

Concepts and Principles

p INTRODUCTION

National Unity and Reconciliation

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and the legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for ubuntu but not victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past...¹

- 1 The previous chapter emphasised the importance of viewing the Commission as part of the broader national process of 'building a bridge' between a deeply divided past of "untold suffering and injustice" and a future "founded on the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all". This chapter seeks to clarify the concepts and principles underlying the Commission's work. Judge Richard Goldstone highlighted the importance of these concepts and principles thus:

On the one hand, there is the vital legal underpinning of the [Truth and Reconciliation Commission] without which such a commission could not succeed and would not exist. On the other hand, there are philosophical, religious and moral aspects without which the commission will be an empty legal vessel which would do a great deal of harm and achieve nothing²

- 2 The Commission was founded in the belief that, in order to build the "historic bridge" of which the interim Constitution speaks, one must establish as "complete a picture as possible" of the injustices committed in the past. This must be coupled with a public, official acknowledgement of the "untold suffering" which resulted from those injustices. It is to these goals that the Commission must contribute.
- 3 The task assigned to the Commission proved to be riddled with tensions. For many, truth and reconciliation seemed separated by a gulf rather than a bridge. Moreover, in the process of implementing its obligation to

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consider amnesty for perpetrators (as required by the interim Constitution), the concept of justice also came under constant scrutiny. “We’ve heard the truth. There is even talk about reconciliation. But where’s the justice?” was a common refrain.

- 4 Before explaining how the Commission dealt with the overlapping and apparently contradictory goals of truth, reconciliation and justice, it is necessary to highlight two more general sources of tension.

The public nature of the Commission

- 5 A distinctive feature of the Commission was its openness to public participation and scrutiny. This enabled it to reach out on a daily basis to large numbers of people inside and outside South Africa, and to confront them with vivid images on their television screens or on the front pages of their newspapers. People saw, for example, a former security police officer demonstrating his torture techniques. They saw weeping men and women asking for the truth about their missing loved ones. The media also helped generate public debate on central aspects of South Africa’s past and to raise the level of historical awareness. The issues that emerged as a consequence helped the nation to focus on values central to a healthy democracy: transparency, public debate, public participation and criticism.
- 6 The sword wielded by the media is, however, double-edged. The fact that much of the Commission’s work was transmitted by the media meant that public perceptions were formed by what people saw on television, heard on the radio or read in the newspapers. Thus, while the ‘soundbites’, headlines and photographs of what happened in the public domain contributed significantly to the work of the Commission, they also had the effect of making aspects of its work more vulnerable to criticism. For example, the Commission was accused of accepting untested allegations, primarily because the activities that led to its findings (investigation, research, enquiries in closed hearings and the actual decision-making process by commissioners) were less visible. Similarly, the first steps towards reconciliation, such as private encounters between victims and perpetrators or pre- and post-hearing community visits by commissioners, usually took place out of sight of the media. Although, clearly, the envisaged reconciliation could not be accomplished in the lifespan of the Commission, a number of serious initiatives were taken to promote it.

The Commission’s three sub-committees

- 7 Many people found it difficult to understand how the work of the three separately functioning subcommittees, with apparently contradictory aims, could contribute to the overall goals of promoting national unity and reconciliation.
- 8 A major source of conflict in public debate concerned the question of amnesty. As already mentioned, the decision to grant amnesty was a feature of the negotiated political settlement and became a central responsibility of the Commission. Many participants, however, saw a contradiction between the work of the Human Rights Violations Committee, which devoted its time and resources to acknowledging the painful experiences of victims of gross violations of human rights, and the work of the Amnesty Committee, which freed many of the perpetrators of these violations from prosecution (and from prison) on the basis of full disclosure.
- 9 This tension was deepened by the fact that the Amnesty Committee was given powers of implementation, while the Reparation and Rehabilitation Committee could, by and large, only make recommendations.

Perpetrators were granted immediate freedom. Victims were required to wait until Parliament had accepted or rejected the recommendations of the Commission.

p PROMOTING NATIONAL UNITY AND RECONCILIATION

- 10 The overarching task assigned to the Commission by Parliament was the promotion of national unity and reconciliation. Debates within and outside the Commission demonstrated that the interpretation of this concept was highly contested.³ While there is no simple definition of reconciliation, the following essential elements emerged.

Reconciliation is both a goal and a process

- 11 When introducing the Promotion of National Unity and Reconciliation legislation to Parliament, the Minister of Justice said:

[This is] a Bill which provides a pathway, a stepping stone, towards the historic bridge of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and commence the journey towards a future founded on the recognition of human rights, democracy and peaceful co-existence, and development opportunities for all South Africans irrespective of colour, race, class, belief or sex.

Its substance is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: ‘...for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights violations...and a legacy of hatred, fear, guilt and revenge’.

- 12 The Minister of Justice made it clear that the ‘journey’ itself must be a conciliatory one. Thus, reconciliation is both a goal and a process.

Different levels of reconciliation

- 13 The work of the Commission highlighted the many different levels at which reconciliation needs to take place. Some of these levels, and the complex links between them, are illustrated in the chapter on *Reconciliation*. They include:

Coming to terms with painful truth

- 14 In some cases, especially where the remains of loved ones were exhumed and dignified reburials were made possible, the Commission’s disclosure of truth helped people to reach ‘closure’, to make peace with what had happened. However, the reconciliation of victims with their own pain is a deeply personal, complex and unpredictable process. Knowing the complete picture of past gross human rights violations, or even the facts of each case, may not lead to reconciliation. Truth may, in fact, cause further alienation.
- 15 The Commission’s work, in particular that of the Amnesty Committee, also illustrated the difficulties faced by perpetrators (with varying degrees of responsibility for past violations) in coming to terms with their guilt and shame.

Reconciliation between victims and perpetrators

- 16 The contribution of the Commission to reconciliation between specific victims and perpetrators was necessarily limited (by its time frame, mandate and resources). In some cases, however, the Commission assisted in laying the foundation for reconciliation. Although truth does not necessarily lead to healing, it is often a first step towards reconciliation. Father Michael Lapsley, who lost both arms and an eye in a near fatal security police parcel bomb attack in Harare in 1990, told the Commission: "I need to know who to forgive in order to endeavour to do so".

Reconciliation at a community level

- 17 The effects of human rights violations were multiple, inflicting lasting damage on social relations. At a national level, the main dimension of the conflict was between the oppressed black population and the former state. However, within and between communities, conflict played itself out in various, often insidious, ways. Internal divisions occurred between the young and the old, men and women, neighbours, as well as between different ethnic and racial groups. All these aspects required attention.
- 18 In some cases, the Commission was able to assist in the process of reconciliation at the micro-level. In others, local conflicts may have been additionally complicated by the different levels of recognition and priority brought into being by the Commission itself.

Promoting national unity and reconciliation

- 19 The experiences of the Commission illustrated the particular difficulty of understanding the meaning of unity and reconciliation at a national level. They also highlighted the potentially dangerous confusion between a religious, indeed Christian, understanding of reconciliation, more typically applied to interpersonal relationships, and the more limited, political notion of reconciliation applicable to a democratic society.
- 20 Many people within and outside the Commission warned against expecting too much, too soon from the reconciliation process at a national level. They were concerned about the imposition of a notion of reconciliation - associated with contrition, confession, forgiveness and restitution – on a diverse and divided society attempting to consolidate a fragile democracy. They argued that the most the Commission could and should hope for, at least in the short term, was peaceful coexistence. Thus, a healthy democracy does not require everyone to agree or become friends. However, a culture of human rights and democracy does require respect for our common human dignity and shared citizenship, as well as the peaceful handling of unavoidable conflicts.
- 21 Others cautioned against accepting too limited a notion of reconciliation. They argued that the Commission should not underestimate the vital importance of apologies - by individuals, representatives of institutions and political leaders - coupled with forgiveness by those who had been violated. They saw such gestures as important in the public life of a nation attempting to "transcend the divisions and strife of the past...leaving a legacy of hatred, fear, guilt and revenge". In the chapter on *Reconciliation*, there are many extracts from testimonies which illustrate these different perspectives.
- 22 The following aspects of the Commission's contribution to the promotion of national unity and reconciliation need to be noted:
- a The democratic, transparent, inclusive process of the Commission and the extensive public debates surrounding its work attempted to nurture and promote the central values of open debate and a democratic culture.

- b The Commission made significant progress in establishing “as complete and reliable a picture as possible of past violations”.
 - c The Commission facilitated the official, public acknowledgement of these violations. In so doing, it sought to restore the dignity of those who had suffered.
 - d By holding accountable not only individuals, but also the state and other institutions, and by making recommendations aimed at preventing future violations, the Commission sought to help restore trust in these institutions. Such trust is necessary for the functioning of a healthy democratic system.
- 23 Reconciliation is needed, not only at an individual level, nor only between individuals, but also within and between communities and the nation as a whole. Another very important dimension of reconciliation was emphasised by an unidentified thirty-nine year old man from Bongolethu, Oudtshoorn:

What does reconciliation mean for you as a young person? Reconciliation means people forgiving each other and working together as one nation. It does not matter as to what one has done to another in the past. Well, at some stages it does matter...

What would be ideal reconciliation for you? That is that the many people who do not have education are reached. Reconciliation starts with building up these people who are uneducated. Employ those who are unemployed. Train those who are not trained. Develop those who are not developed.⁴

Reconciliation and redistribution

- 24 The broad challenge of reconciliation between those who benefited from the past and those who continue to be disadvantaged by past discrimination is central to the vision contained in the postamble to the interim Constitution.
- 25 Gross socio-economic inequalities are the visible legacy of the systematic, institutionalised denial of access to resources and development opportunities on grounds of colour, race and sex. But they are also the less tangible consequences of centuries of dehumanising devaluation of ‘non-Europeans’, ‘non-whites’ and ‘non-males’. The *Mandate* chapter explains the limited focus of the work of the Commission in this broader context.
- 26 Many years ago, Albert Luthuli, the first South African recipient of the Nobel Peace Prize, articulated a vision of South Africa as “a home for all her sons and daughters”. This concept is implicit in the interim Constitution. Thus, not only must we lay the foundation for a society in which physical needs will be met; we must also create a home for all South Africans. The road to reconciliation, therefore, means both material reconstruction and the restoration of dignity. It involves the redress of gross inequalities and the nurturing of respect for our common humanity. It entails sustainable growth and development of the spirit of *ubuntu* (see below). It implies wide-ranging structural and institutional transformation and the healing of broken human relationships. It demands guarantees that the past will not be repeated. It requires restitution and the restoration of our humanity - as individuals, as communities and as a nation.
- 27 Given the magnitude of this exercise, the Commission’s quest for truth should be viewed as a contribution to a much longer-term goal and vision. Its purpose in attempting to uncover the past had nothing to do with vengeance; it had to do, rather, with helping victims to become more visible and more valuable citizens through the public recognition and official acknowledgement of their experiences. In the words of Ms

Thenjiwe Mtintso, former chairperson of the Commission on Gender Equality and currently Deputy Secretary General of the ANC, at the opening the Commission's hearing on women in Johannesburg, 29 July 1997:

[This hearing] is the beginning of giving the voiceless a chance to speak, giving the excluded a chance to be centred and giving the powerless an opportunity to empower themselves.

- 28 In addition, by bringing the darker side of the past to the fore, those responsible for violations of human rights could also be held accountable for their actions. In the process, they were given the opportunity to acknowledge their responsibility to contribute to the creation of a new South African society.

p **TRUTH**

- 29 But what about truth – and whose truth? The complexity of this concept also emerged in the debates that took place before and during the life of the Commission, resulting in four notions of truth: factual or forensic truth; personal or narrative truth; social or 'dialogue' truth (see below) and healing and restorative truth.

Factual or forensic truth

- 30 The familiar legal or scientific notion of bringing to light factual, corroborated evidence, of obtaining accurate information through reliable (impartial, objective) procedures, featured prominently in the Commission's findings process (see chapter on *Methodology and Process*).
- 31 The Act required that the Commission "prepare a comprehensive report which sets out its activities and findings, *based on factual and objective information and evidence* collected or received by it or placed at its disposal" (emphasis added). In pursuing this factual truth, the Act required the examination of two essential areas.
- 32 The first of these related to findings on 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? In order to fulfil this aspect of its mandate, it adopted an extensive verification and corroboration policy to make sure that findings were based on accurate and factual information (see chapter on *Methodology and Process*).
- 33 The second area related to findings on the contexts, causes and patterns of violations. In this respect, the Commission was required to report on the broader patterns underlying gross violations of human rights and to explore the causes of such violations. To do this, it had to analyse, interpret and draw inferences from the information it received. In this regard, it became necessary for the Commission to adopt a social scientist's approach - making use of the information contained in its database and from a range of secondary sources. However, all truth commissions have their limitations. 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 Pinochet regime did not dispatch thousands of entirely innocent people...⁵

- 34 Applying Ignatieff's notion of reducing the number of lies, one can say that the information in the hands of the Commission made it impossible to claim, for example, 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. Thus, disinformation about the past that had been accepted as truth by some members of society lost much of its credibility.

Personal and narrative truth

- 35 At a hearing of the Commission in Port Elizabeth on 21 May 1996, Archbishop Tutu said:

This Commission is said to listen to everyone. It is therefore important that everyone should be given a chance to say his or her truth as he or she sees it...

- 36 By telling their stories, both victims and perpetrators gave meaning to the multi-layered experiences of the South African story. These personal truths were communicated to the broader public by the media. In the (South) African context, where value continues to be attached to oral tradition, the process of story telling was particularly important. Indeed, this aspect is a distinctive and unique feature of the legislation governing the Commission, setting it apart from the mandates of truth commissions elsewhere. The Act explicitly recognised the healing potential of telling stories.⁶ The stories told to the Commission were not presented as arguments or claims in a court of law. Rather, they provided unique insights into the pain of South Africa's past, often touching the hearts of all that heard them.
- 37 By providing the environment in which victims could tell their own stories in their own languages, the Commission not only helped to uncover existing facts about past abuses, but also assisted in the creation of a 'narrative truth'. In so doing, it also 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. The Commission sought, too, to capture the widest possible record of people's perceptions, stories, myths and experiences. It chose, in the words of Antjie Krog, a South African writer and poet, "the road of... restoring memory and humanity".⁷ It is what Oxford University historian, Timothy Garton Ash, sees as "the most promising" way – a way that offers "history lessons" as an alternative to political trials, uncovering what happened and identifying lessons for the future.⁸ As such, the Commission sought to recover parts of the national memory that had hitherto been officially ignored.
- 38 It is impossible to capture the detail and complexity of all of this in a report. The transcripts of the hearings, individual statements, a mountain of press clippings and video material are all part of an invaluable record which the Commission handed over to the National Archives for public access. This record will form a part of the national memory for generations yet to come. In this report, the Commission has tried, through a range of detailed 'window cases' and selections from the testimonies of many victims, to capture some part of the richness of the individual accounts heard before it.

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Social truth

- 39 While narrative truth was central to the work of the Commission, especially to the hearings of the Human Rights Violations Committee, it was in its search for social truth that the closest connection between the Commission's process and its goal was to be found.
- 40 Judge Albie Sachs, a prominent participant in the debates preceding the establishment of the Commission and now a Constitutional Court judge, made a useful distinction between what he called 'microscope truth' and 'dialogue truth'. "The first", he said, "is factual, verifiable and can be documented and proved. 'Dialogue truth', on the other hand, is *social truth, the truth of experience that is established through interaction, discussion and debate*"⁹ (emphasis added).
- 41 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. 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.
- 42 It is particularly important to emphasise that establishing the truth could not be divorced from the affirmation of the dignity of human beings. Thus, not only the actual outcome or findings of an investigation counted. 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. It was, furthermore, through dialogue and respect that a means of promoting transparency, democracy and participation in society was suggested as a basis for affirming human dignity and integrity.

Healing and restorative truth

- 43 The preceding discussion rejects the popular assumption that there are only two options to be considered when talking about truth - namely factual, objective information or subjective opinions. There is also 'healing' truth, 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. This kind of truth was central to the Commission.
- 44 The Act required that the Commission look back to the past and forward to the future. In this sense, it was required to help establish a truth that would contribute to the reparation of the damage inflicted in the past and to the prevention of the recurrence of serious abuses in the future. It was not enough simply to determine what had happened. Truth as factual, objective information cannot be divorced from the way in which this information is acquired; nor can such information be separated from the purposes it is required to serve.
- 45 It is in this context that the role of '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.

p THE RELATIONSHIP BETWEEN TRUTH AND RECONCILIATION

- 46 It was frequently suggested that the Commission's quest for more truth and less falsehood would result in deepened divisions rather than in the promotion of national unity and reconciliation. This concern must be taken seriously, although some of the mistaken assumptions underlying (much of) this criticism must be noted.
- 47 There can be little doubt that gross violations of human rights and other similar abuses during the past few decades left indelible scars on the collective South African consciousness. These scars often concealed festering wounds that needed to be opened up to allow for the cleansing and eventual healing of the body politic. This does not mean, however, that it was sufficient simply to open old wounds and then sit back and wait for the light of exposure to do the cleansing. Nor could the Commission be expected to accomplish all the healing that was required. These basic underlying principles were expressed in the submission of Dr Leslie London, at the health sector hearing in Cape Town, 18 June 1997:

The [Health and Human Rights] Project operates with the premise that the health professions and society cannot afford to ignore the past, and that the costs of this selective amnesia, which we see so much of with regard to past human rights abuses, are enormous. It is very difficult to see how any trust within the health sector and also between the health professionals and the broader community can be achieved until the truth is disclosed.

We believe that only by fully acknowledging and understanding what took place in the professions under apartheid is it possible to achieve reconciliation in the health sector. Any apologies that are made without this understanding will fail to achieve meaningful progress in moving the health sector to a human rights culture.

And while the [Truth and Reconciliation Commission] has played an important role in stimulating this process, the real challenge that faces the health sector is for health professions to accept human rights as a fundamental responsibility. Real truth and reconciliation can only come from below, from within our institutions, and should be seen as part of a larger project to rehabilitate the health sector and build a culture of human rights within it.

- 48 Many people also saw reconciliation as an activity that could take place without tears: they felt threatened by the anger of victims. It is, however, unrealistic to expect forgiveness too quickly, without providing victims with the necessary space to air their grievances and give voice to previously denied feelings. "It would not have been even remotely decent for a non-Jewish person to have suggested to Jews that they ought to become reconciled to the Germans immediately after World War II", observed a Dutch visitor to the Commission. Relationships can only be healed over time and once feelings of hurt and anger have been acknowledged. The resistance and hostility of some victims, directed at times at the Commission itself, required understanding and respect.
- 49 At the same time, many of those who had suffered gross violations of their human rights showed a remarkable magnanimity and generosity of spirit, not only through their willingness to display their pain to

the world, but also in their willingness to forgive. Such forgiveness should never be taken for granted, nor should it be confused with forgetting. The importance of respectful remembrance was clearly expressed by Mr Haroon Timol, testifying about the death in detention of Mr Ahmed Timol, at the Johannesburg hearing, 30 April 1996:

As a family what we would like to have, and I am sure many, many South Africans would like to have, is that their loved ones should never, ever be forgotten...in Ahmed's case a school in his name would be appropriate. But at the end of the day I believe that South Africans in future generations should never, ever forget those that were killed in the name of apartheid.

- 50 Many victims justifiably insisted that they were not prepared to forgive if this meant that they must 'close the book on the past', 'let bygones be bygones' or 'forget about the past and focus on the future'. Forgiveness is not about forgetting. It is about seeking to forego bitterness, renouncing resentment, moving past old hurt, and becoming a survivor rather than a passive victim.
- 51 The Commission sought to uncover the truth about past abuses. This was part of "the struggle of memory against forgetting" referred to by Milan Kundera.¹⁰ But it was, at the same time, part of the struggle to overcome the temptation to remember in a partisan, selective way; to recognise that narrow memories of past conflicts can too easily provide the basis for mobilisation towards further conflicts, as has been the case in the former Yugoslavia and elsewhere. An inclusive remembering of painful truths about the past is crucial to the creation of national unity and transcending the divisions of the past.
- 52 This means that one must guard against such simplistic platitudes as 'to forgive is to forget'. It is also crucial not to fall into the error of equating forgiveness with reconciliation. The road to reconciliation requires more than forgiveness and respectful remembrance. It is, in this respect, worth remembering the difficult history of reconciliation between Afrikaners and white English-speaking South Africans after the devastating Anglo-Boer/South African War (1899-1902). Despite coexistence and participation with English-speaking South Africans in the political system that followed the war, it took many decades to rebuild relationships and redistribute resources - a process that was additionally complicated by a range of urban/rural, class, and linguistic and other barriers. Reconciliation requires not only individual justice, but also social justice.

p AMNESTY, TRUTH AND JUSTICE

- 53 The postamble of the interim Constitution states:

In order to advance such reconciliation and reconstruction [of society], amnesty shall be granted in respect of acts, omissions and offences with political objectives and committed in the course of the conflicts of the past.¹¹

- 54 The implementation of this amnesty agreement proved to be very difficult indeed:

[The granting of amnesty] is a difficult, sensitive, perhaps even agonising, balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and the need for reparations for the

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victims of that truth; between a correction in the old and the creation of the new. It is an exercise of immense difficulty interacting in a vast network of political, emotional, ethical and logistical considerations.¹²

a First, if justice is seen merely as retribution, it becomes difficult to make the appropriate connections between amnesty and justice. While both the interim Constitution and the Commission expressed strong opposition to acts of revenge, it is necessary, nevertheless, to acknowledge that the desire for revenge is an understandable human response. Suppressed anger undermines reconciliation.

Nonetheless, the tendency to equate justice with retribution must be challenged and the concept of restorative justice considered as an alternative. This means that amnesty in return for public and full disclosure (as understood within the broader context of the Commission) suggests a restorative understanding of justice, focusing on the healing of victims and perpetrators and on communal restoration.

B Second, amnesty as an official act of pardon can all too easily be misinterpreted as ignoring responsibility and accountability. As such, amnesty can be seen to be encouraging a culture of impunity. Some victims felt that amnesty results in insufficient social repudiation and that, by refusing to punish those responsible and allowing perpetrators to walk free, it constitutes a failure to respect their suffering.

56 It is important, therefore, clearly to understand the various justifications for the concept of amnesty implemented by the Commission, with its unique focus on individual accountability. Similarly, the relationship between the Commission and the formal justice system merits attention:

The context of transition: accountable amnesty versus impunity

57 The negotiated agreement in South Africa averted the costly return to the politics of confrontation and mass mobilisation. It made the historic bridge provided for by the interim Constitution possible. It did not, however, allow for a choice between amnesty and justice in the sense of large-scale prosecutions and punishment. Indeed, Nuremberg-style tribunals were simply not a viable political option, given the balance of military and political forces that prevailed at the time.

58 The postamble of the interim Constitution thus placed an obligation on South Africa's first democratic government to make provision for the granting of amnesty, while giving it some discretion as to the circumstances in which amnesty could be granted. The choice was, essentially, between blanket amnesty and qualified amnesty.

59 Through extensive negotiations, which included broad-based public debate, the notion of a blanket amnesty for undisclosed deeds was rejected as an inadequate basis for laying the past to rest. A middle path was required, something that lay between a Nuremberg option and total amnesia. The choice, ultimately, was for amnesty with a considerable degree of accountability built into it.

60 Section 20 of the Act stipulated that amnesty could be granted on the following conditions:

- a Applicants were required to apply for amnesty for each offence committed.
- b Applications had to be made within the time frame laid down in the legislation.
- c Perpetrators were required to make full disclosure of their crimes in order to qualify for amnesty.
- d Amnesty hearings involving gross violations of human rights were to take place in public, save in exceptional circumstances.
- e Amnesty had to be granted on the basis of a set of objective criteria.

- f Amnesty could not be automatic; it would not be granted for certain heinous crimes.
 - g The name of the persons to whom amnesty had been granted, together with information relating to the crimes for which they were granted amnesty, would be published in the Government Gazette and in the report of the Commission.
 - h The amnesty provisions in the Act required applicants to declare the nature of their offences – effectively acknowledging their culpability. In cases where amnesty applications were not made or were unsuccessful, the way was left open for conventional criminal trials, where the prosecuting authority decided that there were sufficient grounds for prosecution.
- 61 Most people do not, of course, wish crimes merely to be condemned. For many people, justice means that perpetrators must be punished in proportion to the gravity of their crimes. If one accepts, however, that punishment is not a necessary prerequisite for the acknowledgement of accountability, it is possible to see that qualified amnesty does contain certain of the essential elements required by justice. Thus, individual perpetrators were identified and, where possible, the circumstances that gave rise to the gross violations of human rights they had committed were explained.
- 62 Furthermore, while successful amnesty applicants could not be punished, the impact of public acknowledgement should not be underestimated. Perpetrators were not able to take refuge in anonymity or hide behind national amnesia. In the words of Anglican Bishop David Beutge at a post-hearing follow-up workshop, in Reiger Park, 19 April 1997:

The truth always goes hand in hand with justice. We do not tell our stories only to release the dammed up tears that have waited years to be shed. It is in order that truth should be uncovered and justice seen to be done. Even though it is not the work of the [Truth and Reconciliation Commission] to pass judgement or sentence on the oppressors, it has led many perpetrators of crimes to seek amnesty. That is good for them. The [Amnesty Committee] may speak sternly and, in some cases, refuse amnesty. That rightly demonstrates that truth can be tough. The refusal to grant amnesty is a sign that the [Truth and Reconciliation Commission] is not a body setting out simply to show leniency, but, more especially, that it requires justice before there can be reconciliation. Reconciliation is not taking the least line of resistance; reconciliation is profoundly costly.

- 63 The extension of the cut-off date for amnesty applications from 5 December 1993 (when the negotiation process was completed) to 10 May 1994 (when President Mandela was officially inaugurated) was a reminder of the transitional context in which this unique, accountable amnesty process needed to be understood. The extension of the date was due largely to pressure by, on the one hand, the white right-wing (the Afrikaner Weerstandsbeweging (AWB) and Afrikaner Volksfront) which opposed the elections by violent means and, on the other, black groups such as the Pan Africanist Congress (PAC) and Azanian Peoples Liberation Army (APLA), which had continued the ‘armed struggle’ during the negotiation process. It became clear to the Commission in the course of its work that such an extension would enhance the prospects of national unity and reconciliation, because it would allow these groupings to participate in the amnesty process.

The quest for truth

- 64 The amnesty process was also a key to the achievement of another objective, namely eliciting as much truth as possible about past atrocities. The primary sources of information were the perpetrators themselves who, without the option of applying for amnesty, would probably not have told their side of the story.
- 65 For many victims, the granting of amnesty was a high price to pay for the public exposure of perpetrators. It was made even more difficult by the fact that those who applied for amnesty did not always make full disclosure; perpetrators recounted versions of events that were sometimes different. The inability to reach a clear version of truth in respect of particular incidents led to confusion and anger on the part of victims' families and members of the public.
- 66 Yet, as many commentators noted, trials would probably have contributed far less than did the amnesty process towards revealing the truth about what had happened to many victims and their loved ones.
- 67 In helping reveal details of gross human rights violations and the systems, motives and perspectives that made such violations possible, the amnesty process assisted the Commission in compiling as "complete a picture as possible of the nature, causes and extent" of past gross violations of human rights. The information acquired also helped the Commission in formulating recommendations aimed at the prevention of future human rights violations. In this sense, the work of the Commission complemented the work of the broader judicial system in the following ways.

Preventing future violations

- 68 Disclosures made during the amnesty process, together with information emerging at hearings, in victim statements and during investigations, contributed significantly to the Commission's understanding of the broad pattern of events during the thirty-four year mandate period. They also assisted the Commission in its analysis of key perpetrator groupings and institutional responsibility, and in the making of findings on the root causes of gross violations of human rights committed during the conflicts of the past. These insights provided the basis on which recommendations could be made - aimed both at helping prevent future human rights violations and complementing the necessarily narrower focus of formal trials.
- 69 A further limitation of the formal justice system emerged in relation to the need to make recommendations to help prevent future human rights abuse. A functioning and effective justice system is, of course, crucially important in this regard - reinforcing the rule of law, vindicating victims and so on. However, even a justice system functioning at its optimum level cannot provide all the answers. Prosecution and punishment are responses to abuses that have already taken place. While they may act as a deterrent, other initiatives are required to prevent abuses taking place. The Commission's recommendations on issues such as human rights training for the security forces and human rights education in schools and universities were crucial in this regard. For example, the implementation of the Commission's recommendations on the reform of the security forces may help to restore trust between the South African Police Services (SAPS) and the majority of South Africans. Such trust is essential if the security forces are to act as guarantors of human rights for all South Africans.
- 70 Thus, although the Commission did not offer retributive justice, placing the amnesty process within a broader framework is likely to contribute to formal justice in the long term. Instead of trading justice for truth, amnesty might, in the end, prove to have been a more profitable option than the stark choice between truth and trials. In societies in transition at least, truth must be viewed as an important element in restoring the rule of the law.

Constraints on the South African judicial system

- 71 Arguments against amnesty are based on the assumption that it is both preferable and possible to prosecute perpetrators. The response to the former – that it would be preferable to prosecute – has already been discussed. In a fragile, transitional context, there are strong arguments for the adoption of a truth commission rather than Nuremberg-type trials. But, even if the South African transition had occurred without any amnesty agreement, even if criminal prosecution had been politically feasible, the successful prosecution of more than a fraction of those responsible for gross violations of human rights would have been impossible in practice. The issue is not, therefore, a straight trade-off between amnesty and criminal or civil trials. What is at stake, rather, is a choice between more or less full disclosure; the option of hearing as many cases as possible against the possibility of a small number of trials revealing, at best, information only directly relevant to specific charges.¹³
- 72 The South African criminal justice system is already under severe pressure. Police have very limited capacity to investigate and arrest. Attorneys-general have limited capacity to prosecute. The courts and judges have limited capacity to convict and correctional services are limited in their capacity to accommodate prisoners. The prospects for successful prosecutions seem even gloomier when one considers the complexity of attempting to prosecute political crimes. Political crimes are committed by highly skilled operatives, trained in the art of concealing their crimes and destroying evidence. They are thus notoriously difficult to prosecute and to prove guilty beyond reasonable doubt. In the words of Chief Justice DP Mahomed:

Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof...Secrecy and authoritarianism have concealed the truth in little crevices of obscurity in our history. Records are not easily accessible; witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law.¹⁴

- 73 Trials of this nature are extremely time-consuming and expensive and require large teams of skilled and highly competent investigators. It took over eighteen months to secure a single conviction in the 'de Kock' trial.¹⁵ A specialised investigative unit, consisting of over thirty detectives and six civilian analysts, spent more than nine months investigating and preparing the indictment in the 'Malan' trial.¹⁶ The trial itself lasted a further nine months. Furthermore, since the accused in many of these trials were former state employees, the state was obliged to pay for the costs of their legal defence. In the Malan trial, these costs exceeded R12 million; and in the de Kock trial, the taxpayer had to pay more than R5 million. These figures do not include the costs of the teams of investigators and prosecutors, nor do they reflect the costs of supporting large numbers of witnesses, some of them placed in expensive witness protection programmes. Despite this massive expenditure of time and money, the former General Malan was found not guilty, although numerous allegations continue to be made against him. The costly and time-consuming Goniwe inquest also failed to answer the numerous questions concerning the death of the 'Cradock Four'. Judicial enquiries into

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politically-sensitive matters rarely satisfy the need for truth and closure. As such, they should not necessarily be seen as superior alternatives to the Commission.

Amnesty and social justice

- 74 One of the consequences of granting amnesty is that the civil liability of both the perpetrator and the employer (often the state) is extinguished. While the wish to encourage individual perpetrators to tell the truth does not, in itself, justify indemnifying the state against civil liability, state indemnification may assist in meeting the fundamental objectives of reconciliation between the people of South Africa and the reconstruction of society. Two arguments support this.
- 75 First, by indemnifying the state in this way, prolonged litigation is avoided. Such litigation is likely to lead to a preoccupation with anguish and rancour about the iniquities of the past and may thus divert the energies of the nation from the long-term objectives of national reconciliation and the reconstruction of society.¹⁷ Second, the achievement of reconciliation and the reconstruction of society demands that the limited resources of the state be deployed in a way that brings relief and hope to as many South Africans as possible. Faced with competing demands between the formidable claims of victims of gross human rights violations and their families, and the desperate need to correct massive wrongs in the crucial areas of housing, education and health care, the framers of the interim Constitution favoured the reconstruction of society.
- 76 The immunity awarded to the state does not remove the burden of responsibility for state reparations. It does, however, give the new, democratic government discretion when making difficult choices about the distribution of scarce resources between the victims of gross human rights violations (who fall within the mandate of the Commission) and those many victims who fall outside of the Commission's mandate. The Minister of Justice has said:

We have a nation of victims, and if we are unable to provide complete justice on an individual basis - and we need to try and achieve maximum justice within the framework of reconciliation - it is possible for us...to ensure that there is historical and collective justice for the people of our country. If we achieve that, if we achieve social justice and move in that direction, then those who today feel aggrieved that individual justice has not been done will at least be able to say that our society has achieved what the victims fought for during their lifetimes. And that therefore at that level, one will be able to say that justice has been done (emphases added).

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- 77 The basis for this transition towards social justice lies in the replacement of unjust, minority rule with a democratic state. The amnesty agreement and the way it was implemented were key factors in making the transition possible. It therefore makes at least an indirect contribution to social justice. By extension, it also contributes to the less visible, non-material dimensions of social justice. It will indeed, as Judge Mahomed has said:

take many years of strong commitment, sensitivity and labour to 'reconstruct our society'...developing for the benefit of the entire nation the latent human potential and resources of every person who has directly or indirectly been burdened with the heritage of the shame and the pain of our racist past.¹⁹

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- 78 Through the Committee on Reparation and Rehabilitation, however, the Commission was mandated to focus on the immediate, visible need for subsistence of many victims (suffering, for example, from the loss of a breadwinner). Although no amount of reparations could ever make up for the losses suffered by individuals, families, and communities because of gross human rights violations, the nation has an obligation at least to try to transform abject poverty into modest security.
- 79 Other fundamental human needs needed to be addressed under the banner of reparation and rehabilitation. Victims and/or their families, dependants and friends needed to understand why gross violations of human rights took place. They needed to be free from the legacy of fear that prevented their full participation in the life of the community, stifled their creativity and undermined their dignity. Victims needed to know that, in the future, they would be protected from similar gross violations of human rights.

p **UBUNTU: PROMOTING RESTORATIVE JUSTICE**

- 80 A principal task of the Commission was “restoring the human and civil dignity of victims”. The work of the Commission as a whole, together with the specific contributions of its three committees, underlined the need to restore the dignity of all South Africans. In the process, the sons and daughters of South Africa would begin to feel truly ‘at home’.
- 81 Thus, the tensions and links between amnesty, truth and justice, and the relationship between the Commission and the criminal justice system in South Africa were meant to help prepare the way for the Commission’s contribution to the restoration of civil and human dignity. This was particularly important in view of the many ways in which the previous legal order, and the socio-political system within which it operated, “traumatised the human spirit” and “trampled on the basic humanity of citizens”.²⁰ In the words of Constitutional Court Judge O’Regan:

*... Apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution.*²¹

- 82 This was the background to the constitutional commitment to “a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation”. It was a commitment that called for a respect for human life and dignity and for a revival of *ubuntu*; a commitment that included the strengthening of the restorative dimensions of justice. Restorative justice can be broadly defined as a process which:
- a seeks to redefine crime: it shifts the primary focus of crime from the breaking of laws or offences against a faceless state to a perception of crime as violations against human beings, as injury or wrong done to another person;
 - b is based on reparation: it aims at the healing and the restoration of all concerned – of victims in the first place, but also of offenders, their families and the larger community;

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- c encourages victims, offenders and the community to be directly involved in resolving conflict, with the state and legal professionals acting as facilitators;
- d supports a criminal justice system that aims at offender accountability, full participation of both the victims and offenders and making good or putting right what is wrong.²²

- 83 Restorative justice challenges South Africans to build on the humanitarian and caring ethos²³ of the South African Constitution and to emphasise the need for reparation rather than retaliation - despite growing anger and insecurity in the midst of high levels of crime in South Africa.
- 84 We are also required to look again at the restorative dimensions of various traditions in South Africa, such as the Judaeo-Christian tradition and African traditional values. Neither is monolithic in its approach; both contain strong sources of communal healing and restoration. As such, they are sources of inspiration to most South Africans.
- 85 As far as traditional African values are concerned, the fundamental importance of *ubuntu* must be highlighted. *Ubuntu*, generally translated as 'humaneness', expresses itself metaphorically in *umuntu ngumuntu ngabantu* – 'people are people through other people'. In the words of Constitutional Court Justice Makgoro: "Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation."²⁴ Constitutional Court Justice Langa has said:

*During violent conflicts and times when violent crime is rife, distraught members of society decry the loss of ubuntu. Thus, heinous crimes are the antithesis of ubuntu. Treatment that is cruel, inhuman or degrading is bereft of ubuntu.*²⁴

- 86 He goes on to observe that:

We have all been affected, in some way or other, by the 'strife, conflicts, untold suffering and injustice' of the recent past... But all this was violence on human beings by human beings. Life became cheap, almost worthless.

- 87 It is against this background, vividly illustrated by the Commission process, that "a spontaneous call has arisen among sections of the population for a return to *ubuntu*".
- 88 This call was supported by Ms Susan van der Merwe, whose husband disappeared in 1978 after allegedly being abducted and killed by an Umkhonto weSizwe (MK) unit. At the Human Rights Violation hearing in Klerksdorp, on 23 September 1996, she said:

The Tswanas have an idiom which I learned from my husband which goes 'a person is a person by other people, a person is only a person with other people'. We do have this duty to each other. The survival of our people in this country depends on our co-operation with each other. My plea to you is, help people throw their weapons away...No person's life is a waste. Every person's life is too precious.

Restorative justice: victims

- 89 One of the unique features of the Act was that it provided guiding principles on how the Commission should deal with victims. These principles constituted the essence of the Commission's commitment to restorative

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justice.²⁶ The Act required that the Commission help restore the human and civil dignity of victims “by granting them an opportunity to relate their own accounts of the violations of which they are the victim”. Through the public unburdening of their grief - which would have been impossible within the context of an adversarial search for objective and corroborative evidence - those who were violated received public recognition that they had been wronged.

- 90 Many people who witnessed the accounts of victims were confronted, for the first time, with the human face of unknown or silenced victims from the conflicts of the past. The public victim hearings vividly portrayed the fact that not only were international or domestic laws broken, not only was there a disrespect of human rights in the abstract, but the very dignity and ‘personhood’ of individual human beings were centrally violated.
- 91 At the same time, it must be remembered that, without the amnesty process, many victims would never have discovered what had happened to their loved ones. For many victims, therefore, the amnesty process itself played a role in the reparation and rehabilitation process. Their greater understanding of events helped restore dignity and dispel the lies they were told about ‘criminals’, ‘terrorists’ or ‘informers’. This challenges the popular perception that amnesty exists only for the sake of perpetrators.
- 92 The fact that the state has accepted responsibility for providing reparations to victims of gross human rights violations provides an important counterbalance to the denial of the right of victims to lay civil charges against perpetrators who were granted amnesty. At the same time, however, the limitations of both the Commission’s mandate to recommend and the state’s capacity to provide reparation measures must be recognised. The Commission itself only had the power to place before the State President and Parliament its proposals for the provision of reparations. It could not implement reparations, nor could it take the final decision as to the type of reparation measures to be implemented. This responsibility lies with government.
- 93 The plight of those who, through the legacy of apartheid, need assistance in the form of social spending (for housing, education, health care and so on) must also be remembered. The provision of reparations to the (relatively) few victims of gross human rights violations who appeared before the Commission cannot be allowed to prejudice apartheid’s many other victims. The need to provide reparations for the former cannot be allowed to constitute so great a drain on the national fiscus that insufficient resources remain for essential social upliftment and reconstruction programmes.
- 94 Beyond these considerations, it must also be acknowledged that many victims of gross human rights violations would never have had the opportunity to seek redress through civil trials, given evidentiary constraints, proscription of civil claims, lack of information about the identity of perpetrators and the costs involved in pursuing claims. Overall, victims will have received far greater benefit from the Commission’s processes than they would otherwise have done, although those few who had valid civil claims will have received less. In this sense, too, the Commission can be seen as having contributed to the promotion of restorative justice.
- 95 Recommendations on reparations are also wider in scope or more holistic than those customarily awarded as damages in successful civil claims. Such broad recommendations include the provision of symbolic reparations to victims, such as the continuing public, official acknowledgement through monuments, living memorials, days of remembrance and so on. In addition, as part of the Commission’s general commitment to reparations, some interim reparations were provided in the course of its work. For example, in cases where (through the amnesty process) the bodies of activists killed and secretly buried by the security forces

were discovered, the Commission assisted families with official and dignified reburials. These kinds of reparations emphasise the importance of placing individual reparations within a wider social and political context.

Restorative justice: perpetrators

- 96 The Commission not only condemned acts of killing, torture, abduction and severe ill treatment as violations of human rights. The concrete experiences of victims and the human impact of these violations were put before the nation. At the same time, the Commission sought to identify those responsible for such violations - seeking political accountability as well as moral responsibility.
- 97 The Act required the Commission to “promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past” by establishing, amongst other things, “the motives and perspectives of the persons responsible”. This obviously forms part of the search for as “complete a picture as possible”. This need for understanding must, however, be placed within the context of an attempt to promote restorative justice. Without seeing offender accountability as part of the quest for understanding, the uncovering of motives and perspectives can easily be misunderstood as excusing their violations.
- 98 The potential of an individualised, accountable amnesty process as a contribution to the rehabilitation of perpetrators and their reintegration into the new society should not be underestimated. Judge Mahomed has stressed that amnesty also exposed perpetrators to “opportunities to obtain relief from the burden of guilt or an anxiety they might have been living with for years”. Without this opportunity, many might remain “physically free but inhibited in their capacity to become active, full, and creative members of the new order”. Without this kind of amnesty:

both the victims and the culprits who walk on the ‘historic bridge’ described by the epilogue will hobble more than walk to the future with heavy and dragged steps delaying and impeding a rapid and enthusiastic transition to the new society at the end of the bridge.²⁷

- 99 By concentrating only on individual, or on a limited number of prominent human rights violators, as was the case in the Nuremberg and Tokyo war tribunals, many perpetrators and co-conspirators remained in obscurity. The structures of society and its most formative institutions remained unchallenged. Recognising the need for social and institutional reparations is an important part of restorative justice.
- 100 Restorative justice demands that the accountability of perpetrators be extended to making a contribution to the restoration of the well-being of their victims. Although neither the interim Constitution nor the Act provide for this, this important consideration was highlighted by the Commission. The fact that people are given their freedom without taking responsibility for some form of restitution remains a major problem with the amnesty process. Only if the emerging truth unleashes a social dynamic that includes redressing the suffering of victims will it meet the ideal of restorative justice.

p RESPONSIBILITY AND RECONCILIATION

- 101 The emergence of a responsible society, committed to the affirmation of human rights (and, therefore, to addressing the consequences of past violations), presupposes the acceptance of individual responsibility by

all those who supported the system of apartheid (or simply allowed it to continue to function) and those who did not oppose violations during the political conflicts of the past.

- 102 It is, therefore, not only the task of the members of the Security Forces to examine themselves and their deeds. It is for every member of the society they served to do so. South Africa's weapons, ammunition, uniforms, vehicles, radios and other equipment were all developed and provided by industry. South Africa's finances and banking were controlled by institutions that went so far as to provide covert credit cards for covert operations. South African chaplains prayed for 'victory' and South African schools and universities educated for war. The media carried propaganda and the enfranchised white community voted the former government back into power, time after time, with ever-increasing majorities.²⁸
- 103 This moral responsibility goes deeper than legal and political accountability. Such individual and shared moral responsibility cannot be adequately addressed by legislation or this Commission. What is required is that individuals and the community as a whole must recognise that the abdication of responsibility, the unquestioning obeying of commands (simply doing one's job), submitting to the fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all essential parts of the many-layered spiral of responsibility which makes large-scale, systematic human rights violations possible in modern states. Only this realisation can create the possibility for the emergence of something new in South African society. In short, what is required is a moral and spiritual renaissance capable of transforming moral indifference, denial, paralysing guilt and unacknowledged shame into personal and social responsibility.
- 104 At the practical level, the vexed issue of apartheid as a crime against humanity impinges perhaps more directly on moral than on legal culpability. A simple focus on the criminal culpability of isolated individuals responsible for apartheid can ignore the broader responsibilities presently under discussion. It is not enough merely to identify a few high-profile 'criminals' as those responsible for the atrocities of the past – and thus give insufficient attention to a deeper analysis of the underlying nature, cause and extent of apartheid. The essential nature of a crime against humanity, suggests Professor Denys Schreiner, does not lie in the detail or nature of the actual deeds involved in a particular system that is judged to be a crime.²⁹ Rather, it relates to the political structures which result in sections of the society being seen as less than fully human. It condemns the identified group to suffering and violence as a matter of birth, over which the individual concerned has no influence, control or escape. It excludes a section of the population from the rights afforded to others. It denies that same group participation in the selection of government and in government itself. It facilitates the promotion of extra-legal actions by the dominant group further to suppress those judged to be the 'enemy' - whether Jews, slaves or blacks. Finally, it promotes moral decline within the dominant group and the loss of a sense of what is just and fair. Briefly stated, it involves systematic racial discrimination which, by definition, constitutes the basis of apartheid.
- 105 A pertinent question is the extent to which individual South Africans can be regarded as responsible for the premises and presuppositions which gave rise to apartheid. The kindest answer consists of a reminder that history suggests that most citizens are inclined to lemming-like behaviour - thoughtless submission rather than thoughtful accountability. This is a tendency that needs to be addressed in ensuring that the future is different from the past and serves as a reminder that the most penetrating enquiry into the past involves

more than a witch-hunt. It involves, rather, laying a foundation against which the present and all future governments will be judged.

- 106 The need for political accountability by the leaders and voters of the nation, and the varying degrees of moral responsibility that should be adopted by all South Africans, have (both by design and default) not been given sufficient emphasis by the Commission. These issues must be addressed if South Africans are to seize the future with dedication and commitment.
- 107 One of the reasons for this failure of emphasis is the fact that the greater part of the Commission's focus has been on what could be regarded as the exceptional - on gross violations of human rights rather than the more mundane but nonetheless traumatising dimensions of apartheid life that affected every single black South African. The killers of Vlakplaas have horrified the nation. The stories of a chain of shallow graves across the country, containing the remains of abducted activists who were brutalised, tortured and ultimately killed, have left many South Africans deeply shocked. The media has understandably focused on these events - labelling Eugene de Kock, the Vlakplaas commander, 'Prime Evil'. The vast majority of victims who either made statements to the Commission or who appeared at public hearings of the Human Rights Violations Committee to tell their stories of suffering simply did not receive the same level of public attention. Indeed, victims of those violations of human rights that were not included in the Commission's mandate received no individual public attention at all.
- 108 This focus on the outrageous has drawn the nation's attention away from the more commonplace violations. The result is that ordinary South Africans do not see themselves as represented by those the Commission defines as perpetrators, failing to recognise the 'little perpetrator' in each one of us. To understand the source of evil is not to condone it. It is only by recognising the potential for evil in each one of us that we can take full responsibility for ensuring that such evil will never be repeated.
- 109 A second reason for the insufficient focus on moral responsibility beyond the narrow, direct responsibility of specific perpetrators of gross human rights violations was the widespread failure fully to grasp the significance of individual victims' testimony before the Commission. Each story of suffering provided a penetrating window into the past, thereby contributing to a more complete picture of gross violations of human rights in South Africa. The nation must use these stories to sharpen its moral conscience and to ensure that, never again, will it gradually atrophy to the point where personal responsibility is abdicated. The challenge is to develop public awareness, to keep the memories alive, not only of gross violations of human rights, but of everyday life under apartheid. Only in this way can South Africans ensure that they do not again become complicit in the banality that leads, step by step, to the kinds of outrageous deeds that have left many 'good' South Africans feeling that they can never be expected, even indirectly, to accept responsibility for them. In the words of President Nelson Mandela:

*All of us, as a nation that has newly found itself, share in the shame at the capacity of human beings of any race or language group to be inhumane to other human beings. We should all share in the commitment to a South Africa in which that will never happen again.*³⁰

- 110 Thus, a key pillar of the bridge between a deeply divided past of "untold suffering and injustice" and a future "founded upon the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all" is a wide acceptance of direct and indirect, individual and shared responsibility for past human rights violations.

111 In this process of bridge building, those who have benefited and are still benefiting from a range of unearned privileges under apartheid have a crucial role to play. Although this was not part of the Commission's mandate, it was recognised as a vital dimension of national reconciliation. This means that a great deal of attention must be given to an altered sense of responsibility; namely the duty or obligation of those who have benefited so much (through racially privileged education, unfair access to land, business opportunities and so on) to contribute to the present and future reconstruction of our society.³¹