creating special occasions, even special days or special ceremonies where people who confessed for what they have done can be embraced, can be reintegrated into community (youth and education group, PHCP).
>
> While I was sitting there listening to especially the last contribution, I was just struck by in sadness, how it is possible for a white community in Oudtshoorn and I do not think that it is so unique, people can sit out there and they are so far removed from the TRC, so far removed from the other communities. And here we sit in a class room talking about ways to embrace perpetrators, looking into ways of reintegrate people and all they can worry about is, this is a sort of ANC witch hunt and I do not know what else (ibid).

> People that do not have to reach out, who should actually be bitter and angry are prepared to reach out, but people are still not listening (ibid).

This group was also focusing on education possibilities, funding of education for people that would like to go back to school and a need for tertiary education in Oudtshoorn.

> …a number of people felt that we should not just look into the individual people who suffered specific gross human rights violations, because the youth as a whole in a sense suffered under apartheid and large numbers of people suffered (youth group input PHCP).

There was also focus on possibilities of two-way street learning by connecting white and black kids, and sharing different experiences. The need to get white people involved in reconciliatory attempts was emphasised.

> We talked a lot about using the children, perhaps the parents will not be able to convince, but the children at school level, expose them to the history of Oudtshoorn which are not being thought as schools, especially the white kids (ibid)

As the local museum has closed down the exhibition put up by the TRC documenting the struggle and human rights abuses in Oudtshoorn, it is no longer contributing to spreading this history. The museum is now showing its permanent exhibition about the local ostrich industry, documenting mainly the history of the white population, despite intentions of making the other exhibition permanent. An opportunity to spread knowledge about the past abuses to up-growing generations and sections in Oudtshoorn that has turned a blind eye to such violations has thereby been lost. The reconciliation focus of this group was thereby creating opportunities for former disadvantaged communities and reaching out to both the white community and perpetrators.

I interviewed several teachers that were worried about the impact of how the school system was run during Apartheid and now, and the consequences for attempts of creating responsible and critical citizens today.

> It was humiliating as a teacher (teaching under Apartheid). We were forced to teach a curriculum against all good forms of educating. We were only to impose on people, and not teach them to be critical (teacher, ANC/UDF).
>
> Now we have democracy, but the school system have not changed. The schools were committed to giving the students discipline. I wanted to go away from the authoritarianism of the schools. I wanted a participatory democracy…it is the same hierarchy, and no interrelation between the students and the teacher. And that is one of the problems today: The kids are being trained to be a part of the system. They are only on the receiving end and they are not participating (teacher, ANC).
>
> At the high school, the management is all white. They are not visionaries, they do not look ahead. They just teach the children to reproduce knowledge, not to understand, analyse and be creative (teacher, ANC)

Some teachers also highlighted economic issues as hinders for education possibilities:

> There is a need for change. The schools are too expensive for coloureds and Blacks. We are not accepted. We are accepted only if we act as inferior and follow their standards. I have no accept for them and they have no accept for me before they take some responsibility. They cannot complain about affirmative action when they created a need for it! (teacher, ANC/UDF).
>
> School is mandatory, still many do not come. For example, there was a boy who did not do very well, and he never did his homework. When people from the school came to check on him, they found that there wasn't even a table in the house to do homework on. There is poverty here (coloured teacher).

Parents saw the high school as an arena for contact between the races, but were ambiguous about to what extent it promoted reconciliation:

> I have a child in primary school. And they have a large collective memory. It is the same for the coloured children and the black children. They will not forget in a 100 years (Afrikaner).
>
> For my generation and us that was involved in the struggle, it will never go away. But the children go to school together, to them we must explain apartheid, because they do not know what it is. They can reconcile naturally through natural contact. I do not believe in forced ways of reconciliation like the TRC. It must come naturally, like at the workplace, where we can get to know each other. (Former Security Police, Afrikaner).
>
> …they go together to school now. the high school used to be white traditionally, now 22% are from Bridgeton and Bongulethu. It has high academic standards…When they hand out awards, there are always black and coloureds that receive them. So there was a need for a new system. I have to explain to my children what apartheid was. Now the children are doing things together. That generation can change South Africa (Afrikaner).
>
> Today the schools are open for everybody. Whites do not always want their kids in mixed schools (coloured).

Some were also worried that the resistance movement had taught the children how to build down the system, to disregard laws and rules of behaviour, which makes it difficult to become law abiding citizens that are responsible of rebuilding a new system:

> So now when the boarders are being changed, and broken down, we see a behavioural crisis. They have not learned to behave responsibly. We se a huge problem with crime coming up (ANC/UDF).

People working with mental health discussed the need to put up a local trauma service with existing recourses, and to have an open door to people suffering long and short term traumas as a result of the past. They located a need for further training in dealing with politically motivated trauma. They decided to set up a group of volunteers to develop skills like these, and counselling, and conflict resolution skills. This group thus had a mainly intrapersonal focus on reconciliation.

Even though a lot of constructive suggestions had come out of the PHCP, little was implemented as there were no implementing body.[78]

The role of the religious communities

The church group at the post hearing community programme, excluding the Afrikaner Dutch reformed church that did not participate, focused on the need for the churches to come together again and lead the reconciliatory work. They discussed their possible role in identifying and bringing together victims and perpetrators in reconciliatory attempts, and locating their needs. These churches had been united working against apartheid, but as the "common enemy" vanished, the various churches had become more fragmented. They needed to bring back the co-operation, and together contact the white churches to convince them that reconciliation was also their concern. They pointed out that churches could play a

[78] This impression was confirmed in interviews with people that had been involved in putting up the programme. According to Paul Houpt (interview), that was involved from TRC's side, some health care workers may have had a project in Oudtshoorn. This was not common knowledge among the people I interviewed, many of whom were suffering from traumas related to human rights abuses, and were in key positions in Oudtshorn, and thereby should have been familiar with such a project.

role in convincing the white Christians that they were profiting from the past and have got the recourses to help the needy today.

But Dutch reformed church representatives in the community were not familiar with any attempts from the other churches to contact them after the programme to work together with them on reconciliation projects. Some priests in this church were openly hostile towards the TRC and refused to discuss it or reconciliation at all. Still a few younger priests took the efforts of the TRC seriously and wanted to work for reconciliation:

> There is a split within the Dutch reformed church here. Between the majority of priests and a few younger, progressive priests like (…). He challenges the congregation all the time. But that is the exception, not the rule (liberation movement, coloured)

At the national level, it was seen as a success when the Dutch reformed church, famous for legitimising apartheid religiously, formally apologised for apartheid after TRC's work (Botman:1999). This was very controversial at the local level in Oudtshoorn:

> Before 1990-94, there was a division within the Afrikaner community, and within the British community in South Africa. There were harsh battles within the NG Kerk (Dutch reformed church). When the NG church apologised for Apartheid, a new church was established opposing this…there was a split within the church on the issue of apologising for Apartheid. At the national level, when this was decided, there were both ministers and members of the congregation, about 50-50. The split is between what is the right thing to do as a Christian, and the majority in the congregations (priest, Dutch reformed church)

The local churches have made some reconciliatory steps too but they remain controversial:

> We had a meeting with all the Dutch reformed churches in Oudtshoorn. There are 10 of them. Then we prayed for the first time for forgiveness for apartheid. This was very controversial and finally, after a long debate, it went through. Our sister churches, for the coloured communities had a similar gathering nearby…11 people from our church went there and asked forgiveness. This has lead us closer together…We are now working to come together as one church, instead of three (ibid).
>
> A few weeks ago I was myself in a TRC meeting, and got very negative reactions…(but) the church is to play a prophetic role, it shall lead the people: It is not a democracy. But that makes it difficult in the congregation. There are many that do not want to participate in the unification process…(Afrikaner priest).
>
> The NG Kerk , with its history of legitimising apartheid will not be taken seriously if we talk too loud about reconciliation. We must show goodwill through action, and my congregation has put up a local small scale land project, giving training on how to use the land, and it is run like a kibbutz. We also hand out soup, and many people that would otherwise not have anything to eat, gets at least one meal a day because of this (leader NG Kerk).

As mentioned the Dutch reformed church were working on integrating its own church for the different races when I visited Oudtshoorn, and some progress had been made:

> In the start, reconciliation and making us understand what we had done to them was always on top of the agenda in our meetings. It is still on the agenda, but it is no longer always on the top (Afrikaner priest).

No steps have been taken by local Dutch reformed churches towards perpetrators:

> …nothing has been done officially from the church towards the perpetrators. If it should have been done? Maybe. Not to punish them, but to help them burn the sins of the past. Many are struggling with the past (Priest Dutch reformed church).

This shows that the different church communities have had problems in coming together and lead the reconciliatory work across old lines of division as suggested at the PHCP. Still the Dutch reformed church is working with integration across the race border, even though there seems to be a wide split between a few young liberal priests and the majority of priest and the Afrikaner congregations on these issues.

The role of the press

At the Post hearing community programme, problems with the local media and its ability to be a forum for debate and promote reconciliation was voiced. The media in Oudtshoorn have traditionally been owned and controlled by white people. All the newspapers in Oudtshoorn are in Afrikaans, as this is the dominant language in town, but is excluding for the Xhosa speaking population, the poorest section of the population. The local radio station has recently started to send some in Xhosa. The main paper, the Oudtshoorn Courant, has been in operation for over 100 years, but has a "non-political" profile, selling to all communities by steering away from any politically touchy themes (PHCP, interviews). But the liberation movement used to run an alternative community paper, Saamstaan, based in Oudtshoorn, but targeting the whole of Southern Cape. It was focusing on social and local political issues, targeting the black and coloured communities to raise political awareness.

> The Oudtshoorn Courant would not cover the same issues that we did. We could not even get it printed here. So we had to go all the way to Cape Town (a days travel) to print it (Saamstaan co-worker)

Editors and journalists working for the Saamstaan experienced police harassment, detentions, restrictions and some were shot by the police (former Saamstaan co-worker). It received South African Society of Journalists award for outstanding journalism in 1986. It was funded by donors that pulled out with the democratisation. Ironically, the paper that had been a voice for the voiceless, were closed down due to lack of funding because of the democratic transition. The editor of Oudtshoorn Courant is coloured, but many pointed out the lack of capacity and editorial freedom because of white owners, and the need to sell adds to the mainly white owned businesses in town. This makes it impossible to raise issues controversial in the white community (ANC/UDF leader, Saamstaan co-workers). The need for community based newspaper, like the Saamstaan, addressing social issues from a different perspective was raised by the media group and in interviews.

> Without the Saamstaan, people would not have been so politically conscious. It (Oudtshoorn Courant) did not cover the same issues as we did at the time, and it still does not. It does not cover the hardship…nobody is trying to fill the gap after the Saamstaan (Saamstaan co-worker).
>
> The local newspaper does not explain *why* things happen, just that they happen. I think there is a huge gap between the role the Oudtshoorn Courant plays and the role the Saamstaan used to play (Saamstaan co-worker)

The media group wanted a balance between negative and positive news in the media.

> These are the kind of things which people would like to see reflected in the media -things of reconstruction, things of development, of healing, of reconciliation, of bringing people together and of integration (media group, PHCP)

Little had happened in form of editorial freedom or capacity to cover these issues after the community programme. Still the Oudtshoorn Courant has changed its profile somewhat since the apartheid years. During apartheid it was commonly not seen as important enough

to put inn the names of the people that died in political violence: They are only referred to by the colour of their skin. After the hearings in George the Oudtshoorn Courant dedicated most of its next edition (21.06.1996) to the hearings, and reported on several of the cases that were heard. The names of victims were now reported, but the paper left out controversial information like details on who was named as perpetrators from Oudtshoorn. Any form of analysis and putting the violations in a political context were also left out.

A newly established local paper, Die Herring, is owned and run by white people only, and it is therefor unlikely that it has the potential of filling the gap after Saamstaan.

There were different views on the reconciliatory role of the media in the existing media environment and people formerly working with the Saamstaan. By steering away from political issues the Oudtshoorn Courant is able to sell across the race border. The editor sees the paper in a role of bridging the black/ coloured and the white communities. Still it has trouble getting adds because it is being perceived as a "coloured" newspaper as the editor is coloured (interview). Former Saamstaan workers emphasised that the media should serve as a debate forum on how to address social/political issues within the coloured and black communities, a role the Oudtshoorn Courant does not fill (interviews). One particularly mentioned that Saamstaan would have written about AIDS and been a forum for debate about how the community should deal with the problem, while the existing newspapers are ignoring the issue. The differences in opinion on how the media should work to promote reconciliation can partly be seen as an example of different focus for reconciliation: People that has been connected with the Saamstaan had a focus on intergroup reconciliation with focus on social and economic rebuilding. For cross racial reconciliation, it was seen as essential that the white community was enlightened by news from the black and coloured communities, and given a greater understanding of the hardship created by apartheid. The supporters of the a-political profile chosen by the Oudtshoorn Courant focused on possible effects on intragroup reconciliation by selling to all communities, and not highlighting conflicts.

The way things stands in Oudtshoorn now, a Saamstaan like paper has little chance of being funded at all, or being read by the white population. An a-political paper, not addressing local conflicts, has little potential for being a debate forum and increasing understanding

between different population groups. This leaves the existing media in Oudtshoorn impotent in promoting cross racial reconciliation.

Some pointed out that poor people particularly are excluded from access to the media. First the language barrier is excluding for the poorest Xhosa population. Second, there is a problem with illiteracy:

> Now the problem is who can read and write…So because of this, the media is not accessible to everybody. So there is a need for adult training and education. The radio might fill some of this gap, at leas they are trying. It is still mainly in Afrikaans and English, but they have something in Xhosa. Most of the subjects are "white", but we have to be reasonable about this, at least they are trying (coloured).

Last, the Oudtshoorn Courant is mainly dependent on people coming to the paper with stories, because it has very limited recourses to spend on investigative journalism. It is therefor likely that the threshold is higher for the poorer sections to access the media than the educated elite.

> I am worried about the press… I see little independent journalism. I see nobody who covers the underdogs. There is a need to build on what the constitution stated. But it is not happening (ANC/UDF leader, co-founder of the Saamstaan)

The media thus seems to have problems playing a reconciliatory role in Oudtshoorn. It is still controlled directly or indirectly by the white community, and fails to be a forum for debate, raise political awareness and create greater cross racial understanding. Issues particularly affecting the poorest sections in Oudtshoorn do not reach the local media. Even though most of these problems were uncovered by the TRC, nothing has been done to change it after the TRC pulled out.

Poverty and land rights

How to address poverty and the conflicts over access to land was worrying people in Oudtshoorn across the race border. Some highlighted the social and economic changes after apartheid, while most were worried because it is too slow, and government projects seem inadequate to fill the enormous needs. Many feared developments as in Zimbabwe. People were generally worried because the issues at stake are high, and there does not appear to be any easy solutions either at the national level or within the community.

> Before, we could not buy businesses in town. That was not good for our self -esteem. But now we can. As long as you got the money. Then it is easier to look people in the eye (coloured).

> The conditions in the townships are the results of neglect, neglect, and neglect. Even if there are real attempts to change the social consequences of apartheid, the needs are enormous (coloured).

> And that (electricity) is a large problem here. Things have got better, but because of unemployment it is difficult. We do not have any economic growth here. The farmers are in trouble, so the workers loose their jobs and travel to the towns (ANC leader).

> The gap is smaller between people of the same class, but there are only a few blacks and coloureds that have the money (Afrikaner).

> According to poor people, very little has changed. I think the overall health care system is better now. Education is also somewhat changed…I am amazed over poor peoples ability to forgive and their faith for a better future. There I do not think the government is addressing economic and social issues properly (Afrikaner priest).
>
> The South African land reform is going far to slow. Something has to be done. Now. People are getting impatient. After the first election the black were happy because of the new democracy, and were supporting the ANC. At the second election there was disillusion…But at the at the third or fourth election I think people will see through and demand action (Afrikaner).

Many saw the social and economic situation as a threat to reconciliation

> Reconciliation is not possible without resolving the social issues. I put my life on the line for the ANC, but now I criticise them (ANC/UDF)
>
> I think it is harder for poor people to reconcile than for others (ANC/UDF).
>
> I think it is easier to reconcile when the economy is good, so I think it is easier for privileged people. For the majority there is minimal contact with whites. And when there is, it is the relationship between the boss and the maid. For them nothing has changed, and then reconciliation is hard. But we are trying our best to manage reconciliation. But if the economy stays the same, reconciliation becomes impossible (coloured).
>
> Rich people do not see poor people: They are physically separate. Poor people are seen as a threat (Afrikaner).
>
> I am very disturbed (about reconciliation). There is power now in a new black elite. But I do not see the effect down to regular people. So there has been created a new empowered black elite, but to the disadvantage for ordinary blacks. White people still control the economy. The growth of infrastructure is important, but with no jobs, there is no money to buy for instance is a lot of goodwill among poor people, but it is disillusioning that so little is happening (Afrikaner priest).

All I interviewed wanted the land conflict resolved through lawful means. Still people seemed to recognise that far too little land was made accessible to the land reform programme as it is based on voluntary sales of land from private people. Many pointed out that the people accessing land through the national land reform needs training on how to farm it.

> Let's take Zimbabwe as an example. People here say "we earned everything ourselves". The Afrikaner is typically hard working. We have the bond back to Calvinism. We are not like the blacks, with their "African time" and their "ubuntu". But it is hard to claim that because of the Apartheid system. Blacks and coloureds were paid less, even for the same work (Afrikaner priest).
>
> I do not support the occupation of land that is going on in Zimbabwe right now. We need a peaceful solution of the distribution of land. And people need to learn how to use the land. The land itself in not enough (Black Sash)
>
> I believe that land reform is good in theory, but it is not going well in practice. Because we do not want to chase people off their farms. Peoples lives are connected to the farms. And the new farmers need help and subsidies. They need basic training. If you pay the owners when taking over the land, its like recognising that they have built their empire themselves. As if! I have been part of the monitoring process here. Suddenly white farmers do not want to sell. They do not want blacks of coloureds in their neighbourhood (ANC/UDF leader).

One was worried that landreform, by dividing the land into smaller production units might reduce overall production:

> Over all in the world, the trend is towards larger production units, because dividing the land in smaller pieces leads to less productivity. Large scale farming also gives indirect benefits to the rest of the population. These are the tensions, and I don't have the answers (Afrikaner).

This view does not take into account that larger overall production does not alone secure distribution. Successful landreform can give access to land to poor people, and reduce their food and income insecurity.

As mentioned, one of the Dutch reformed churches led by a young priest had privately bought land to give to black and coloured people, as part of a reconciliatory project. One of the ideas was that people from the congregation should help in the start to build competence in farming among the poor. Not all took this as a sign of genuine goodwill:

> I find the NG Kerk's programme patronising, patronising, patronising! In this way, the white people stays in control and the structural power stays with them, and the coloured and black communities are to stay dependent on them. We must take what is rightfully ours, but this must happen through lawful, political means. We must not get into the same situation as Zimbabwe (ANC leadership).

The social and economic improvements after the democratic transition thus seem to be inadequate for reconciliation. As blacks and coloureds tend to focus on rebuilding and increased understanding in the white community as the fundament for reconciliation, lack of delivery in this field hampers reconciliation, particularly between the majority of poor people, and the wealthy white elite.

6.7 Cross racial contact and reconciliation

We have seen that some in Oudtshoorn claimed that contact between the races for instance at the workplace would be more suited to promote reconciliation than TRC's work. This argument goes along the lines of the contact hypothesis discussed in chapter 3, suggesting an alternative or additional road to reconciliation in South Africa. We have seen that theorists argue that the cross racial contact have to include equal status, common goals, co-operation and authoritative norms from society encouraging acceptance. The question that pops up is whether this is the typical form of contact in Oudtshoorn. If it is, we might expect that the limited level of reconciliation achieved by TRC's work will be deepened by cross racial contact. This would render costly institutional attempts of reconciliation unnecessary, as contact over time will solve the problems. However, if daily contact does not work in favour of reconciliation, we risk that it can undermine the reconciliatory work initiated by the government, including TRC's work.

We have seen that the races still generally live physically apart as a result of the apartheid policy, so there is little contact between the races as neighbours. The overlap between race and class limits movement between residential areas, and is thereby hindering contact. We have seen that there were disagreement locally about to what extent the new emerging coloured/ black middle class were accepted by whites in their traditional domains, such as neighbourhoods and social clubs. While one claimed that middle class coloured people were welcomed into the white settlement areas, another claimed that only people accepting the white middle class' values and way of life would be accepted. This view suggests a non-equal relationship that according to the contact hypothesis is needed to for contact to lead to

tolerance[79]. We have also seen that most black and coloured people do not have access to these meeting places due to class differences. Class thus appears to be a hinder for cross racial contact in the first place, but also equality in that contact when it takes place.

We have seen that one of the few social meeting places where both whites and coloureds were now gathering is the golf club. This is obviously only accessible for the wealthier part of the population and exclude most of the black and coloured people that are not generally members of the middle and upper classes. A member of the emerging coloured middle class pointed out this to be a place to mingle and where he had white friends too. He pointed to this being important for getting to know, respect and understand one another. In his eyes, the TRC had played an important role as an eye-opener for the white community, and their relationship was more even now than then. Others objected to that understanding claiming that the golf club were only for "White Wannabes": Coloured people were only accepted if they accepted the values and way of life of the whites. He also claimed that white people's changed attitudes towards the coloured population were due to the power change and not because of an increased understanding of one another because of the TRC.

Some argued that reconciliation was impossible for people that had been involved in the struggle, but there was hope for the young South Africans. Contact for instance at school was seen as promising for long term reconciliation. The schools are no longer formally race divided in Oudtshoorn, but practically speaking the overlap between race, class and residential areas hinders children across the race border from going to the same schools. As the former white schools are generally a lot more expensive than the other schools, most black and coloured parents cannot afford to send their kids to formerly white schools, in spite of general opinions of higher academic levels and more recourses in these schools. The former white high school in Oudtshoorn is known for a high academic level, and repeatedly in my interviews the issue of integration here came up. Parents estimated about 20% of the students there to be coloured or black. An Afrikaner (interview) saw this as a sign of racial integration and that times were changing by it self. One of the coloured parents (interview) were not so optimistic. She worried about the high drop out percentage among these students, and claimed that the coloured children were socially isolated in school. She

[79] This reflects a larger issue in discussion in South Africa today: whether the new black and coloured middle class should stay in their communities and help rebuild them, or simply move into the former white areas and enjoy their newly won

understood this as a result of the teachers (all white) harassing the coloured children, and that the coloured kids did not visit white children's houses (even when invited), because the white children would never come visit back. One of the Afrikaner parents understood the high drop out percentage as a result of lower academic standards in the schools the non-white children had been attending. He was puzzled that the coloured children seemed to prefer to stay to themselves (interview).

These findings are disturbing because it shows that there is little contact to start with between the races, and this seems to spread on to the up-growing generation. It shows that the coloured children does not feel that they are treated equally, and that class differences are serious hinders for equal social contact, which hampers reconciliation through daily contact.

Gibson's work indicate that the workplace is the most common meeting place between the races (2001A:45-46). It is a natural meeting place with potential for developing friendships and mutual respect and understanding (given that the contact is not hierarchical, not competitive but co-operative with a common goal). This is often not the case in the South African workplaces. Apartheid provided superior education to whites, and also restricted certain jobs for them. As Oudtshoorn, was a “coloured labour preference area”, blacks were excluded from work if there were coloureds that could fill the job. Apartheid therefore effectively secured whites the top positions, the coloureds the middle position and the blacks the bottom position. The relationship at workplaces is therefore often of a hierarchical nature as a legacy of apartheid.

The policy of Affirmative Action is implemented to start undoing this: This means that former disadvantaged groups will have priority when they apply for jobs where their group are underrepresented. Whites in South Africa tends to see this as opposite racial discrimination, without acknowledging that without the apartheid system favouring the whites, there would be no need for affirmative action (ANC/UDF leader). An unintended side effect of this is that whites feels threatened by co-workers from the other races: When applying for jobs, or issues of promotion comes up, whites know they might loose out not because of lack of qualifications but because of race. Job insecurity, virtually unknown for

wealth.

white South Africans during Apartheid, is now something they have to deal with, like the rest of the population. A new higher position at the municipality of Oudtshoorn was a hot potato at the time of my stay because of the white candidate's superior qualifications and the more popular coloured candidate's potential playing out of the race-card referring to affirmative action (interview municipality).

The non-equal status to start with, and affirmative action to try to change it thereby introduces a stronger element of conflict in the work relationship, and as pointed out earlier is not a positive thing if social contact is to lead to greater understanding and tolerance between the races. Still, it is hard to se how South Africa could do without affirmative action given the incredibly unfair system of apartheid, creating a need for it.

This discussion of the contact hypothesis on the case of Oudtshoorn suggests that the little contact there is between the races is not of the kind that is most favourable to reconciliation and racial harmony. I pointed to the general overlap between both race and class and the physical separation of residential areas as a hinder for contact in the first place. We have discussed before that the press have limited ability to bridge the gap between the races and their world views, when personal contact is highly limited. I showed that social meeting places were usually the workplace, where unequal status and conflicts of interests due to affirmative action (and the need for it in the first place) were not the most favourable to promote racial harmony (reconciliation). I argued that this lack of contact or non-positive contact is spreading to the younger generation through a school system where the same components of class divide (largely overlapping with race) and physical separation of residential areas leads to schools being largely divided by race still. I argued that some members of the new coloured middleclass meet with whites in the golf club, and moved into the white residential areas, and their children attend to the former whites only high school. I showed that this contact was not uncontroversial or uncomplicated. Different people in the community viewed the power relationship in these relationships differently, which is of importance for its ability to promote reconciliation.

6.8 Summary

We have seen that Oudtshoorn was heavily affected by gross human rights violations as well as repression of economic and social rights resulting in a general overlap between race,

class, and a coloured majority because of the coloured labour preference policy. The democratic transition resulted in several national strategies to promote reconciliation that manifested itself in Oudtshoorn including social reform programmes to reduce poverty and inequality, and TRC's work focusing on gross human rights violations, seeking to promote reconciliation through truth and restorative justice. We have seen that the poverty alleviation programmes have had some results in providing public services, but as unemployment stays high, it has had limited success at uplifting the majority of the poor, but created a new black/ coloured middle class.

Although the TRC was successful at uncovering a general pattern of abuse, it only scratched the surface of these abuses and suspicions and anger are still widespread. Amnesty and thereby lack of criminal justice is deeply unpopular even though many see it as unavoidable in the transition process. Limited implementation of reparation policy by the government has partly undermined the public acknowledgement of victimisation given by the TRC and hindered restorative justice. The forensic truth presented by the TRC was very painful in the Afrikaner community that responded by withdrawing from the process and looking for flaws and excuses to disregard them. Many Afrikaners felt that the TRC did not take into account or acknowledge their self perception as a victimised group (as violations against them fell outside the TRC mandate). Little but pain was to be found in the TRC process for this group, that responded by pulling away from the TRC and the discussions about the past and how to build a new future. Although Oudtshoorn is facing enough political reconciliation for the political parties to co-operate at times at the local level, cross racial reconciliation is very limited. It appears to be easier for the emerging black/ coloured middle class to reconcile with whites, than for the poorer sections. For them reconstruction, social and economic change seems to be a precondition for cross racial reconciliation. The revelation of perpetrators have been very painful in the Afrikaner community. Many pointed out the TRC as an eye-opener also for the Afrikaners, that people seemed to think knew less about abuses than the coloured/ black communities did before TRC's work. Still there was a split between Afrikaners that distanced themselves from the perpetrators and their actions (and thereby acknowledging the human rights norm), and the conservative Afrikaners that stood up for the perpetrators. Many perpetrators left the community. While some ex-combatants claims to have contact and are reconciled with people involved on opposite sides, others claim that the conflicts are still deep, that this contact is painful, despite a civilised surface. Many still struggles with coming to terms with their own past, and even though the need to address

personal traumas have been uncovered by the TRC, little has come out of this practically in Oudtshoorn.

The PHCP was a valuable initiative to start the debate on the past and how to promote reconstruction and reconciliation after apartheid abuses. But the absence of the white community excluded dialog across the race-border and lack of implementation of local suggestions limited its effect in the local environment. We have seen that the local press have trouble filling the role as a debate forum, hindering increased knowledge and understanding across the race-line.

The continued general overlap between race and class is a hinder for reconciliation because (particularly poor) black and coloured people see improved living conditions as a precondition for reconciliation. It also hinders equal contact between the races and thereby limits the potential of this suggested non-institutional path to reconciliation.

7. CONCLUSIONS

The starting point of this essay was the problems of democratic consolidation in the new African democracies. We argued that lack of reconciliation can be a hinder for democratic consolidation in cases that has experienced gross human rights abuses under previous regimes. Some authors also claim that the majority of poor Africans want democracy to be an instrument to improve their living conditions. Lack of delivery of economic and social human rights can thus undermine belief in democracy and be a hinder for consolidation.

We questioned how we can address former gross violations of human rights after democratic transitions in ways to promote reconciliation and whether institutional means, such as the TRC, is sufficient to promote reconciliation in cases that have also experienced massive repression of economic and social rights.

We discussed six suggested roads to reconciliation after human rights abuses. Criminal justice, oblivion, truth, and restorative justice are roads focusing dealing with gross human rights violations. Prospective justice has a stronger focus on rebuilding and creating a fair future by reform after political repression. Cross-racial contact was suggested as a possible road to reconciliation in cases where race has been the main political cleavage. We used experiences with different approaches to illustrate that no strategy is superior under all circumstances. While criminal justice is the road demanded by international law after gross human rights violations, it is not always possible to achieve. Restraints on the new democratic regime, such as guarantees of amnesty after pacted transitions, fear that trials might lead to coups by powerful antidemocratic forces have often led to lack of national prosecutions. In other cases the new government does not have the economic or institutional recourses, or even commitment to human rights to go through with trials. We saw that international ad-hoc tribunals or trials in foreign countries sometimes have been put up in such cases: But these trials often have a limited effect on reconciliation in the countries where violations took place. Such trials are also highly costly, and are dependent on the getting the attention of the world community to be put up. Resent developments in international law have led to the establishment of a permanent international tribunal that can prosecute people accused for genocide, crimes against humanity and war crimes, in cases where national governments fail to do so. Although this might prevent future abuses, it is

questionable whether this court will overcome the problems faced by former ad hoc international courts regarding reconciliation.

We saw that the justice system serves several functions adding to promoting reconciliation, including prevention, rehabilitation, restitution, restatement of values, socialisation, regulation and deterrence. We argued that oblivion doesn't fill any of these, but restorative justice, uncovering the truth about former abuses and prospective justice are ways to fill some of these functions in cases where criminal justice are ruled out. Truth commissions and restorative justice shift the focus from the perpetrator to the victim and are often combined. Uncovering and acknowledging abuses have been seen as positive for reconciliation.

We then turned to the South African case, as it is often regarded a success case in democratic transition despite a history of widespread gross human rights violations, extreme inequality and widespread poverty after massive repression of human rights. Many argue that South Africa is moving towards democratic consolidation in spite of a transition form, pact, that put restraints on the choice of reconciliation strategy (how to deal with former abuses). We saw that South Africa gave up criminal justice by granting amnesty for gross human rights abuses as part of the negotiated, pacted, transition. We questioned if the TRC, as an institutional path to reconciliation was sufficient to promote reconciliation after the massive abuses of economic and social rights. South Africa is still struggling with the legacy of abuses including poverty and inequality, and a general overlap between race and class that strengthens the divide between the former conflicting groups. We saw that South Africa, by the establishment of the TRC, adapted several reconciliation strategies including truth and restorative justice to address former gross human rights violations. But the government seems to have moved away from these strategies and adapted a reconciliation strategy based on social and economic reform (prospective justice).

We questioned to what extent South Africa is reconciling after the democratic transition, and what are hinders for democratic consolidation. As there is no consensus on how to define or measure reconciliation, we distinguished between a narrow definition of political reconciliation, and a broader, multi-dimensional definition including changes in identity, values, attitudes and behaviour at different social levels. We distinguished between different social levels reconciliation can take place (national elite/mass level, community, inter and intrapersonal), and saw that the TRC wanted to promote reconciliation at all these levels.

At the national political level the reconciliatory compromises with amnesty and truth commission made the transition to democracy possible in the first place. All the major political parties now accept the new political rules, political violence has dropped dramatically and militant groups have become politically isolated. This suggests movement towards political reconciliation, the form of reconciliation considered most crucial for democratic consolidation. But the TRC's actual work seems to have had limited effect at promoting reconciliation at the political elite level as all major parties or their leadership challenged its findings. The political parties in government hampered the implementation of the TRC's recommendations on reparations and thus undermined it's work.

At the mass level, we saw that amnesty remains deeply unpopular, but reparations and sincere apologies from perpetrators had a potential of making amnesty more acceptable for the general public. The limited implementation of recommendations thus underscores this potential. Even though the TRC was fairly successful at uncovering a rough picture of former abuses by making amnesty contingent on revelations of the abuses, overall commitment to human rights remains low. There are also indications that the TRC's work has worsened cross-racial relations. Particularly white people are unconvinced they played a role in former abuses and that the abuses were morally wrong. This made us question why the group benefiting from the abuses rejected the TRC findings, and what could have been done to involve this group in reconciliatory attempts. As most research on the TRC focus on the national level, we did a community study to see if local communities could offer new insight on why the TRC had limited success at promoting cross racial reconciliation.

In Oudtshoorn, an Afrikaner dominated town that had experienced harsh oppression of all human rights and gross violations in particular, we found that the TRC process had been particularly painful within the white Afrikaner community. Although the TRC only scratched the surface of local abuses it established that they had taken place, which was not publicly acknowledged by the white population in town. The white population was split over how to deal with revealed perpetrators within their own community, and thereby sent mixed signals to the other communities about whether the Afrikaners distanced themselves from or supported the abuses. National accusations of bias in favour of the liberation movement seems to have been a convenient excuse to look away from painful revelations of gross human rights violation. This can have made it easier to avoid notions of guilt or responsibility (individually or collectively). Involved groups, as the security police and the

army, closed ranks and did not appear before the commission. They thereby gave up an opportunity both to acknowledge that violations had taken place and accept responsibility, but also give input on their version of the truth about the past conflict.

We saw that the TRC, by establishing a Post Hearing Community Programme, tried to get input in the work for reparations as well as starting a local debate on how to promote reconciliation in Oudtshoorn. But the white community felt alienated by the TRC as it didn't think that the Afrikaner self-perception as a victimised group was taken into account. This group thereby withdrew from TRC initiatives, limiting its potential of starting a cross-racial dialogue. Lack of a local implementation body has also severely limited the local impact of the programme in terms of reconciliation and development. The governments hesitation to implement reparations limited the potential effect on reconciliation in Oudtshoorn.

We also looked into how the other national reconciliation strategies affected Oudtshoorn, and whether contact as a suggested non-institutional path to reconciliation, has had the intended effect. We saw that there were improvements in terms of infrastructure and housing after RDP programmes, but unemployment and poverty remain widespread. Although a minority of blacks and coloureds have climbed into the middle class, little has changed for most of the black and coloureds. We saw that the general overlap between race and class still hinders cross-racial contact. Residential areas, schools and social meeting places remain separate as most black and coloureds can not afford access to traditional white arenas as residential areas, schools and certain social meeting places. Inequality in social status are also hinders for this contact to be positive for cross-racial reconciliation. Although some members of the new black/coloured middle class are forming friendships across the race-border, this contact remains controversial. Many pointed out that it as easier to reconcile for the people that had experienced improvements in living conditions, but for most people little have changed. This hampers the suggested non-institutional road to reconciliation, and shows that there is a continued need for initiatives working for reconciliation at the community level.

We have seen that South Africans have an instrumental view of democracy. But even though the South African Constitution is one of the most progressive in the world when it comes to recognising economic and social (and cultural) human rights, the government is struggling with delivery: Reconciliatory compromises made in the transitional pact, the international

political climate and fear of uproar in the white community has ruled out radical redistribution of land: Land that have accumulated in the hands of the white population as a direct result of apartheid human rights abuses reserving most land for this population group. Landreform could have had the potential of giving the poor majority access to means of production and have an impact on addressing poverty. But the apartheid government would not have given up power if radical redistribution was an option. South Africans fear that attempt now would lead to white uproar, renewal of violent conflict and democratic breakdown. At the local level in Oudtshoorn this has led to tensions as the current landreform programme, based on voluntary sales of land to the state for redistribution is far too limited to fill the need and have any impact on redistribution of wealth or poverty reduction. Against this background, with the main social and economic conflicts unresolved after almost 10 years of democratic rule, it seems that the TRC's work was too limited to deliver strong, long term reconciliation.

I have argued that South Africa is institutionalising democracy if we understand democracy in the minimalist way with a focus on formal civil and political rights and elections. But several writers point to the need for a minimum delivery of economic and social rights for every part of the population to be able to exercise the democratic rights. South Africa is still struggling with violent crime and widespread poverty, making reconciliation hard. Even though white South Africans had to give up exclusive political power, they still benefit from better access to the economic recourses as a result of the human rights abuses from the past. The problems in delivery of economic and social rights is threatening to undermine the consolidation of the South African democracy because people have an instrumental view of democracy: They want democracy because they hope it will lead to delivery of economic and social rights, not because it is seen as a good thing in itself, independent of performance.

This shows that reconciliation after human rights abuses, despite it being put on top of the political agenda during the democratic transition, is still difficult because the legacy of the abuses lives on. We have seen that economic and social human rights also count in consolidation of democracy: Not only can we distinguish conceptually between consolidation of minimalist and maximalist democracies: In South Africa problems of delivering economic and social rights, are hampering reconciliation, which in the long run can undermine democratic consolidation.

To what extent are these findings generalisable?

When picking South Africa as a case for this study, it was done because it is viewed as a success case in democratic transition, despite a violent history where gross human rights abuses were frequent, and the negotiated pact made prosecutions of human rights abuses impossible. Like many other countries, South Africa is also struggling with delivering economic and social human rights, despite South Africa's relatively privileged position as a middle income country. But South Africa stand out from other cases because the poverty and inequality is a result of human rights abuses, not only lack of delivery. The overlap between class and race also makes the injustice in this particularly visible. Whether a similar connection between economic/ social human rights, reconciliation and democratic consolidation is found elsewhere, is therefore an open ended empirical question.

Further research

The Oudtshoorn study shows that poverty and inequality, the result of economic and social human rights abuses are hinders for reconciliation across the overlapping race and class division. As these findings are based on an explorative qualitative study, there is a need to follow up this with quantitative material to see how generalisable these findings are in South Africa. It would also be interesting to see whether there is a connection between economic and social human rights and reconciliation in other countries, or if this is unique in the South African case, as it has experienced extreme repression in this field.

We still need to know more about the relationship between reconciliation at different social levels and how lower social levels affect national reconciliation, which are seen as the most relevant for democratic consolidation. Gloppen (2002:8) points out that the growing literature on reconciliation assumes a close relationship between reconciliation and democratisation, without making it explicit. The Oudtshoorn study indicate that lack of local level reconciliation undermines national reconciliatory attempts. But we need to investigate closer which levels and degrees of reconciliation are sufficient for democratic consolidation to take place. This work shows that economic and social human rights abuses and lack of delivery in this field in the form of poverty, can make reconciliation difficult. This creates a need to further explore the relationship between economic and social human rights, reconciliation and democratic consolidation.

APPENDIX 1

Profile on basic needs in South Africa at the end of apartheid, 1993

Nutrition

25% of children under the age of 5 suffered from stunting as a result of chronic malnutrition, i.e. 3.37 million children. Malnutrition affects physical and mental development, thus placing children at a disadvantage for the rest of their lives.

Water

Nearly 25% of South African households did not have access to piped water while only 40% actually have water laid on to their homes. Only 17,5% of all African households had access to piped water in their homes. Over 99% of white and Indian households had water laid in.

Energy

45% of all households did not have access to grid electricity. 75% of African households in rural areas are not connected to the national grid. Many households in rural areas are experiencing serious energy shortages due to the depletion of fuel wood stocks and because alternative energy sources are unaffordable.

Housing

Just under 1 million households lived in shacks in South Africa. Around 1/2 million households lived in hostels.

Sanitation

Nearly 50% of all households had flush toilets. Nearly all white and Indian households had toilets. 88% of coloured households had toilets. 34% of African had flush toilets, 41% pit latrines and 6.5 % had bucket toilets. 16% of African households had no form of toilet.

Health, life expectancy

73 years for whites, 60 years for Africans.

(Complied from the South African Living Standard and Development Survey October 1993, quoted in Deegan1999:129).

APPENDIX 2

South Africa's history and the shaping of group identity before apartheid

South Africa is a multi racial, multi ethnic society where the black people are a majority, but no ethnic groups are large enough to be a majority. It was first inhabited by nomadic hunters and gatherers (the San and Khoikhoi) and around the third century black Bantu speaking pastoral/farmers migrated in to the area. Europeans entered South Africa in 1478 when Bartholomeu Dias rounded the Cape of good hope, and in 1488 Vasco da Gama rounded the cape and found the sea route to India in 1498. By the end of the 16th century the English and Dutch were beginning to challenge the Portuguese traders, and the Cape became a regular stopover to stock up food and water, and was ruled by the Dutch East India company. The first settlers were Dutch and German farmers, and later French Huguenots fleeing prosecutions under Luis XIV. This was the start of the Boers (farmers), the Afrikaans speaking white population. Some started to migrate into the country, missing out on the new intellectual development in Europe: The French revolution and the associated ideas of liberalism and democracy.

The white population imported slaves from Asia, Madagascar and Mozambique and together with Khoisan people they became the basis for the coloured population in South Africa.

Around 1770 the first of 9 frontier wars between the treek Boers and the Xhosa (living west of the great Fish River) started in 1779.

In 1795 the Dutch power was fading, and the British invaded the Cape. The British power was based on race, and the colonial powers started using the recourses of raw materials and labour. It introduced missionaries and British settlers that were farmers and traders. This was the start of the English speaking white population that was highly urbanised, and dominated politics, trade, finance mining and manufacturing.

Early in the 1800 the difqane (forced migration) started around today's KwaZulu-Natal where a centralised militarised state was taking form and reaching its height under the Zulu king Shaka, forcing thousand of people to flee with his brutality. This was the start of the Zulu, the largest ethnic group in South Africa today.

Dissatisfaction with the British rule lead to the great treek in the 1830s: Boers migrating in larger groups inland, crossing the Orange river in search for the promised land, that was disintegrated after the difakane.

The Boers started establishing their own republics and it ended in a series of fights between the Boers and the Zulu, heightened at the battle of blood river in 1838 where 3000 Zulu were killed, and only 3 Boers were injured. The most significant Boer republics were the Transvaal and the Orange Free State. But when diamonds were discovered near Kimberly, conflicts of interests increased and Transvaal was annexed by the British. This lead to the first Anglo-Boer war, won by the Boers who established the Zuid Afrikaasche Republiek. The finding of gold lead to the growth of Johannesburg with large amounts of black workers and white business people. In fear of being colonised by the British, the ZAR formed an alliance with the Orange Free State.

This lead to another Anglo-Boer war, where the British killed 26000 people in concentration camps alone, many children. In 1902 the Boer republics became British colonies, with limited self-government from 1906, but where the Boers were marginalised as poor farmers when the mining ventures and foreign capital made them of little relevance.

After the war, the Cape Province was the only state where political rights were shared between the races, but only 15 % of the registered voters were "non-white". In 1906/7 the republics were given representative government, and only white people were eligible. In 1910 the republic of South Africa was established with Cape Town as its capital. The three British High Commission territories of what are now Lesotho, Botswana, Swaziland and Zimbabwe were excluded from the Union (Murray, Everist & Williams 1996:12-26).

APPENDIX 3

Truth Commissions

Uganda (1974-75): Commission of Official Inquiry into the Disappearances of people in Uganda since 25 January 1971. Prompted by international pressure on government to investigate disappearances. Listed 308 cases. Security forces found guilty. Commissioners were victimised and report ignored, but stands as official history.

Bolivia (1982-84): National Commission of Inquiry into Disappearances. Established by the president after change from military to democratic rule. Mandate excluded torture. 8 commissioners. Limited financial support from government. Investigated 155 cases (1967-82). Disbanded after 2 years without delivering report. Trials against former officials were investigated in mid 1980s.

Argentina (1983-84): National Commission on the Disappearances of Persons. Established by President. 13 commissioners, staff of 60. 9 months duration. Narrow focus, mandated to investigate disappearances (8960 cases) by the former military regime (1976-82) victims of torture or prolonged detention interviewed and included in report, but not defined as victims, significant violations excluded. Report Nuna Más published in 1985 and widely distributed. Names of perpetrators not made public, but leaked. Material later used for compensation and in trials against the military regime. Prosecutions were subsequently halted and pardons given.

Zimbabwe (1985): Commission of Inquiry. Investigated repression in Matabeleland where at least 1500 civilians were killed in 1983. Kept confidential. Defence Minister apologises for killings and torture. Continued demands for publication of report.

Uruguay (1985): Investigative Commission on the Situation of "Disappeared" People and Its Causes. Established by parliament. Around 9 commissioners worked for 7 months. Mandate limited to disappearances during military rule (1973-82), excluding more prevalent abuses (torture, lengthy detentions etc). Reported on 164 disappearances and evidence of security force involvement. Forwarded this to the Supreme Court, but this has not resulted in prosecution. Public, but not widely distributed report with minimal effect.

Philippines (1986-87): Presidential committee on human rights. Put up after transition to democracy to investigate state crimes during martial law. Amid continued unrest, commission resigned over killing of civilian protesters in 1987. Work unfinished, no report or prosecutions.

Uganda (1986-95): Commission of Inquiry into Violations of Human Rights, established by the President after the overthrow of Obote. Broad mandate, investigating human rights abuses by public officials (1962-86). 608 deponents. 6 commissioners and 5-10 staff, operated for 9 years with progressively deteriorating funding. Presented findings, including widespread arbitrary arrests, detention and imprisonment, recommended repeal of laws following detention without trial, conclusions and recommendations in 1994. Government accepted recommendations, and established human rights commission.

Nepal (1990-91): Commission of Inquiry to Locate the Persons Disappeared during the Pnchayet period, established by Prime Minister. During its year of operation 4 commissioners investigated 100 cases occurring between 1961 and 1990. The 1991 report was made public in 1994. Perpetrators were not named.

Chile (1990-91): National Commission on Truth and Reconciliation, established by the President after change from military to democratic regime. 8 commissioners, balanced between the parties, were tasked with investigating disappearances (3428), killings, torture resulting in death and kidnappings by both sides of the conflict during the junta (1973-1990). Commission operated for 9 months and had a staff of 60. Investigated 2920 cases in depth. The 1991 report (the Retting report) was made public, but perpetrators not named. Recommendations implemented; Reconciliation and Compensation Corporations set up. Material from the report was used to identify victims for compensation. Amnesty law barred prosecution, but the report later become basis for the Spanish extradition request for General Pinochet.

Chile (1990-96): Reconciliation and Compensation Corporation. Further investigation into abuses under the Pinochet regime (1972-90). Report published in 1996. Found further 899 cases of people who had died or disappeared. total of victims of political repression: 3197 of whom 2095 are known to have died and 1102 are officially classified as disappeared.

Chad (1991-92): Commission of Inquiry on the Crimes and Misappropriations Commanded by the Ex-president Hambré… Established by the new President to investigate killings (3900 cases), torture and arbitrary detentions committed by the former regime (1982-90). 12-16 commissioners operated for 10 months before finalising the 1992 report. Report on 40 000 killings and involvement of US, France, Iraq and Egypt in training of the military. First commission to name perpetrators (only so far to publish photos of the perpetrators) -many whom were in high offices. No purges or trials. Mainly PR exercise for the new government. Human rights abuses continue.

South Africa (1992): Commission of Inquiry into Complaints by former ANC Prisoners and Detainees, "The Skweyiya Commission". ANC investigation into allegations by former members of human rights abuses in camps outside South Africa (1979-91). ANC accepted findings, notably "staggering brutality" in camps. Against the naming or prosecution of individuals. Accused of bias and lack of due process.

Germany (1992-94): Commission of Inquiry for the assessment of History and Consequences of the SED Dictatorship in Germany was established by parliament to investigate human rights abuses in DDR between 1949 and 1989. Composed of political representatives and experts. Focus on political-historical analysis rather than investigation of individual human rights violations. Academic papers commissioned and presented at public hearings. 27 commissioners and a staff of around 20 took 3 years to complete the 15 000 page report. This academic exercise was combined with individual's right to review own Stasi files.

El Salvador (1992-93): Commission on the Truth for El Salvador was established by the UN as part of the UN moderated peace accord. Staffed and funded entirely by non-nationals. Broad mandate. 3 commissioners and 15-45 staff members. 22 000 cases of human rights abuses (disappeared, killed, tortured or kidnapped), committed by both sides between 1980-91). 32 cases were investigated in depth during the 8 months the commission operated. The 1993 report named over 40 perpetrators and made mandatory recommendations. Criticised for inadequate investigations of death squads. Shortly after publication of the report, amnesty laws was passed, but some of the named perpetrators were removed from positions. Key recommendations were implemented after international pressure.

Rwanda (1993): International Commission of Investigation on Human Rights Violations in Rwanda. Established after agreement between government and rebels in connection with cease fire to investigate abuses during civil war (1990-93). Mass graves unearthed. Official welcome by Hutu government but killings start again immediately; commission leaves the country. Brought pressure on Belgium and to lesser extent France to stop support for government.

South Africa (1993): Commission of Inquiry into certain allegations of cruelty and human rights abuses against ANC prisoners and detainees by ANC members, "The Motsuenyane Commission" investigating abuses from 1979-91 after criticism of lack of independence and due process in the Skweyiya Commission. Ran like a trial. Report finds severe abuses in camps. Perpetators were named. ANC accept report but deny systematic policy: Call for a wider truth commission in South Africa.

Sri Lanka (1994-97): Commissions of Inquiry into the Involuntary Removal or Disappearance of persons. 3 geographically distinct commissions, each with 3 commissioners and a staff of 5-20, established by President. Mandated to investigate human rights violations from 1998-94. 20 000 cases presented for the commissions during 3 years of operation. Each commission presented separate final reports. Released after international pressure. Some perpetrators were named, and several have later been prosecuted. limited reparations programme.

Haiti (1995-96): National Commission for Truth and Justice. Established by President following the restoration of Aristide by a US lead multinational force. Investigated violations committed by former regime (1991-94). 8600 cases were presented to the commission. 7 commissioners and staff of 50-100 operated for 10 months. Report was presented in 1996, and made public in 1997. List of perpetrators were included, but not released. Recommended an international tribunal to try perpetrators.

Burundi (1995-96): International Commission of Inquiry. Established by UN Security Council on request by Burundian government to report on human rights abuses occurring between 1993-95. 5 commissioners operated for 10 months before presenting their report to the UN in June 1996. (Due to a coup the release was delayed until October). International prosecution and new commission to investigate pre 1993 abuses. Renewed violence prevented further action.

South Africa (1995-2001): Truth and Reconciliation Commission. Established by Parliament. 17 Commissioners mandated to investigate gross human rights abuses of all sides of the conflict (1960-94). Staff of 300, annual budget of US$18 mill. Strong powers of investigation. Amnesty for political crimes upon full disclosure. Public, broadcasted hearings. Report naming perpetrators and more than 21 000 victims published in 1998, after 2, 5 years in operation. Recommendations on reparation policy (partly implemented) and prosecution (not implemented). Amnesty committee continued hearings. Final report halted in the legal system. Criticised by all sides but has much support also.

Ecuador (1996-97): Truth and Justice Commission established by ministry of Government and police to investigate human rights violations between 1979-96. 7 commissioners disbanded after 5 months without finishing report, due to lack of support and recourses.

Guatemala (1997-99): Commission for Historical Clarification, established by UN as part of UN moderated peace accord to investigate killings, disappearances, torture and rape committed by both sides of the conflict (1962-96). Broad mandate. Cases of 42 275 victims presented to the commission (which estimated a total of 200 000 killed or disappeared in the 34 years of armed conflict). The commission operated for 18 months, had 3 commissioners (one international and 2 national) and a staff up to 200. Restricted reporting powers, no naming of perpetrators, but documented involvement by "the highest authorities of the State".

Truth Commissions are currently underway or in the process of being established in Nigeria (1999-), Sierra Leone (2000-), East Timor, Indonesia, Bosnia a.o. (Source: Gloppen 2002:20-21 and Christie 2000:54-58)

Other Acts and Commissions dealing with Human Rights violations in South Africa

1989 The McNally Commission: Examined claims of a hit squad after allegations by former police captain Dirk Coetzee. Commission found allegations to be unfounded. Later court cases showed the allegations to be largely true.

The Commission of Inquiry Regarding the prevention of Public Violence and Intimidation (Goldstone Commission) looked into human rights abuses committed by the security forces.

The Steyn Commission followed up the work of the Goldstone commission and examined the responsibility of high-level military personnel, resulting in 23 high-ranking officers having to resign.

1990 Indemnity Act: Gave amnesty to ANC personnel in order to facilitate their return to South Africa (After initial negotiations between ANC and NP). This temporary indemnity was specifically aimed at ANC members who needed a guarantee that they would not be imprisoned when returning to South Africa during the negotiation process.

1992 The further Indemnity Act: Gave the State President sole discretion to grant amnesty to individuals who committed an act with political intent and whose release might promote negotiations and peaceful solutions. Was blocked in parliament, but was pushed through.

1995 The Promotion of National Unity and Reconciliation Act: Established to fulfil the constitutional obligation of granting amnesty. The basis for the TRC. (Van der Merwe 1999:ch.5.2a)

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