

# MEMORY OF NATIONS

## Democratic Transition Guide

[ The South African Experience ]



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# TRANSFORMATION OF THE POLITICAL SYSTEM

CHRIS SAUNDERS

## INTRODUCTION

The South African political system was transformed in the early 1990s with the introduction of a new constitution and the transfer of power from the National Party (NP) to the African National Congress (ANC). This meant a transition from apartheid to democracy, and from white minority rule to majority rule. As we shall see, the transition occurred through a constitutional process and did not involve the bloody racial civil war that many had predicted. Along with the political transformation, outlined here, went one from a state that had been to some extent excluded from the world economy to one now welcomed by the international community and which sought to be an integral part of the world economy.

The entire process of transformation was extremely complex, and its history and meaning remains contested.

## THE APARTHEID SYSTEM

The South African political system that was transformed in the early 1990s was based on apartheid, the idea that racial classification mattered and determined one's political as well as other rights. In its most advanced form, apartheid was the most elaborate system of racial discrimination ever implemented anywhere. A system of racial segregation had developed over centuries, with its roots in the racism of the early settlers from Europe. Apartheid, a more comprehensive form of earlier segregation, began to be introduced by the NP government after it came to power in 1948. At its heart was a system of racial classification and racial ordering that was extended into almost all areas of life. The system began to break down in the mid-1970s and was substantially modified in 1984 with the introduction of a new constitution that provided that those classified Coloured (people of mixed descent) and Indian (people whose forbears came from India) could also participate in central government. The majority of South Africans, those classified as "Bantu" under apartheid, remained excluded from Parliament, which under the Westminster system inherited from Britain could pass whatever legislation it wished.

Black Africans had formed a South African Native National Congress in 1912 to try to win acceptance as citizens of the country but their representations over decades had no effect and instead they progressively lost what limited rights they had possessed when the Union of South Africa was formed in 1910. In the 1950s, responding to the decolonization of tropical Africa, and to try to justify denying black Africans political rights in most of South Africa, the Minister of Native Affairs, Hendrik Verwoerd, who became Prime Minister in 1958, developed the idea that black Africans should be given such rights in small areas of the country. Millions were forcibly resettled in these areas, which became known as the Bantustans. By the late 1980s, four of these had been led by the South African government to self-government and nominal "independence": the Transkei,

Bophuthatswana, Ciskei and Venda. Despite some modifications to apartheid, as the 1990s began, the pillars of apartheid remained in place: the Population Registration Act of 1950, providing for a system of racial classification; the Group Areas Act of 1950, which required residential segregation in urban areas (though it was no longer implemented with any rigour); and the Land Act of 1913, which divided South Africa between areas in which black Africans could own land and the vast majority of the country, in which they could not. As protest against apartheid mounted, its repressive nature became ever more apparent, and the 1980s was its most repressive phase, involving military occupation of townships along with mass detentions and assassinations during successive states of emergency. Yet at the same time a few skillful anti-apartheid judges were able to interpret some apartheid legislation in the interests of human rights.

Throughout the apartheid period, the NP dominated the whites-only political system. In the early 1980s there was a break-away to the right, with the formation of the Conservative Party (CP), which rejected any watering-down of strict apartheid. On the other end of the parliamentary political spectrum, the small Progressive Federal Party was critical of many aspects of apartheid and called for reform. It grew in strength as apartheid came under pressure and was transformed into the Democratic Party (DP) in 1989. In the general election among whites held in September that year, the NP lost support to both the CP and the DP. Though from 1984 there was increasing violence and a break-down of order in some parts of the country, the government retained the support of the security forces and poured vast resources into the police and the army. As the decade of the 1980s ended it was difficult to see how the government could be forced to give up power, for it was not seriously challenged by the armed struggle being waged against it by the exiled ANC.

Opposition to apartheid had taken new forms after the massacre of non-violent protestors at Sharpeville in 1960. Leading members of the ANC and the South African Communist Party (SACP) formed Umkhonto we Sizwe (known as MK; Spear of the Nation) in 1961 to wage an armed struggle, but after a campaign of sabotage the MK leadership was arrested, and Nelson Mandela and others were imprisoned on Robben Island. The ANC's struggle against apartheid was then led from exile, as was one by the rival Pan Africanist Congress. The ANC's close links to the SACP meant it long had difficulty winning support in the West, but by the late 1980s, with the winding down of the global Cold War, it had received significant recognition as the likely successor government in the West as well as in the countries of the so-called Eastern Bloc.

## THE BEGININGS OF THE PROCESS OF TRANSFORMATION

It is not easy to say when the process of transformation began. The harsh suppression of the Soweto Uprising of 1976, which spread from Johannesburg to other major centres, brought new

international pressures for change, and in its aftermath the exiled ANC's armed struggle grew in significance, while the NP government began to introduce reforms, including the recognition of black African trade unions and the ending of the system of passes that restricted black African movement. A group within the NP that rejected these reforms broke away to form the far-right Conservative Party. At the same time, resistance to apartheid grew, in the non-violent form of the United Democratic Front, formed in 1983, and then the countrywide Township Revolt that began in 1984. The declaration of a state of emergency brought new international condemnation of apartheid. Some argue, however, that the financial sanctions imposed on South Africa in 1985 by international banks was the most important tipping point. Though they produced a major economic crisis, President P.W. Botha remained unwilling to jettison the major pillars of apartheid or to release Nelson Mandela, now a global icon as South Africa's leading political prisoner, unconditionally. As the 1980s ended, international pressure was building for further sanctions. But the settlement reached in 1988 in the major conflict in southern Angola, providing for the process to begin leading to the independence of South West Africa/Namibia, weakened MK by removing its military bases from Angola, and the Soviet Union now made clear to the ANC that it no longer supported its armed struggle and urged it to negotiate a settlement with the ruling white minority. Oliver Tambo, the President of the ANC, then won the approval of the Organisation of African Unity in August 1989 for a declaration, issued at Harare, Zimbabwe, setting out the conditions for negotiations with the South African regime.

## **REACTIONS TO A CHANGING SITUATION**

1989 was a key year in the process of transformation. After President Botha suffered a stroke, F.W. de Klerk emerged as the new leader of the NP, taking over as President in September, a month after the Harare Declaration. De Klerk almost immediately allowed a major march in Cape Town, led by a leading anti-apartheid figure, Archbishop Desmond Tutu. Then in October De Klerk allowed the release of all the remaining ANC leaders from jail except Mandela, who by then had been allowed a measure of freedom to consult with colleagues on the way forward. A series of talks had been held between leading members of the ANC in exile and white South Africans, and in September a first meeting, held in Switzerland, took place between two ANC leaders and South African government officials. The various informal "talks about talks" helped break down stereotypical views of each other and laid the foundation for formal negotiations by helping to promote understanding between the parties of how a negotiated settlement could be reached. A necessary preliminary to negotiations was liberalisation of the political scene by unbanning the organisations that were prohibited, releasing political prisoners, and allowing the return of exiles, to enable them to participate in the making of the new order. The key breakthrough came after the collapse of the communist regimes in Eastern Europe in late 1989. Influenced by that, and realising that it was in his interests to try to retain control of the process, De Klerk announced in February 1990 that the ANC and other organisations would be unbanned, and Mandela released unconditionally. There then began a process leading to the formal multi-party talks.

Nineteen parties and organisations participated in what was called Convention for a Democratic South Africa (CODESA), held at the World Trade Centre outside Johannesburg, in December 1991.

## **ESTABLISHING THE NEW SYSTEM**

Initially, after Mandela's release, the ANC refused to say that it would end the armed struggle, and it continued to accuse the government of using violence against it, but an agreement that both sides would work for the elimination of violence enabled a series of bilateral talks to begin. At one of these talks, in August 1990, the ANC agreed to suspend its armed struggle, after which, De Klerk lifted the five-year state of emergency. These steps helped make it possible for CODESA to begin. There, De Klerk berated Mandela for not having disbanded MK, to which Mandela replied by accusing the President of using the security forces to destabilise the ANC. Though the multi-party talks ended in November 1993, with an agreement on a new interim constitution for the country, the process to achieve this was by no means straight-forward. In May 1992, the talks broke down, and only a series of compromises enabled them to resume. One of these was the acceptance, by both the government and the ANC, of a Government of National Unity for a five-year period.

On 10 April 1993 Chris Hani, MK chief of staff and Secretary General of the SACP, was assassinated. Two right-wingers were speedily arrested, and Mandela's leadership prevented a descent into chaos; he called for the negotiation process to be speeded up. On 25 June, a group of armed right-wingers broke into the World Trade Centre where the multi-party negotiations were taking place. They were persuaded to retreat, and their intervention led the negotiators to decide to agree to a date for the first democratic elections, April 1994. An interim constitution would come into effect to provide for that election, and the new Parliament, then elected, would also be a Constitutional Assembly tasked to draw up a final constitution within two years. The final constitution had to be in line with a set of Constitutional Principles enumerated in the interim constitution. These proposals went from the unelected multi-party talks to the existing Parliament, which accepted them, providing for constitutional continuity. After the ANC won 62 % of the votes in the April 1994 election, Mandela was sworn in as the first president of a democratic South Africa on 10 May 1994.

In the process of negotiation the NP, representing the white minority, had to abandon its ideas for the protection of group rights. Its hope now was that the protection of individual rights and the provisions for nine provinces, instead of the existing four, might provide a measure of protection for minorities. The Bantustans were incorporated back into South Africa. Though De Klerk told his supporters that he had aimed for, and achieved, a sharing of power; in fact that was only on a temporary basis, with one of the compromises reluctantly accepted by the ANC being a Government of National Unity (GNU) for five years. De Klerk also suggested that what was happening was the extension of democracy, from one for whites, coloureds and Indians, to all South Africans, but that too was highly misleading, for the reality was that there was a transition to a dramatically different political and constitutional order, one based on liberal democratic principles. The whole process gained legitimacy by the fact that

the final constitution was drawn up by a democratically-elected body, which received over two million submissions from members of the public during its drafting.

## THE LEGAL AND POLITICAL NATURE OF THE NEW SYSTEM

Besides adopting the idea of the separation of powers, with an independent judiciary at the heart of the new system, both the interim and final constitutions included a justiciable bill of fundamental rights providing, for the first time in the country's history, that all were equal in law, and including safeguards for individual liberty and checks and balances on the abuse of executive power. The final constitution, unlike the interim one, not only enumerated civil and political rights, but also included a set of social and economic rights, such as rights to housing, education, food and water, and stated that the state should, within available resources, work for the progressive realisation of these rights. The Bill of Rights could only be amended by a vote of two-thirds of the National Assembly. New institutions were set up in chapter 9 of the constitution to help monitor the way the constitution was to operate. Of fundamental importance, in the new constitutional order, Parliament was now no longer supreme. Instead the constitution itself was the highest law, and a Constitutional Court of eleven justices was established to adjudicate on whether the legislature was complying with the constitution. The first draft of the final constitution was not accepted by the Constitutional Court and it had to be revised by the Constitutional Assembly before Mandela signed it into law in December 1996. It took effect in February 1997.

With the NP winning 20% of the vote in the 1994 election, De Klerk became one of the new Deputy Presidents but soon found that he and his party had little power in the GNU, and that the ANC was effectively in control. In 1996 De Klerk took the NP out of the GNU, and not long after the NP disappeared from the political scene. Under Mandela the other Deputy President, Thabo Mbeki, was responsible for much of the day-to-day running of the country, and in 1999 Mbeki succeeded Mandela as President of the Republic, for Mandela had made it clear from the time he was elected that he would only serve one five-year term. The ANC, which still projects itself as the party of the liberation movement that brought freedom to South Africa, remains in power to this day.

## LESSONS LEARNT

- South Africa was fortunate to have two great leaders steer the transformation process. De Klerk showed great courage

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in taking the decisive steps to make the transformation possible, knowing many of his own supporters and many in the security forces were not in favour of it. He was able to hold the NP together as it underwent a sea-change in policy. Mandela emerged from jail a man of peace who skilfully projected himself as a statesman of integrity and one who championed reconciliation. As the founding commander of MK and because of his own personal sacrifices, he was able to take the majority of his supporters with him as he engaged in compromises with the apartheid rulers. A remarkable group of other leaders also played important roles in the process. A personal friendship that developed between the two chief negotiators, Cyril Ramaphosa for the ANC and Roelf Meyer for the NP, was important in ensuring that the negotiations finally succeeded.

- The two major players, the NP and the ANC, both recognised that there had to be compromises. The transformation began in a situation of stalemate, which made the conflict “ripe for resolution”: the NP government was under immense and increasing internal and international pressure, while the ANC did not possess the means to overthrow the government and come to power. So both accepted that they could not get what they ideally wanted: in the case of the NP, the continuation of white power; in that of the ANC, a transition to unfettered majority rule. The two major parties also had to try to bring other lesser players on board, to achieve as much legitimacy for the new system as possible. Early in the process they agreed that it should be “home-grown” and not initiated or overseen by any international body, though the mission the UN sent to South Africa in 1992 did help bring the parties together again after the negotiation process had broken down.
- Every such transformation is unique and this one had special characteristics deriving from its particular historical context. The transformation was made possible by the fact that increasing internal pressures on apartheid happened to coincide with the winding down, and then the end, of the Cold War. The fear by Western countries that the ANC might come to power under the influence of the SACP and that South Africa might become a socialist state dissipated, and in the new post-Cold War climate the ANC, which had always been a broad church ideologically, was quick to buy into the so-called Washington Consensus and neo-liberal economics.
- Though the political scene was transformed by the mid-1990s, the economic order remained very similar. This, and the elite nature of the transition, helps to explain why, twenty-five years later, South Africa, though now a very different country, is in some ways at least as unequal a country as it was before the end of apartheid.

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[www.anc.org.za](http://www.anc.org.za)

[africanactivist.msu.edu/](http://africanactivist.msu.edu/)

# DISMANTLING OF THE STATE SECURITY APPARATUS

GUY LAMB

## INTRODUCTION

In 1948 the National Party became the ruling party in South Africa. Historians generally regard this political development as the official commencement of the apartheid period, which was to herald the implementation of even more far-reaching racially discriminatory policies and legislation aimed at the comprehensive disenfranchisement and regulation of South Africa's black population. Throughout the apartheid period (1948–1993), opposition and violent resistance to government, principally within black communities, was typically met with an aggressive response from the security forces, especially the South African Police (SAP). From the mid-1980s the South African Defence Force (SADF) was deployed internally in response to an escalation in unrest and violent protests, and regularly used lethal force in this regard.

From the 1960s dynamics within a number of states in the Southern African region became increasingly threatening towards the South African government, particularly in Rhodesia (now Zimbabwe) and South West Africa (SWA) (now Namibia), which was occupied by South Africa at the time. In both territories liberation movements had initiated armed insurgency against the white minority governments, with these liberation movements being sympathetic to the plight of the African National Congress (ANC) and the Pan Africanist Congress (PAC) in South Africa. Southern Africa became an even more unwelcoming place for the apartheid government from the mid 1970s with Angola and Mozambique acquiring independence and subsequently being led by pro-communist governments. In response, the SADF became involved in various regional armed conflicts, especially in Namibia and Angola.

Such responses by the apartheid government were informed by a security-centred form of statecraft widely referred to as “Total Strategy”. This strategy was based on an ideology that a “total [communist] onslaught” was directed against the apartheid state from both inside and outside of the country. Total Strategy entailed the de facto centralisation of high-level decision-making on domestic and foreign policy within the State Security Council (SSC), which was dominated by the security services, particularly the military. A key foreign policy strategy was to use the security forces to destabilise states in Southern Africa that were perceived to be hostile towards the South African government and/or harboured ANC and PAC insurgents.<sup>1</sup>

## POLICE WORK UNDER APARTHEID

A central feature of apartheid was the methodical criminalisation of the movement of black people who were required to reside in specific (principally rural) areas and could only be present in urban and “Europeans (whites) only” areas if they had an official permit (passbook). SAP members were active in upholding such legislated racial segregation and arrested those black people who

failed to produce such a permit on demand. In fact, considerably more time was taken up with the enforcement of “petty” apartheid criminal codes than was devoted to the prevention and combating of more serious forms of crime.<sup>2</sup> Police also harassed and imprisoned numerous leaders of anti-government organisations. The SAP also became intricately involved in the forced removals of black populations from land that had been designated for exclusive use by whites, or from areas that had been earmarked to be buffer zones between white and black residential areas.<sup>3</sup>

Paradoxically, on average, close to half of all the SAP members were black, the majority of which occupied lower ranks of the policing organisation. This was largely due to cost considerations, as black police personnel were paid lower wages than whites. Black South Africans enrolled in the SAP largely due to limited stable employment opportunities, and the relatively better salaries offered by the SAP compared to other government institutions.<sup>4</sup>

There was a distinct difference with respect to the manner in which the SAP policed “ordinary” crime in white residential areas as compared to black townships, with patrolling and responses to calls for assistance being significantly more subdued in the latter. The SAP, which displayed distinct othering towards black populations, surmised that a minimalist approach to policing “ordinary” crime in black townships was appropriate as the SAP's enforcement of petty apartheid laws would mostly keep crime contained within townships.<sup>5</sup> When necessary, the austere and indirect policing in townships was supplemented with mass crackdowns and curfews by both the police and the military in an attempt to clear-out the more deviant and undesirable elements from these communities through sudden and concentrated enforcements of laws and the mass arrests of suspects.<sup>6</sup>

From the 1980s the SAP also made use of “special constables” who were inexperienced, poorly paid black recruits often drawn from communities with strong support for loyalist vigilante groups, such as Inkatha. They were enrolled in a six-week crash course in basic policing and were then armed with shotguns, batons and *sjamboks* (a type of whip). These special constables were largely unsupervised and often operated with impunity.

1 Gavin Cawthra, *Brutal Force: The Apartheid War Machine*. London: International Defence & Aid Fund for Southern Africa, 1986; Rob Davies, and Dan O'Meara, “Total Strategy in Southern Africa: An Analysis of South African Regional Policy Since 1978”, *Journal of Southern African Studies*, 1985, (11), 2, 183–211; Kenneth W. Grundy, *The Militarization of South African Politics*, Oxford: Oxford University Press, 1988.

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4 Andrew Prior, *op cit*, 1989.

5 Gavin Cawthra, *Policing in South Africa. The SAP and the Transformation From Apartheid*. London: Zed Books, 1993.

6 John Brewer, *op cit*, 1994; Clive Glaser, “Whistles and Sjamboks: Crime and Policing in Soweto, 1960–1976”, *South African Historical Journal*, 2005 (52), 1, 119–139.

They were also notorious for their brutality, ineptitude, partiality and for abusing their mandate and service firearms to settle personal disputes.<sup>7</sup>

A further SAP strategy in relation to policing black communities was to provide financial and material support to loyalist groups that were predisposed to undermining or attacking organisations within their communities that were opposed to government. This in effect was a form of indirect policing, in which partisan groups were deputised to undertake aspects of geo-racial boundary enforcement. In Natal, for example, during the 1980s the SAP reportedly escorted and permitted Inkatha *impis* (armed vigilante groups) to perpetrate violent acts against communities aligned to the United Democratic Front (UDF)<sup>8</sup> and the Congress of South African Trade Unions (COSATU). In addition, the SAP even thwarted efforts to prosecute Inkatha members, particularly warlords, who had allegedly been responsible for multiple acts of violence.<sup>9</sup>

SAP typically policed protests in townships at an arm's-length with an arsenal of military-style vehicles and incapacitants (such as tear gas). If required, SAP members would engage in a baton charge and use *sjamboks* on protestors. Lethal force was applied (including live ammunition) in the occasions where protestors breached the SAP notion of a buffer zone, or if the crowd did not adhere to instructions from the police.<sup>10</sup> Such policing tactics often resulted in massacre of protestors, as was the case in Sharpeville (in 1960) and Soweto (in 1976).

Following the 1976 Soweto massacre the SAP became increasingly militarised (Brewer, 1994). Close strategic and operational ties were forged with the SADF, and the operational elements of the SAP were frequently teamed-up with SADF units to patrol high priority border areas, as well as subdue and contain unrest and violent protest action in black townships. In addition, the police were granted extensive search-and-seizure powers. Such developments were also informed by an escalation in acts of sabotage by the ANC's armed wing, Umkhonto we Sizwe (MK). In 1981, for example, there were reportedly more than 90 sabotage acts orchestrated by MK against police stations, railway lines, electricity stations, and military facilities. This was close to a nine-fold annual increase in attacks compared to the period 1977–1980.<sup>11</sup>

From the mid 1980s elements within the SAP and the SANDF pursued clandestine divide-and-rule strategies in relation to a number of black communities that were perceived to be strong supporters for the ANC, UDF and COSATU. This entailed the formation and support of vigilante/gangster groups (which included the supply of firearms and ammunition) that then sought to unsettle ANC/UDF/COSATU mobilisation efforts in targeted communities. These groups also terrorised and attacked those individuals and communities that were supportive of the ANC/UDF/COSATU.<sup>12</sup> Furthermore, the Truth and Reconciliation Commission (TRC) implicated SAP members in the clandestine support of and/or complicity in attacks by Inkatha-affiliated hostel dwellers against ANC-aligned communities, which resulted in mass killings in the early 1990s. Massacres were perpetrated in the Transvaal province in areas such as in Sebokeng (1990), Swanieville (1991) and Boipatong (1992). Some SAP personnel even planned and directly perpetuated mass killings, as was the case with the 1988 Trust Feed Massacre in the Natal Midlands where UDF activists were assassinated in a SAP orchestrated hit.<sup>13</sup>

By the mid-1980s the SAP was struggling to contain this widespread violence and the destruction of state property in many townships. For the period from September 1984 to May 1990 the SAP reported that they had responded to in excess of 51,000

unrest incidents in which 4,529 people had died and 12,449 had been injured.<sup>14</sup> Various states of emergency were declared (which mostly remained in place until 1990), which allowed the police to arrest and detain (without standing trial) suspected agitators. Between June 1986 and June 1987 the police detained an estimated 29,000 people.<sup>15</sup>

## THE SOUTH AFRICAN DEFENCE FORCE

Between the early-1970s and the early-1990s, the SADF enjoyed a privileged relationship with the Presidency, both in terms of budget and influence on decision-making. It was unaccountable to Parliament, and its military operations were undertaken in the absence of public scrutiny. It was comprised a permanent force but derived the bulk of its manpower from the compulsory conscription of white men. In the 1980s, it was estimated that, in times of need, the SADF could muster between 400,000 and 500,000 personnel.<sup>16</sup>

The SADF was involved in a variety of military activities during the apartheid period, which included: frequent hot pursuit operations into Angola; covert cross-border attacks; material and training support of anti-Communist rebel groups such as the *União Nacional para a Independência Total de Angola* (UNITA) (in Angola) and the *Resistência Nacional de Moçambique* (RENAMO) (in Mozambique); counter-insurgency strategies; destruction of strategic targets in neighbouring countries; and large-scale conventional military campaigns in Angola. The SADF's principal enemies were the ANC; the South West African Peoples' Organisation (SWAPO), the main Namibian liberation movement; and the *Movimento Popular de Libertação de Angola* (MPLA) government in Angola along with its Cuban allies.

The South African government and the SADF perceived their interventions in Angola and other military operations throughout Southern Africa as necessary wars that were part of the West's

7 John Brewer, *op cit*, 1994; Matthew Krentz, *An Unofficial War: Inside the Conflict in Pietermaritzburg*, Claremont: David Philip, 1990.

8 The UDF was an anti-apartheid movement that drew together hundreds of civil society organisations and religious organisations from across South Africa. It was closely aligned to the ANC.

9 Anthea Jeffery, *The Natal Story: Sixteen Years of Conflict*, Johannesburg: South African Institute of Race Relations, 1997.

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16 Mark Phillips, "The Nuts and Bolts of Military Power: The Structure of the SADF", in Jacklyn Cock and Laurie Nathan, (eds.), *War and Society: The Militarisation of South Africa*, Cape Town and Johannesburg: David Philip, 16–27.

resistance to a perceived Soviet global offensive. The SADF's first major invasion of Angola was through Operation Savannah (1975), which sought to prevent the MPLA from securing power at independence in November 1975. Operation Savannah was unsuccessful and the SADF withdrew in March 1976. The South African military continued to conduct clandestine and overt operations into Angola until the late-1980s. The aim of these operations was to prevent the MPLA government from permitting SWAPO to operate in southern Angola and to install UNITA as the *de facto* government of southern Angola.<sup>17</sup>

By the late-1980s, none of the parties involved in the Angolan war were in a position to secure a resounding victory. Furthermore, the SADF military campaign was placing a considerable burden on the South African economy. This resulted in considerable progress towards the conclusion of a peace agreement. The signing of the New York Accords in December 1988 resulted in the SADF withdrawal from Angola and Namibia, but also brought about the implementation of United Nations Resolution 435, which paved the way for Namibia's independence (in March 1990).

From the mid-1980s SADF soldiers were increasingly sent into black townships in an attempt to quell the intensification of violent protests against apartheid rule. Initially, soldiers were deployed to support the work of the police, but during the states of emergency SADF personnel were granted police powers (including the power of arrest, and search-and-seizure) and were often deployed separately from the police. For example, in 1985, more than 35,000 soldiers were dispatched to unrest hot spots. During this period there were numerous reports of SADF members being responsible for human rights abuses.<sup>18</sup>

## INITIAL POLICE REFORMS

In 1988 the De Witt Commission was established to draw up proposals for the restructuring of the police, but the key recommendations were only effectively initiated during the early 1990s. In this regard, the SAP was reconfigured into five divisions, namely: Crime Combatting and Investigation (CCI), Visible Policing, Internal Stability, Human Resource Management and Support Services.<sup>19</sup>

The restructuring process subsequently became framed by the National Peace Accord (NPA), which was signed by government and the principal political groupings in 1991 (including the ANC). This document had a major police component, including a Code of Conduct for SAP members, specifically calling for effective, non-partisan, racially inclusive and more legitimate, community-focused and accountable policing. In addition, SAP members were obliged to "disarm those persons illegally bearing dangerous weapons in any gathering or procession."<sup>20</sup> Some analysts have argued that the NPA ultimately laid the foundation for democratic policing and community-oriented policing in the post-apartheid period.<sup>21</sup>

## POST-APARTHEID PERIOD REFORMS

### THE CREATION OF THE SOUTH AFRICAN POLICE SERVICE (SAPS)

South Africa's Interim Constitution (1993), which was negotiated during the political transition in the early 1990s, required the government to create the South African Police Services (SAPS) by

means of an act of Parliament. Such a police organisation was subsequently established out of the integration of various apartheid-era police bodies, including the Bantustan police forces, as well as the inclusion of some individuals from the armed wings of the ANC and the PAC into the existing SAP structures.<sup>22</sup>

South Africa's final Constitution (1996) reframed the police's "internal security" obligation as follows: "maintain public order" and "protect and secure the inhabitants of the Republic and their property".<sup>23</sup> The subsequent SAPS Act (Act no. 68 of 1995) sought to re-engineer the police, and how they related to government structures and how they acted within society. The SAPS were thus required to: "ensure the safety and security" and "uphold and safeguard" the fundamental Constitutional rights of "all persons" in South Africa; "reflect respect for victims of crime and an understanding of their needs"; cooperate with "the communities it serves" to reduce crime; and submit to civilian oversight.<sup>24</sup>

In essence, the architects of the Constitution and the SAPS Act had envisaged a new police for South Africa that would disregard the internal geo-racial apartheid policing boundaries and police all people with professionalism, compassion and respect, particularly those population groups that had previously been treated with suspicion and fear. Flowing from the new political leaders from the ANC and their civilian policing advisors set about drafting the National Crime Prevention Strategy (NCPS). The strategy was an attempt to "reorganise government" in order to reduce and prevent crime, but emphasised the need for the SAPS to be more efficient and effective.<sup>25</sup> This approach was informed by development-centred crime reduction efforts in other countries. The NCPS was an idealistic attempt to fundamentally address the various social and economic determinants of crime and violence in South Africa by means of an extensive, integrated, multi-layered, intergovernmental and public-private partnership enterprise. Many of the principles of the NCPS strategy were also re-emphasised in the 1998 White Paper on Safety and Security.

## LIMITED SAPS REFORMS

The SAPS was fashioned amidst considerable political and socio-economic volatility. Intense political violence persisted in many peri-urban and rural areas in KwaZulu-Natal after the 1994 general elections. In addition, criminal violence escalated in most policing areas in South Africa throughout the remainder

17 Annette Seegers, *The Military in the Making of Modern South Africa*. London: IB Tauris, 1996.

18 Laurie Nathan, "Troops in the Townships, 1984-1987", in Jacklyn Cock and Laurie Nathan, (eds.), *War and Society: The Militarisation of South Africa*, Cape Town and Johannesburg: David Philip, 67-78.

19 Janine Rauch, *Deconstructing the South African Police*. Paper presented at the Annual Conference of the Association for Sociology in Southern Africa, Cape Town, 1991.

20 National Peace Accord, 1991, retrieved from <http://www.anc.org.za/show.php?id=3967>

21 (Phiroshaw Camay and Anne J. Gordon, *The National Peace Accord and its Structures*. South Africa Civil Society and Governance Case Study No. 1, 2002.

22 Mark Shaw, *Crime and Policing in Post-Apartheid South Africa. Transforming Under Fire*, London: Hurst & Company, 2001.

23 Republic of South Africa, *Constitution of the Republic of South Africa (Act No. 108 of 1996)*

24 Republic of South Africa, *South African Police Service Act No. 68 of 1995*.

25 Department of Safety and Security, *National Crime Prevention Strategy*, Pretoria: Department of Safety and Security, 1996.

of the 1990s, with high concentrations of such violence being experienced in Gauteng, KwaZulu-Natal and the Western Cape. Cabinet consequently impressed upon the SAPS the necessity to control and combat crime within South Africa as a matter of priority. In addition, the SAPS generally lacked popular legitimacy, particularly in townships.<sup>26</sup>

During the latter part of the 1990s the ethos and orientation of the SAPS had remained relatively unchanged from the apartheid era (Rauch, 2004). Consequently, the SAPS responded to the radical policy shift that was recommended within the NCPS in a relatively superficial manner.<sup>27</sup> The police leadership narrowly interpreted the notion of crime prevention to conform to its tried-and-tested militarised approaches. Within a short space of time the NCPS had become marginalised, and was subsequently supplanted by the SAPS' own National Crime Combatting Strategy (NCCS) (in 2000), in which serious and violent crime was to be eliminated through aggressive policing, and by apprehending and imprisoning criminals.<sup>28</sup>

The SAPS, however, did embrace some policing approaches that were in-line with more progressive thinking on crime prevention. A key example was that of community-oriented policing. It was seen by the new generation of South African policy makers in the 1990s to be a potential miracle treatment that would instil democratic policing values throughout SAPS, as well as generate legitimacy and grassroots accountability for the police (African National Congress, 1993; Pelser, 1999). In this regard, the SAPS Act (No. 68 of 1995) has required the police to establish Community Policing Forums (CPFs) in all policing areas. CPFs were envisaged to be committees of community members that would be mandated to: Promote communication and cooperation between communities and SAPS; engage in joint problem-solving between civilians and the police; facilitate transparency and accountability of the police; and improve the delivery of police services. Nonetheless, the SAPS modified the notion of community-oriented policing to suit the dominant policing ethos, namely as a means to mobilise and co-opt civilians as auxiliary resources for the business of state policing.<sup>29</sup>

The SAPS even developed their own brand of community-oriented policing in 2001, which has been referred to as Sector Policing, with the National SAPS Commissioner issuing a Final Draft National Instruction on Sector Policing in 2003. It was a hybrid model that fused together elements of both community policing and problem-oriented policing, and was influenced by the limited British and North American experience in this area.<sup>30</sup> The SAPS version was envisioned to be a "practical manifestation" of community policing, that divided policing precincts "into smaller manageable parts", which would be actively patrolled by the same cohort of police in order to: deliver more community-specific, partnership policing; increase response times; and strengthen CPFs.<sup>31</sup>

Sector Policing was to be phased in over the next decade, and by March 2012 it had reportedly been implemented in 1,056 police station areas.<sup>32</sup> However, by this point in time, the problem-solving aspects had been de-emphasised with sector policing having been re-interpreted as an "operational" form of visible policing.<sup>33</sup> Since 2000 there have been some studies of Sector Policing that has indicated that there had been some successes in building legitimacy and improving service delivery,<sup>34</sup> but other studies have indicated that the effectiveness of sector policing was undermined by scant community involvement and inadequate resources.<sup>35</sup>

## PUBLIC ORDER POLICING IN THE NEW SOUTH AFRICA

Efforts were also made to reform the SAPS approach to the policing of public disorder in an attempt to align this form of policing with the principals of policing in a multiracial democracy. In this regard the SAPS Public Order Policing Unit was established in 1995, which was the merger of the personnel from the former Riot Units and Internal Stability Units from the SAP and the various Bantustan police forces. It was envisaged that the Public Order Policing Unit would pursue a "more soft approach than previous historical methods" to the policing of gatherings, marches and protests, which included the showing of restraint and using force as a last resort.<sup>36</sup> Public Order Policing personnel were "re-selected" and underwent training based on international standards of crowd management by Belgian police instructors, which included negotiation skills.<sup>37</sup>

The 1997 SAPS strategy on the policing of gatherings, protests and crowds called for the establishment of uniform procedures in this regard that were: aligned to the Constitution; community orientated; and efficient and effective. Public Order Policing units were also required to devote a significant amount of their time to supporting crime prevention and crime combatting operations. This strategy was encapsulated within SAPS Standing Order No. 262 (2002), which outlined how the police should act in circumstances where force was required to control collective disorder.<sup>38</sup>

26 Ibid.

27 The SAP had experimented with the notion of crime prevention in the 1980s, but was narrowly interpreted as a community liaison function and appeared to be part of a "winning-hearts-and-minds" counterinsurgency strategy.

28 Guy Lamb, "Police Militarisation and the 'War on Crime' in South Africa", *Journal of Southern African Studies*, 2018, (44), 5, 933-949.

29 Monique Marks, Clifford Shearing and Jennifer Wood, "Who Should the Police Be? Finding a New Narrative for Community Policing in South Africa", *Police Practice and Research*, 2009, (10), 2, 145-155.

30 Johan Burger, J, *Submission to the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community in Khayelitsha*, 5 May 2014; Janine Rauch and Bill Dixon, B, "Sector Policing. Origins And Prospects", *Institute for Security Studies Monograph*, 97, 2004.

31 (South African Police Service, 2003, 2013) South African Police Service, *Annual Report of the National Commissioner of the South African Police Service 1 April 2002 to 31 March 2003*, Pretoria: South African Police Service, 2003; South African Police Service, *National Instruction 3 of 2013: Sector Policing*, 2013.

32 (Government Communication and Information System, *South Africa Yearbook 2012/13*, 2013.

33 Johan Burger, 2014, *op cit*.

34 Jonny Steinberg, "Sector Policing on the West Rand. Three Case Studies", *Institute for Security Studies Monograph*, 2004, 110.

35 Dumisani S. Buthelezi, *An Analysis of the Implementation of Sector Policing in Soweto* (Magister Technologiae in Policing), University of South Africa, Pretoria, 2014; Moses Montesh, "Poor Infrastructure as an Inhibiting Factor in the Implementation of Sector Policing at Calcutta Police Station in the Bushbuckridge Local Municipality", *Acta Criminologica*, 2007, (20), 3, 32-45.

36 South African Police Service, *Annual Report of the South African Police Service 1 April 1996 - 31 March 1997*, Pretoria: South African Police Service, 1997, 50.

37 Sean Tait, and Monique Marks, "You Strike a Gathering, You Strike a Rock: Current Debates in the Policing of Public Order in South Africa", *South African Crime Quarterly*, 2011, 38, 15-22; Bilkis Omar, "Crowd Control. Can Our Public Order Police Still Deliver? SA Crime Quarterly", 2006, 15, 7-12.

38 Bilkis Omar, 2006, *op cit*.; Ministry of Police, *Policy and Guidelines: Policing of Public Protests, Gatherings and Major Events*, 2013.

During the 2000s, the public order component was rebranded, reoriented and its members re-trained on two occasions. In 2001, following a reported decrease in incidents of public violence, these units were renamed Area Crime Combating Units (ACCUs). Informed by the principles of Sector Policing the ACCUs were regionalised and were assigned an adjusted mandate, namely, to focus on serious and violence crimes. Five years later the ACCUs were further rationalised into Crime Combatting Units (CCUs), which were heavily armed, sported military-style uniforms, and made use of military organisational terms such as “company” and “platoon”.<sup>39</sup> These developments have had serious implications for the nature of public order policing in South Africa in the post-apartheid period with SAPS members being regularly implicated in the excessive use of force. A prime example was the 2012 Marikana massacre in which 34 striking miners were fatally shot and 78 were wounded by a large contingent of well-armed police personnel during an unprotected strike. Evidence uncovered by journalists has suggested that some of the deceased had possibly been executed by the police.<sup>40</sup>

## DEFENCE TRANSFORMATION IN SOUTH AFRICA

During the 1990s the South African military establishment underwent a large-scale transformation process, not merely in terms of its personnel, but also with respect to its relationship with government, as well as its organisational culture, role and posture. The military was brought under civilian control, as Parliament was given the authority to approve the defence budget and decisions taken by the President to deploy the military. The Parliamentary Joint Standing Committee on Defence was granted powers of investigation and recommendation, and the personnel, logistics and financial functions of the military are closely regulated and subject to independent audit.

A new military structure, the South African National Defence Force (SANDF) was established that is comprised of an army, air force, navy, and health services. Its primary objective is the defence and protection of South Africa, its territorial integrity and its people. Within South Africa, the SANDF has undertaken the following activities: patrolled the borders on a regular basis; supported the SAPS in crime combatting operations; provided assistance to victims of natural disasters, such as floods and fires; provided search and rescue support at sea and in mountainous regions; and patrolled the Kruger National Park to combat wildlife poaching. In addition, SANDF personnel have assisted the Independent Electoral Commission with logistics for voter registration as well as provided support during national and provincial elections. The SANDF has also increasingly become involved in United Nations (UN) and African Union peace support operations in Africa. In August 2019, for example, the SANDF had contributed 1,168 personnel to UN missions.

## MILITARY NEGOTIATIONS AND THE CREATION OF THE SANDF

In the early-1990s, parties responsible for negotiating South Africa’s future were faced with the problem of how to deal with a variety of armed forces, namely the armed wings of the ANC and PAC (*Umkhonto we Sizwe* – MK and the Azanian People’s Liberation Army – APLA), the former homeland armed forces and the SADF, all of which had the potential to destabilise

**TABLE 1: CERTIFIED PERSONNEL REGISTER DATA**

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

Source: Motumi and McKenzie (1998)

South Africa. A two-fold strategy was eventually agreed upon. Firstly, a new representative national armed force would be created (the SANDF), which would consist of personnel from all the above-mentioned armed forces. Secondly, thousands of combatants would be demobilised and reintegrated into civilian life.

Between 1993 and 1994, all South African statutory (conventional military formations) and non-statutory (armed wings of liberation movements) forces were required to submit a list of their personnel to a centralised list called the Certified Personnel Register (CPR), which was administered by the South African Department of Defence (DOD). This list was to form the basis of the military integration, as well as the demobilisation and reintegration of targeted ex-combatants. However, MK and APLA experienced challenges in compiling their relevant lists as they had not kept detailed records of their members; many ex-combatants had used pseudonyms during the armed struggle; and MK and APLA experienced difficulties in determining those categories of members that could be defined as “combatants”.<sup>41</sup>

The content of the CPR was controversial as thousands of ANC and PAC members who had not been included on the list claimed that they had served in MK or APLA. Consequently, these individuals were not entitled to any financial payments or other benefits, and in effect had to self-demobilize. The final numerical breakdown of the CPR by type of armed force at that time was as follows: *See Table 1*

Following the completion of the CPR, integration of the former combatants into the SANDF was initiated. It consisted of four stages:

- Ex-combatants were regionally mustered and then assembled at specified military bases.
- Ex-combatants then appeared before the placement board that consisted of different armed forces and the British Military

39 Bilkis Omar, “SAPS Costly Restructuring. A Review of Public Order Policing Capacity”, *Institute for Security Studies Monograph*, 2007, 138.

40 Greg Marinovich, “The Murder Fields of Marikana. The Cold Murder Fields of Marikana”, *Daily Maverick*, 8 September 2012

41 Tsepe Motumi, and Penny McKenzie, “After the War: Demobilisation in South Africa”, in Jacklyn Cock and Penny McKenzie, (eds.), *From Defence to Development. Redirecting Military Resources in South Africa*, Cape Town: David Philip, 1998, 181–203.

Assistance Training Team (BMATT). Those without formal military training or sufficient military qualifications did not undergo integration and were released from the military.

- If required, ex-combatants were provided with bridging training and orientation.
- Ex-combatants were placed into different arms of service.<sup>42</sup>

The official process of integrating personnel into the SANDF began in April 1994. During these negotiations it was decided that the SANDF would include the following numerical breakdown of armed forces: MK-17,000, APLA-6,000, Homeland militaries-10,000 and SADF-85,000. The integration of MK and APLA was however characterised by dissatisfaction over ranks, conditions of service and salaries. Most MK and APLA soldiers received lower salaries and ranks compared to their white SADF counterparts. In addition, former non-statutory soldiers were not initially issued with uniforms, had to endure substandard living conditions, and were not provided with pensions as had been previously promised.<sup>43</sup>

### DEMobilIZATION OF IDENTIFIED EX-COMBATANTS

The official demobilisation process was initiated in April 1995, the aim of which was the voluntary release of ex-combatants (principally from MK and APLA) who were members of the SANDF, but either did not wish to, or were unable (due to physical disability) to serve in the full-time force. It involved the provision of gratuities, which varied according to the number of years of military service, from a minimum of R 12,734 to a maximum of R 40,657. Soldiers undergoing demobilization were also encouraged to participate in two weeks of voluntary counselling and eighteen months of vocational training through the DOD's Service Corps (SC).<sup>44</sup> It was anticipated that the SC would train close to 22,000 personnel between 1995 and 2001. However, the SC was plagued by various problems, with the primary shortcomings being:

- It was established without effective planning and training programmes were designed without an adequate analysis of existing skills among demobilised soldiers, as well as their career aspirations.
- No systematic labour market analysis was undertaken, which resulted in many trainees acquiring skills with which they could not secure jobs in their place of residence.
- Tensions existed between the SC Head Office, which was administered predominantly by former MK soldiers, and regional offices, which were run by former SADF and TVBC soldiers.
- The maintenance of a military culture within the SC undermined the culture of learning. There were a number of official inquiries into the performance of the SC, all of which found that the SC to have significantly under-performed and to have been ineffective in fulfilling its mandate.<sup>45</sup>

In December 1996, the South African Parliament passed the Demobilisation Act, which extended demobilisation to SANDF members who could not be integrated because of their age, level of education, health, or individuals who chose not to continue in the employment of the military because of dissatisfaction with their rank after placement in the SANDF. It involved the provision of gratuities, which varied according to the number of years of military services. (DOD, 1998). Also in 1996 the Special Pension Act No. 69 of 1996 (which specifically targeted MK and APLA military veterans) was enacted to provide a modest pension to those former combatants were 35 years or

older on the commencement date of the Act, with monthly payments ranging from R 500 to R 5000 depending on the age of the beneficiary.

## SANDF POLICY AND INSTITUTIONAL REFORM

### DEFENCE POLICY

The Interim Constitution which was enacted in 1993 (which was reworked and amended in 1996), includes a Bill of Rights, stipulates that government should be transparent and accountable to the people of South Africa, and specifies that the South African armed forces should be non-partisan, subject to the control and oversight of an elected civilian authority; and required to perform its functions in accordance with the law. This provided a major impetus for the overhauling of South Africa's defence policy in the post-apartheid period.

The process of re-writing defence policy was characterised by a struggle over the control of drafting process between the Ministry of Defence and the DOD. In 1995, the DOD, presented a draft policy document to the Minister of Defence, Joe Modise, which recommended a series technical reforms. However, this plan did not adequately address organisational culture, as well as race and gender representivity. Modise rejected this document and established a more consultative process involving Parliament, political parties, interest groups. A White Paper on Defence was subsequently drafted, and then ratified by Parliament in 1996.<sup>46</sup>

The White Paper provided the broad policy framework and the principles of defence in a democratic South Africa. The key principles were as follows: security shall be pursued by addressing the social, economic, political and cultural rights and needs of South Africans; the SANDF shall have a defensive posture and orientation, and shall pursue peaceful relations with other states; the SANDF will be a balanced, modern, affordable and technologically advanced military force, capable of executing its tasks effectively and efficiently; the SANDF shall be subordinate and fully accountable to parliament; the SANDF shall develop a non-racial, non-sexist non-discriminatory institutional culture; and the composition of the SANDF shall broadly reflect the composition of South Africa, and as a result affirmative action and equal opportunity programmes shall be introduced.<sup>47</sup>

However, the Defence White Paper was vague in certain sections. No targets, timelines and implementation strategies were presented, and it did not address the critical issues of the SANDF's force design and budget.<sup>48</sup> Hence it became essential to initiate a more technical follow-on process that would

42 Mafole Mokalobe, *Demobilisation, Reintegration, Rationalisation and Peacebuilding in South Africa*, Unpublished Master of Social Science Degree, University of Cape Town: Department of Political Studies, 2001

43 Creative Associates International. *Tool Category C: Military Measures 7, Integration/Restructuring of Military Forces*, ND.

44 Tsepe Motumi, and Penny Mckenzie, 1998, *op cit*.

45 Mafole Mokalobe, 2001, *op cit*.

46 Laurie Nathan, "The 1996 Defence White Paper: An Agenda for Demilitarisation?" in Jacklyn Cock and Penny McKenzie, (eds.), *From Defence to Development. Redirecting Military Resources in South Africa*, (Cape Town: David Philip, 41-59, 1998.

47 Laurie Nathan, 1998, *op cit*.

48 Gavin Cawthra, "From 'Total Strategy' to 'Human Security': the Making of South Africa's Defence Policy, 1990-1999", *Journal of Peace, Conflict and Military Studies*, 2000, 1, 51-67.

recommend, in detail, the manner in which the SANDF would be transformed. This process became known as the Defence Review, which was a transparent and consultative process, with the Defence Secretariat making an effort to ensure public participation. These developments resulted in the formulation of a substantial document that was approved by Parliament in April 1998. This document included sections on defence posture; roles and functions; force design; regional and international security co-operation; organisation and structure; human resources (particularly strategies to bring about race and gender representivity); land and the environment; as well as defence acquisition management.

## INSTITUTIONAL REFORM

Institutions that were geared towards effecting the necessary democratic changes with respect to the military establishment were either strengthened or introduced in post-1994 South Africa. The key organisations were: The Parliamentary Portfolio Committee on Defence and Military Veterans; the Defence Secretariat; the Chief Directorate Equal Opportunities and Affirmative Action (DOD); and the Military Ombudsman.

The South African multi-party Parliamentary Portfolio Committee on Defence and Military Veterans has been the key champion in terms of redrafting defence policy and legislation, as well as an advocate for transformation within the SANDF, and has, since the mid-1990s, this Committee has frequently held the DOD to account in terms of fulfilling its transformation objectives. The Secretary for Defence manages the Defence Secretariat and is the accounting officer of the DOD. He is the principle advisor to the Minister on defence policy, as well as on matters that may be investigated by the Parliamentary Portfolio Committee. The Secretary is responsible for monitoring the Chief of the SANDF's compliance with directives issued by the President or the Minister of Defence.

The Equal Opportunities and Affirmative Action Chief Directorate was established within the DOD, and has advised the Secretary for Defence on equal opportunities and affirmative action policy and plans (and the implementation thereof).

A Military Ombudsman was established in the Office of the Public Protector and reports to Parliament. According to the Defence White Paper, the Military Ombudsman is responsible for monitoring adherence to democratic civil-military relations and investigating complaints against the SANDF by military personnel and members of the public (Republic of South Africa, 1996). As shown in the various annual reports compiled by the Military Ombudsman, over the years, the Military Ombudsman has predominantly dealt with cases related to the conditions of service of serving or former SANDF members. Only a small minority of complaints have been related to complaints against SANDF personnel by members of the public. Of concern was a report by the Ombudsman in 2000 to the Parliamentary Portfolio Committee on Defence that verbal abuse of rank-and-file soldiers was widespread.<sup>49</sup>

One of the major challenges that confronted the SANDF in the 1990s was to transform its race and gender profile. Hence targeted policies and programmes were required. The DOD has sought to implement measures to ensure that the DOD is broadly representative of the South African population, but at the same time ensures that the mission readiness of the SANDF is guaranteed. The key features of this policy are:

- To assist designated groups (particularly Africans and women) to develop their skills and potential, especially in leadership positions;
- To create an environment which values diversity and fosters mutual respect and dignity among all DOD personnel;
- To acknowledge and entrench the right of women to have the opportunity to serve in all ranks and positions, including combat roles;
- To subscribe to the principle of affirmative action as a measure to obtain equal opportunity in the DOD; fast-track identified military members and civilian employees, specifically personnel of the designated groups, who are suitably qualified in order to prepare them for leadership roles; and
- To develop special programmes to suit the specific needs of designated individuals/groups in developing their full potential to empower them to execute their tasks more efficiently.

Special education and training programmes were introduced in the SANDF to standardise procedures following the integration of statutory and non-statutory forces; to facilitate the above-mentioned affirmative action and equal opportunity programme; and upgrade the skills of African personnel and women soldiers. A civic education programme on "Defence in a Democracy" was planned, with the objective of instilling respect amongst military personnel for core democratic values such as respect for human rights, the rule of law, international law, non-partisanship, non-discrimination and civil supremacy over the armed forces.<sup>50</sup> However, such a programme is yet to materialise.

## SANDF: FORCE RESTRUCTURING AND DOWNSIZING

In 1996 the total personnel strength stood at 101,000. However, in terms of the 1998 Defence Review, the ideal personnel strength was set 70,000, and hence a downsizing process was required, which the DOD referred to as "separation". The downsizing of personnel was largely achieved by means of natural attrition (e.g. resignations, retirements, transfers, selective non-renewal of contracts, discharges and death) and voluntary severance packages.<sup>51</sup> The DOD also sought to achieve greater racial and gender representivity within its ranks. The table below provides details on progress that has been made in this regard between 1994 and 2001, where the percentage of African person increased from 37.5 % to 71 % (which is more representative of overall demographics in South Africa). There was also an improvement in terms of the DOD's gender representation during this period as there was a eight per cent increase in the overall number of women employed by the DOD between 1994 and 2011. See *Table 2*

In the late-1990s and early-2000s there were a number of incidents of alleged racial discrimination by white soldiers against their black counterparts. These incidents took the form of unfair punishment, assaults, slurs, discrimination and unfair dismissals. Shooting incidents between members of the SANDF, which were allegedly racially motivated, have also taken place. The most widely publicised incident was in 1999 when a black soldier shot

<sup>49</sup> Military Ombudsman, *Report on the State of Military Ombudsman to the Joint Standing Committee on Defence*, 31 October 2000.

<sup>50</sup> Laurie Nathan, 1998, *op cit*.

<sup>51</sup> Philip Frankel, *Soldiers in a Storm: The Armed Forces in South Africa's Democratic Transition*, Boulder: Westview Press, 2000.

**TABLE 2: RACIAL AND GENDER TRANSFORMATION IN THE SANDF**

	1994	1996	2011
<b>SANDF personnel (race) %</b>			
African	37.5	54.1	71
Coloured	15.7	11.9	13
Indian	1	0.9	1
White	45.7	33.1	15
<b>SANDF personnel (gender) %</b>			
Male	80.2	82.3	72
Female	19.8	17.7	28

Source: Department of Defence (2011)

and killed six white colleagues and a white civilian at Tempe military base (Bloemfontein). Other allegedly racially motivated shootings have taken place at the Phalaborwa 7 SA Infantry Battalion, Simon's Town naval base and during the South African peace support operation in Burundi. Following the Tempe shooting, a Ministerial Inquiry was established to determine the causes of the Tempe shooting. According to the final report, the skewed racial representation at the SANDF's management at operational levels fuelled racial tension and contributed to overt racist incidents between white and black members of the SANDF.<sup>52</sup>

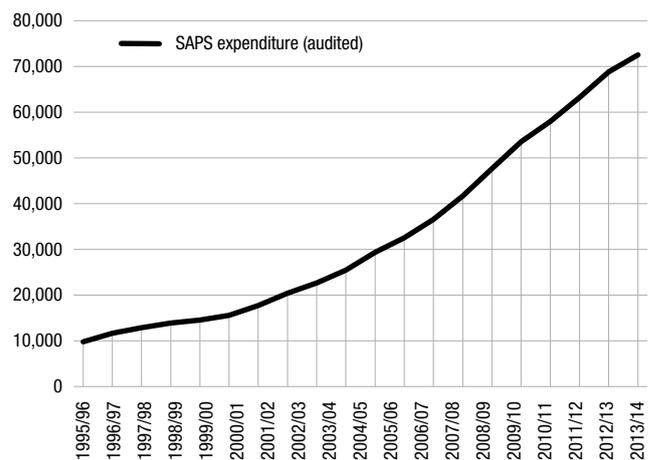
## REINTEGRATION OF EX-COMBATANTS INTO CIVILIAN LIFE

Studies on the reintegration of ex-combatants into civilian life indicated that ex-combatants encountered a number of challenges in this regard. Liebenberg and Roefs (2001) undertook a questionnaire-based study of a sample of 307 ex-combatants (of which 66 % of their sample stated that they were from MK or APLA). They found that 37 % of respondents to be unemployed.<sup>53</sup> Gear (2002) undertook a qualitative study that was based on interviews and focus group discussions. Gear concluded that many ex-combatants were experiencing major difficulties integrating into civilian life, and perceived themselves to have been "wished away".<sup>54</sup> The Centre for Conflict Resolution (2003) surveyed a nationally representative sample of 410 MK and APLA ex-combatants and found that 66 % per cent of respondents were unemployed, with most either being dependent on family members to provide them with money, food and shelter, or engaged in *ad hoc* informal sector activities. Approximately a third of the respondents indicated that they suffered from psychological problems.<sup>55</sup>

## LESSONS LEARNT

The South African case indicates that considerable democratic reforms in relation to the security apparatus are possible in post-conflict environments. A key aspect of this was an all-inclusive negotiation process that led to the drafting of a new national Constitution. This Constitution necessitated substantial legislative, institutional and policy reforms in terms of both the police and military. A further element of success was the systematic

**CHART 1: SAPS EXPENDITURE (AUDITED AMOUNTS IN SOUTH AFRICAN RANDS)**



Source: (National Treasury, various years)

integration of individuals from the previously conflicting groups into new security entities.

A key contributing factor to defence transformation in South Africa is that the country has not faced a significant military threat since 1994. Hence, the DOD and the Parliamentary Portfolio Committee on Defence were able to focus on and consolidate defence and security reforms, including effective civilian oversight of the military. However, transformation efforts have been constrained by declining budget allocations for the military over the past two decades, which in turn has had negative consequence for the SANDF's combat readiness as identified in the 2015 Defence Review.

Leadership also played a constructive role in defence reform. The Defence White Paper (1996) and the Defence Review (1998) would not have materialised if it had not been for the commitment of the relevant Cabinet Ministers and Chairpersons of the Parliamentary Defence Portfolio Committee; the diligence of senior members of the Defence Secretariat; and the willingness of the Chief of the SANDF and senior officers to make compromises and actively engage in the policy reform process. In addition, other constructive developments, such as changes to the role and functions of the SANDF, as well as movements towards greater racial equality in the SANDF, would not have been achieved without the necessary leadership.

The South African police did undergo a noticeable transformation process both in terms of democratic oversight and policing orientation. This was also facilitated by progressive leadership, both in terms of the relevant parliamentary committees and senior SAPS officers, combined with the requirement that the SAPS had to regularly engage with community organisations, such as CPFs, in its day-to-day policing activities.

52 Ministerial Committee of Inquiry, *An Analysis of Progress with Transformation in the Defence Force*, Bloemfontein: Ministerial Committee of Inquiry), 2001

53 Ian Liebenberg and Marlene Roefs, "Demobilisation and its Aftermath: Economic Reinsertion of South Africa's Demobilised Military Personnel." *Institute for Security Studies Monograph Series*, 2001, No. 61.

54 Sasha Gear, "Wishing us Away: Challenges Facing Ex-Combatants in the New South Africa", *Violence and Transition Series*, (8), 2002

55 Centre for Conflict Resolution, "Reintegration into Civilian Life: the Case of Former MK and APLA Combatants", *Track Two*, 2003, (12), 2.

However, some elements of apartheid policing remained, especially militarised policing. A key lesson is that policing reforms are especially difficult in contexts characterised by: consistently high levels of crime; low levels of public trust in the police; and a dominant view amongst government decision-makers that forceful approaches to police work is an effective means of reducing crime levels. This approach has resulted in a considerable expansion in the size of the police, as well as in terms of the police budget.

The SAPS, which encompasses close to 50 % of all funded government posts, has consistently received one of the largest allocations of total government spending compared to other departments. This financial allotment has increased considerably every year since 1995/96 (see Chart 1. below). In the 2014/15 financial year SAPS spent R 72.5 billion, which was in excess of 11 % of government spending for that year. For 2015/16 SAPS was allocated R 76.4 billion, which was more than the combined financial resources that had been apportioned to: Health; Basic Education; Trade and Industry; Economic Development; Agriculture, Forestry and Fisheries; Sport and Recreation; and Women.<sup>56</sup> Sound international research has shown that significant government investment in education, health, and employment creation is likely to result in meaningful long-term violence prevention outcomes. See *Chart 1*

## CONCLUSION

During the apartheid period the security apparatus within South Africa was well-resourced and politically influential. The police and military were central to ensuring the perpetuation of a repressive government that sought to protect the interests and privileges of a minority group at the expense of the majority. A negotiated settlement was concluded between the main political groupings following decades of armed conflict that spanned numerous other countries in Southern Africa. A key focal issue during the negotiations was the reform of the both the police and military with aim of ensuring that these institutions would support and protect democratic governance in a “new” South Africa.

Since the elections in 1994 South Africa’s security institutions have undergone considerable changes in terms of institutional arrangements, policy and posture. This has been influenced by the absence of a significant military threats to South Africa but has also due to the fact that the ANC, as the ruling party has had a substantial political majority. Such a state of affairs has enabled the South African government to initiate and consolidate reforms within both the police and the military.

<sup>56</sup> National Treasury, 2015, *Estimates of National Expenditure 2015*, Pretoria: National Treasury.

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# REGIME ARCHIVES

GERALDINE FRIESLAAR, NOBUKHOSI ZULU

## INTRODUCTION

25 years after the new democratic dispensation was ushered in, reality has set in with the sobering cognizance that there are limits to the South African “miracle” and its liberation. Burdened with the legacies brought about by the oppressive, discriminatory and violent acts of colonialism, apartheid and resistance, the transformation discourse became a dream deferred. As the effects of these legacies continue to reverberate in post-apartheid South Africa with an increasing socio-economic divide driven by a cocktail of race and class polarisation, an incongruent ruling party and the resultant, often violent forms of protest action, there has been a return to a focus on basic human rights such as land, housing, employment, education and health care.

Never quite central in public debates and collective memory, archives in post-apartheid South Africa are “far from standing as enduring monuments to the past, instead [archives] appear somewhat fragile, eternally subject to the judgement of the society in which they exist. Neither atemporal nor absolute, the meaning they convey may be manipulated, misinterpreted, or suppressed ... [T]he archives of the past are also the mutable creations of the present!” It is precisely for this reason, and in recognizing the impact left behind by colonial and apartheid legacies, one can begin to understand the limitations and challenges that faces the state archival system within the post-apartheid setting.

Historically speaking, South Africa is perhaps best known for its policy of *apartheid* (which translated from the Afrikaans language means apartness). *Apartheid* was informed by separate development of the different racial groups in the country and was the dominant ideology supported by the National Party (NP) which was formally institutionalized in 1948, although the roots of segregationist policies stretch back to the arrival of colonialism, long before the Afrikaner Nationalist Party assumed power. Though the system of apartheid drew on the discriminatory structures inherited from colonialism, the apartheid regime enacted legislation that legitimized, formalized and even normalized segregation, oppression and racial discrimination. The apartheid laws that came into force from 1948 onwards, destroyed, traumatised and displaced individuals, families and communities through forced removals and control over movement, housing, education and employment.

As apartheid reached into almost every aspect of people’s lives through entrenching white minority rule and discriminatory practices that sought to categorize, catalogue and classify its subjects by the use of oppressive, discriminatory and often violent acts of dehumanization and dispossession in the broadest sense, the apartheid regime produced a vast archive of its own activities of repression, control and discrimination.<sup>2</sup> While the apartheid regime might have been ardent record keepers, access to the records of the state archive were tightly controlled and shrouded in a culture of secrecy which has prevailed well into the present.

## APARTHEID’S ARCHIVE

Although traces of archiving in the form of carvings, rock paintings, body scarification and collective stories that were passed from one generation to the next can be found throughout South Africa today, and predates the arrival of European colonialism, it has habitually been ignored.<sup>3</sup> The arrival of European colonialism signaled the beginning of formal repositories to manage the resources and administrative challenges of the respective Dutch and British projects of empire building. The most important reason for the development of formal repositories during colonial times was the centrality of the archive in the formation and creation of the nation. Colonial archives were as much products of state machinery as technologies that bolstered the production of those states themselves, as argued by Ann Laura Stoler in her insightful study on nineteenth century Dutch colonial archives.<sup>4</sup> Taking her argument further, Stoler contended that “[c]olonial archives were both sites of the imaginary and institutions that fashioned histories as they concealed, revealed, and reproduced the power of the state”<sup>5</sup>

Following these modest pre-national, administrative colonial beginnings, the archival holdings underwent a major development in 1910 with the establishment of the Union of South Africa. The national archives service under the auspices of the Department of the Interior, legislatively came into being in 1922 and was later configured as part of the project of building an Afrikaner nation. The custodial mandate of the newly established State Archives Service (SAS) included the archival records of national and provincial government offices, which was further expanded in 1962 to encompass the archival records of local government offices as well as the records of the former self-governing homelands.

1 Judith M. Panitch, “Liberty, Equality, Posterity? Some Archival Lessons from the Case of the French Revolution”, in *The American Archivist*, 1996, Vol. 59, No. 1, 47.

2 Verne Harris, *Exploring Archives: An Introduction to Archival Ideas and Practice in South Africa*, Pretoria: National Archives of South Africa, 2000, 8.

3 One reason for early traces of archiving being overlooked is that the written record has always enjoyed more privilege at the expense of other modes of communication and recordkeeping such as the oral, visual and other sensory forms. For a discussion on the connections between orality and literacy see Isabel Hofmeyr, “We spend our years as a tale that is told”: *Oral Historical Narrative in a South African Chieftdom*, Johannesburg: Witwatersrand University Press, 1994. Also see Alessandro Portelli, What makes oral history different, in Robert Perks and Alistair Thomson (eds.), *The Oral History Reader*, London: Routledge, 1998 for his argument about the use and function of oral sources in creating meaning, content and form. For a discussion on how visuality has been subordinated to textuality, see Patricia Hayes, Jeremy Silvester and Wolfram Hartmann, Photography, history and memory, in Wolfram Hartmann, Jeremy Silvester and Patricia Hayes (eds.), *The Colonising Camera: Photographs in the making of Namibian History*, Athens: Ohio University Press, 1998, 2.

4 Ann L. Stoler, “Colonial Archives and the Arts of Governance”, in *Archival Science*, 2002, Vol. 2, 98.

5 *Ibid.*, 97; Also read Richard H. Brown and Beth Davis-Brown, “The Making of Memory: The Politics of Archives, Libraries and Museums in the Construction of National Consciousness”, in *History of the Human Sciences*, 1998, Vol. 11, No. 4, 17–32.

Further to its mandate, SAS was also empowered to augment its public archival record holdings with private records. With the institutionalization of apartheid in 1948, and especially after the implementation of the Archives Act in 1962, the SAS was transformed into a formidable system with wide-ranging regulatory powers and “an extraordinary capacity to secure the support of most white South Africans as well as the acquiescence or collaboration of significant sections of the black population.”<sup>6</sup> In a similar vein as colonialism, the apartheid state also sought to control social memory and the production of knowledge, as well as who had access to knowledge. Focused on legitimizing apartheid rule and building support for their ideology, the apartheid state gave attention to constructing state-funded memory institutions such as archives, museums, libraries and monuments through which they collected and constructed official narratives focused on entrenching a dominant ideology of white minority rule. In particular, apartheid was very successful in reaching into almost every aspect of the lives of the people which it governed by having control over the “racial classification, employment, movement, association, purchase of property, recreation and so on, all were documented by thousands of government offices”<sup>7</sup>

Apart from the public records generated by the apartheid state, the apartheid archival system also encompassed records of the security police and intelligence services that documented their surveillance activities on especially those in opposition to apartheid. While these records constituted a significant part of the SAS, large quantities of records that documented the struggle against apartheid were confiscated during raids from individuals and organizations opposed to apartheid, as opponents to apartheid also started keeping their own account of the struggle against apartheid. Often forced by the long reach of the apartheid system into informal spaces, liberation movements, solidarity organizations and activists generated a vast record of their activism and resistance work that documented the underground activities and exile experiences of those opposed to apartheid.<sup>8</sup> This material, considered to be subversive by the apartheid state, would constitute the shadow archives of the liberation struggle and would later be deployed as the antithesis or counter archives to the state archives. These archives would remain in the shadows until apartheid was legislatively dismantled in the early 1990s.

The rigidity of the apartheid bureaucratic structures molded the state archives into an apparatus in the service of the apartheid system as access to the state archives and employment opportunities within the state archives mirrored the enforced apartheid era legislation. The adoption of an apartheid bureaucratic culture, contributed to a skewed representation of historical memory in South Africa as the approach of the state archives to archival practices was informed by an ideology that sought to racially exclude, omit and elide the struggles and experiences of colonialism, segregation and apartheid’s marginalized and oppressed.<sup>9</sup> It is also significant that in examples where documentation of black experiences or other marginalized voices took place, scant as it may be, this was subject to the subjectivities of white archival professionals.

This situation of apartheid fashioned gaps within historical memory and state imposed public amnesia through censure and restricted access prevailed until the end of apartheid. Through a sustained campaign of resistance punctuated with protests, mass mobilization, sanctions and international solidarity which culminated during the 1980s to fever pitch as

the apartheid state clamped down on its opponents, the National Party realized the need to engage with its opponents as the apartheid system would not be able to sustain the mounting pressure for reform calls. On 2 February 1990, then President F.W. de Klerk made an announcement in which he lifted the ban on political and solidarity organizations such as the Communist Party of South Africa (CPSA), African National Congress (ANC) and the Pan Africanist Congress (PAC), along with other political organizations, as well as the International Defence and Aid Fund (IDAF), an international solidarity organization, and also announced that political exiles would be allowed to return and that all political prisoners would be released from prison. After centuries of colonial oppression and four decades of experiencing the brutal force of apartheid, the revolution did not happen. Instead, apartheid was dismantled through a negotiated settlement between the liberation movement and the apartheid regime.<sup>10</sup>

The struggle for liberation in South Africa was a long and bitter battle in more ways than one. It is a fragmented story marked by violence, pain, loss and suffering but equally, it is a story about memory erasure, silencing of oppositional voices, exclusion and marginalization. The remnants that remained bear testimony to a tumultuous, divisive and painful past, some of which the apartheid regime managed to destroy in the last few feverish moments of apartheid in the early 1990s, just as the country was casting off the shackles of apartheid and emerging as a fledgling democracy.

The archive as a site of struggle, contestation and ambiguity, in particular the archives of the apartheid era, and after being shrouded in an imposed state of public amnesia for more than two decades following the democratic transition, has recently become prominent again in public discourse through a renewed call for justice for victims of apartheid era atrocities as the process started by the Truth and Reconciliation Commission (TRC) remains unfinished.<sup>11</sup> This prominence, however momentary it may be, has underlined the importance of the records of the state archives to assist in piecing together fragments of history, which is crucial in the process of the reopening of inquests, the prosecution of human rights abuses committed during apartheid and for families to find closure. Problematically, it has also brought into sharp focus the indeterminate and opaque nature of the apartheid era archives in the way it seemingly, resiliently and

6 Verne Harris, *Exploring Archives: An introduction to archival ideas and practice in South Africa*, Pretoria: National Archives of South Africa, 2000, 7.

7 *Ibid.*, 8.

8 For an account of some of the struggle material was generated through the activities of the liberation movements and the support work of solidarity organizations such as the International Defence and Aid Fund see Geraldine Frieslaar, “(Re)collections in the archive: making and remaking the International Defence and Aid Fund (IDAF) archival collection”, Unpublished Ph.D Dissertation, UWC, 2015.

9 Verne Harris, “The Archival Sliver: Power, Memory and Archives in South Africa”, in *Archival Science*, 2002, Vol. 2, 73.

10 For a trajectory of the negotiated settlement see Steven Friedman and Doreen Atkinson, *The Small Miracle: South Africa's Negotiated Settlement*, Randburg: Ravan Press, 1994; Willie Esterhuysen, *Endgame: Secret Talks and the End of Apartheid*, Cape Town: Tafelberg Publishers, 2012.

11 In the Final Report of the TRC, one of the recommendations was that at least 300 cases should be investigated and prosecuted, however only two cases have been prosecuted in the past 15 years. Several family members of victims of human rights violations during apartheid has consistently called for justice and accountability but also equally, to provide them with the right to know in respect of what happened to their family members.

stubbornly remains in the long shadow of the apartheid regime's culture of secrecy as it refuses to be fully laid bare in the present.

## THE DESTRUCTION OF RECORDS

The apartheid regime was built on secrecy and lack of transparency and as the pillars of apartheid's architecture started crumbling during the early 1990s, those in opposition to apartheid feared that the regime might just be tempted to destroy public records revealing apartheid secrets and culpability in human rights violations as evidence suggested that the regime routinely destroyed public records during apartheid.<sup>12</sup> Engineered by the apartheid state, and designed in part to withhold perceived sensitive information from the future government under the cloak of the very vague and dubious *Protection of Information Act* (PIA) of 1982, the state undertook a comprehensive sanitization exercise on its archival resources. While this operation involved various departmental structures within the regime, the focus of this large scale destruction of public records, were the records of the security and intelligence arms of the state in particular.<sup>13</sup> According to the findings of an investigation that was launched by the Truth and Reconciliation Commission (TRC) into the destruction of public records, huge volumes of public records were destroyed between 1990 and 1994 in an attempt to sanitize the official record and keep the secrets of the apartheid state buried.<sup>14</sup>

Equally disconcerting, especially when viewed against a background of deliberate practices of memory erasure, the silencing and marginalization of oppositional voices during apartheid through exile, banning, detentions, torture, imprisonment, enforced disappearances and deaths, was the destruction of records that went beyond the repressive activities of the state and included the records of those that were opposed to apartheid. As revealed by the TRC investigation into the destruction of apartheid era records, records encompassing material that were confiscated during raids, collected as evidence against individuals or organizations considered to be enemies of the state, were not spared from being destroyed. Sometimes these records were part of the collateral destruction caused by bombings and other violent acts against those opposed to apartheid, but unfortunately, most of these surviving non-public records that made it into the twilight of apartheid were subsequently also destroyed during the early 1990s in the hope of whitewashing the historical record.

Apart from the widespread destruction of public records whether through intentional destruction or through the confiscation of private records which eventually led to their destruction, it remains to be told how many private records were obliterated from social memory within the rigid conditions of apartheid for fear of imprisonment, torture, harassment and even death. Hindered by a lack of resources, coupled with the state confiscation of material considered to be revolutionary and the possibility that individuals and organizations opposed to apartheid might have destroyed some of their own records in order to combat infiltration and prosecution by the apartheid state, this has resulted in an even more fragmented record of historical memory by the end of apartheid. As Verne Harris, a former archivist at SAS commented in his detailed account of the destruction of public records by the South African state between 1990 to 1994, that "this was a struggle of remembering against forgetting, of oppositional memory fighting a life-and-death struggle against a systematic forgetting engineered by the state".<sup>15</sup>

## TRANSITION TO DEMOCRACY

With the negotiated transition from apartheid to democracy, the new South African state was shaped around the notion of a unified rainbow nation focused on fostering transformation, reconciliation and nation building as the central tenets of building a democracy. Although the negotiated settlement facilitated a Government of National Unity after the sweeping victory of the ANC in the 1994 general elections, the new democracy tentatively emerged in the post-apartheid setting burdened by the deeply entrenched psychological scars and documentary inheritances left behind by apartheid and colonialism. These sometimes deeply etched traces have left an indelible imprint on South African society as they continue to operate in very pervasive and often subversive ways.

Having inherited the documentary traces of apartheid and colonialism, with which the new South African government had to contend with, the early 1990s, in particular, also saw a proliferation of new archival and memory projects focused on the collection of memories of the hidden, marginalized, exiled and the suppressed archive. Some of them included, the South African History Archive (SAHA), the Mayibuye Centre for History and Culture which was later absorbed into the Robben Island Museum, the District Six Museum, the Gay and Lesbian Archives (established as a special project of SAHA but later became an independent project) and the National Heritage and Cultural Studies Centre (NAHECS) at the University of Fort Hare (UFH). Conceived as one of the ways in which to redress "apartheid-fashioned gaps in social memory",<sup>16</sup> the creation of these counter archives and the augmentation of existing collecting institutions with anti-apartheid and liberation struggle material were about "bringing the hidden, the marginalized, the exiled, the 'other' archive, into the 'mainstream'".<sup>17</sup> In addition, these institutions also played a key role in

12 Although it is not clear when a policy on record destruction was implemented, it certainly came into effect in 1978, when "all government departments received guidelines for the protection of classified information, signed by the Prime Minister and empowering department heads to authorize destruction outside the ambit of the Archives Act". See Verne Harris, "They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994", in *Transformation*, 2000, Vol. 42, 4.

13 It is estimated that the National Intelligence Service headquarters destroyed 44 tons of paper-based and microfilm records in a 6-8 month period during 1993. See Verne Harris, "They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994", in *Transformation*, 2000, Vol. 42, 7.

14 Verne Harris, "The Archival Sliver: Power, Memory and Archives in South Africa", in *Archival Science*, 2002, Vol. 2, 64; Also see Harris, *Exploring Archives*, 9.

15 Verne Harris, "They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994", in *Transformation*, 2000, Vol. 42, 13.

16 Verne Harris, *Exploring Archives: An Introduction to Archival Ideas and Practice in South Africa*, Pretoria: National Archives of South Africa, 2000, 11.

17 Ibid. During the early 1990s a number of strategies were employed such as publications and exhibitions as a means of bringing the hidden, lost and exiled archive into the mainstream. Emblematic of this endeavour, was an exhibition curated by Gordon Metz, who at the time was the curator of visual collections at the Mayibuye Centre for History and Culture in 1994. The exhibition was entitled "Margins to Mainstream: Lost South African Photographers" and featured the "lost" work of Ernest Cole, Bob Gosani, Willie de Klerk, Ranjith Kally, Leon Levson and Eli Weinberg. For a further discussion on the "Margins to Mainstream" exhibition see Gary Minkley and Ciraj Rassool, "Photography with a difference: Leon Levson's camera studies and photographic exhibitions of native life in South Africa, 1947-1950", in *Kronos*, November 2005, Vol. 31, 186.

the transformation discourse that emerged alongside the political transformation that South Africa was undergoing both by leading discussions in heritage transformation and through their archival practices premised on activism and social justice.

Repatriated from exile, and consisting of the material of previously banned organizations as well as the records of various international solidarity organizations, and those of activists who fought in the struggle against apartheid, anti-apartheid struggle and liberation struggle related materials were unceremoniously thrust into a national process of heritage and archival transformation in the service of promoting the principles of democracy and reconciliation. Highly controversial because of its enduring contemporary significance and mired in continued secrecy as a consequence of the conditions in which they were constituted, these archives have been at the forefront of intense debates regarding issues of ownership, commodification, competition, marginalization, silencing and collective amnesia.

Constitutive of the “hidden, exiled or counter” archives of the struggle against apartheid, these archives were formally positioned in opposition to the state archives through the emergence of a transformation discourse during the early 1990s. A discourse on transformation, especially one that speaks to issues of memory, education and culture can be traced back to as far as the 1970s, with the emergence of resistance art and literature and the conceptualization of a people’s education during the 1980s as a means of countering apartheid. Crafting a prestigious position within a changing political landscape whose agenda, amongst other things, was concerned with the remembering, recuperating and the rewriting of history, the records of the liberation movements, solidarity organizations and records from anti-apartheid activists that documented different aspects of the liberation struggle, coalesced around a transformation discourse, informed by the assumption that archives in South Africa required a reimagining or a refiguring.<sup>18</sup>

Building upon these projects of memory construction and oppositional historiography which emerged from the 1970s, the transformation discourse of the 1990s was primarily informed by the need for reconciliation, redress and equality. Reflecting on this period, Verne Harris noted that the transformation discourse in archives was constructed “around a commitment to redressing inherited balances and rectifying the exclusions of the past”.<sup>19</sup> According to Harris, the impetus of the construction of a transformation discourse around archives was to take the archives to the people.<sup>20</sup> However, as Harris thoughtfully observed, “[t]he nature of the transition to democracy meant that there would be no dramatic dismantling and reconstruction of the apartheid archival system. Rather, the new would be built out of the old through a process of transformation.”<sup>21</sup>

Emphasizing the tension and challenges this created for archives, Helena Pohlandt-McCormick argued:

Not surprisingly, the years since 1994 have seen South Africa emerge as a complex and conflicted nation, burdened still with the legacy of apartheid and resistance ... The destruction of historical archives and the concealment or exclusions of materials must be included in the repertoire of the state’s efforts to change what was known and remembered of South Africa’s past. Less visible, but no less dangerous, are complex patterns of behaviour (habits of secrecy, control, dissimulation, accountability or lack thereof) that have as much to do with apartheid bureaucracies as with resistance politics, most of all in the way

they replicate each other. A new culture of remembering and accountability brings new evidence and historical understanding into the open, but it also brings new challenges.<sup>22</sup>

Although there was a fervent desire to redefine archives during the 1990s, this reimagining had to occur within the constraints posed by an inherited bureaucratic system built upon the injustices and inequality of apartheid as well as the confines of a reconciliation narrative as set out by the agenda of a new democracy in the making.

It is against this background that the *National Archives of South Africa Act* came into being in 1996, which usurped the SAS and established the National Archives in response to the shifting political changes and the need for transformation within the national archival system. As newly established and reconstituted archival and memory projects were positioning themselves in respect of assuming possession of the counter archives, the National Archives had to work harder to establish their credibility in respect of representation, access and active documenters. Central to transforming the national archival system were issues of representation within the public service that had been at the forefront since 1994, and which have seen changes brought about through the application of affirmative action policies in the recruitment of archivists in the National Archives. Parallel to the transformation of the national archival system, was the question of transparency and accountability and the degree to which public records should be made accessible to the public while also taking into account the interests of the state in safeguarding sensitive national issues.

In balancing the interest of the state with the responsibility of providing access of public records to the public, the *Promotion of Access to Information Act* (2000), also known as PAIA was passed which gives effect to the constitutional right of access to information held by public and private bodies as outlined in the South African Constitution.<sup>23</sup> However, as Veronique Riouful

18 In post-apartheid South Africa, the debate on the archive was made explicit with the publishing of *Refiguring the Archive*, which was the outcome of a project that focused on a series of thirteen seminars hosted in 1998 by the University of the Witwatersrand’s Graduate School for the Humanities and Social Sciences. Constituted around a visit by Jacques Derrida to South Africa, the *Refiguring the Archive* project was conceived as an idea to address and interrogate urgent questions posed to the archive that followed in the wake of the work of the Truth and Reconciliation Commission (TRC) and the transformation of institutions in South Africa after 1994. In their interrogation of the archive, the contributors to the volume *Refiguring the Archive* proposed a (re)figuring of the archive by investigating the ethnographies and histories of archives, the way in which institutions such as archives are implicated in creating a particular vision of society and, very significantly, to understand the conditions and processes of the record. See Carolyn Hamilton, Verne Harris, Michele Pickover, Graeme Reid, Razia Saleh, Jane Taylor (eds.), *Refiguring the Archive*, Cape Town: David Philip, 2002, 7–16.

19 Verne Harris, “Seeing (in) Blindness: South Africa, Archives and Passion for Justice”, in *Archifacts*, 2001, 5.

20 Harris, *Exploring Archives*, 5.

21 *Ibid.*, 10.

22 Helena Pohlandt-McCormick, In good hands: Researching the 1976 Soweto Uprising in the State Archives of South Africa, in Antoinette Burton (ed.), *Archive Stories: Facts, Fictions and the Writing of History*, Durham: Duke University Press, 2005, 319–320.

23 Section 32(1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution), provides that everyone has the right of access to records or/and information held by the state and any information held by another person and that is required for the exercise or protection of any rights.

and others have argued, the new democratic dispensation of 1994 brought its own conditions in which to reshape representations of South Africa as a country “promoting democratization, fostering reconciliation and national unity,”<sup>24</sup> through which South Africa was represented within the lens of as a reconciled and unified rainbow nation. Drawing on Riouful’s argument of the positive and universalist terms in which South Africa was recast in order “to fit the new political situation and to foster cohesion,”<sup>25</sup> it can be argued that in the project of recasting South Africa as a unified nation, it necessarily involved the silencing, forgetting or marginalization of certain voices and narratives. In his reflections on the relationship between the archive and the making of the nation state, Kwame Anthony Appiah made a similar argument in which he noted that, “[n]ational history is a question of what we choose to remember, not just in the sense of which facts we use for our public purposes, but equally in the sense that we choose which facts actually count as ours.”<sup>26</sup>

## DECLASSIFICATION AND OPENING UP OF THE ARCHIVES

The widespread destruction of records and the entrenchment of an apartheid culture built on secrecy within the national archival system, which was further shaped by the compromises reached as a result of the negotiated settlement between the apartheid regime and the liberation movements, impacted heavily on the work of transitional justice and truth recovery. Promulgated by the *Promotion of National Unity and Reconciliation, Act 34 of 1995*, the Truth and Reconciliation Commission (TRC), was established and tasked with the responsibility to investigate apartheid’s atrocities through public participation and transparency, granting amnesty to perpetrators, in line with full disclosure by amnesty applicants, providing victims with some form of reparation and making recommendations to the President in order to prevent any future recurrence of systematic violations of human rights. Though the South African TRC has been internationally recognized for its work in assisting the country to deal with issues of the past, the TRC has not been without its critics, especially when it is compounded by the structural inequalities inherited by the previous regime that continue to prevail in post-apartheid South Africa. The memory work that had begun with the TRC has been plagued by a persistent lack of political will, apartheid fatigue, and has been recently revealed, even political interference but all too often, there is the sense of rather leaving the skeletons in the closet where it cannot stir up trouble in the present.<sup>27</sup>

Pointing to the decisive role that the archive plays in the formation and the subsequent safeguarding of the nation and the state, Jacques Derrida argued that, “[t]here is no political power without control of the archive, if not memory. Effective democratization can always be measured by this essential criterion: the participation in and access to the archive, its constitution, and its interpretation.”<sup>28</sup> But how successful has this been? One of the recommendations of the TRC was to protect and make readily accessible to all South Africans the “national asset” that is the records of the TRC archive. In line with this recommendation, the South African History Archive (SAHA), an independent activist archive based at Constitution Hill in Johannesburg, has demonstrated a longstanding interest in making the work and records of, and surrounding, the South African TRC more widely

available, often in the face of little state engagement in continuing the reconciliation agenda begun by the TRC.

One example of the work SAHA has undertaken in making the TRC archive, in its broadest sense, more readily accessible was the development of the SAHA/ SABC Truth Commission Special Report multimedia player and website, an interactive tool built around the 87-part Truth Commission Special Report television series.<sup>29</sup> Beyond this initiative, and since the inception of SAHA’s Freedom of Information Programme (FOIP) in 2001, SAHA have made over 2000 requests utilizing PAIA on behalf of individuals and communities, researchers, authors, academics, community based organisations, social movements, and other non-governmental organisations and coalitions in the public interest.

Despite, the necessity for transparency and accountability required within the democratic transition, transformation in respect of providing access to public records has been painfully slow as the new government inherited the apartheid regime’s “organizational culture of clandestine, unaccountable and covert activity.”<sup>30</sup> In SAHA’s experience of having submitted PAIA requests for access to TRC records, the state has repeatedly attempted to block access to the TRC archives, which, all too often, has resulted in unnecessarily lengthy, hostile and litigious engagements. SAHA has secured several favourable settlements, forcing government departments to hand over TRC records they had previously refused to disclose and, in some instances, had denied even existed. However, because of these last minute out-of-court settlements, no legal precedents have been set around access to the TRC archive, enabling government departments to continue using such blocking tactics. Furthermore, going to court is expensive and time-consuming and should not be the primary mechanism to gain access to TRC records. It is ironic to consider that, as stated in its preamble, PAIA had, in part, been enacted to counteract “the secretive and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations” in the apartheid era.

To date the records of various pre- and post-1994 Government departments are neither kept at, nor do they fall under the oversight of the National Archive. In fact, as it currently stands the process of concealing of records as classified is of grave concern as it is not a transparent process and is antithetical to the principles of openness enshrined in PAIA. State organs can easily declare information in their archives to be protected on the basis of national security, and challenging such

24 Veronique Riouful, “Behind Telling: Post-apartheid Representations of Robben Island’s Past”, in *Kronos*, August 2000, Vol. 26, 22.

25 *Ibid.*, 26.

26 Kwame Anthony Appiah, *Identity, Politics and the Archive*, in Xolela Mangcu (ed.), *Becoming Worthy Ancestors: Archive, Public Deliberation and Identity in South Africa*, Johannesburg: Wits University Press, 2011, 106.

27 Greg Nicolson, “NPA allowed manipulation of criminal justice system in TRC cases”, in *DailyMaverick*, 4 June 2019, <https://www.dailymaverick.co.za/article/2019-06-04-npa-allowed-manipulation-of-criminal-justice-system-in-trc-cases/>

28 Jacques Derrida, *Archive Fever: A Freudian Impression*, translated by E. Prenowitz, Chicago and London: University of Chicago Press, 1995, 4, note 1.

29 See <http://sabctrc.saha.org.za>

30 Graeme Simpson, “A Brief Evaluation of South Africa’s Truth and Reconciliation Commission: Some lessons for societies in transition”, Paper written prior to the publication of the TRC’s Final Report, October 1998, <https://www.csvr.org.za/index.php/publications/1724-a-brief-evaluation-of-south-africas-truth-and-reconciliation-commission-some-lessons-for-societies-in-transition.html>

a classification is a difficult task. This is because the information required to prove that the records should be public record is the very information that has been declared as classified. The legislation in respect of state security is yet to be passed effectively. This applies particularly to the records of the former state security structures such as security police, intelligence, defence, and the former homelands. Therefore, identifying their locations and extent is essential. Many of these records have been classified and therefore they remain unknown and inaccessible to the public. Other factors contributing to the challenges of accessing the records of the state are the result of mismanagement in government archives, general poor resourcing of state archives, skills shortage and lack of professional commitment in the national, provincial and municipal archives.

In 2011, after much uproar, the proposed Protection of State Information Bill, commonly referred to as the Secrecy Bill, was placed on hold to allow for further consideration. The Bill was of great concern to archival work involving right to truth and access to information. The Bill failed to accurately convey how information was classified as “secretive”, as well as allowing blanket categorization of whole groups of information as classified without individually considering each record. The Bill also attempted to usurp the position of PAIA as the key legislation in respect of access to information. PAIA states that in relation to other legislation, it holds supremacy and is the primary mechanism through which an individual can attempt to access information.<sup>31</sup> Although the Bill was shelved, it demonstrated the thinking of the government around the classification of documents and granting public access to sensitive documents.<sup>32</sup>

For the records that are available in the archives, access is not automatic. Individuals are required under PAIA to make a request to gain access to the records. PAIA prescribes how the form should appear and the processes to be followed to access records that are held by the state or a private body. The condition of the national archival system is in a state of crisis and not conducive to promoting access to information. Despite the fact that the law mandates that records must be created and kept in a manner that promotes access to information, this has not been the case. The failure to keep archives in a fashion that is organised and easily accessible makes it difficult for organizations and individuals that make PAIA applications to access records in a suitable manner.

In order to access the records held in state archives, individuals and organisations have often been forced to use more creative ways than just merely submitting a PAIA request and trusting that the records will be released.<sup>33</sup> Whilst the provisions of PAIA are very clear about the responsibility of the state to respond to requests on time, allowing the archivists time to sift through large quantities of records and providing them with greater scope, has proved necessary in ensuring that records released. As a result of the resources that have incrementally shrunk over the years, requests are rarely responded to on time.<sup>34</sup> PAIA has specific provisions that dictate specific time frames that must be adhered to in the process of releasing information. Ideally records should be released as per the submitted PAIA requests, but in some instances the archives such as the South African Police Archives and the National Archives have opened up their doors and allowed researchers to go through their records on their own.<sup>35</sup>

A limitation that exists in the use of PAIA is the requirement that the requested items must be specifically identified. Although PAIA is intended to be used by the general public in accessing

records, an individual requester might not know the exact location and description of the record. This reason could result in a finding that “the work involved in processing (the request) would substantially and unreasonably the resources of the public body”<sup>36</sup> and therefore the request can be denied by the information officer. With the complex manner in which the archives are in, there are instances where an ordinary individual would not know where in the archives records are held. It has been the experience of SAHA that a series of PAIA requests need to be sent before records are correctly identified and the PAIA request is responded to.<sup>37</sup> The process is long for the expert archivists, and is naturally more cumbersome for the ordinary citizens. PAIA does however have provisions under section 19 that instruct an information officer to offer assistance to individuals who make requests and require help in clarifying their requests.

In addition to negotiating and being flexible on legislative requirements, the most effective tool to gaining access to records that are held by state archives has been the use of litigation. The mechanism of PAIA is such that once an appeal to the minister in charge of the department from whom records are sought has made a decision to deny the request for records the only available option is through the courts. SAHA has extensive experience in using the courts to gain access to public records held in the State archives. The most significant of these cases is the Section 29 Hearings, which saw the records of the hearings that were held in camera during apartheid released as well as the records from the Department of Defence that revealed the depths of corruption pertaining to the arms deals during

31 PAIA, Section 5 provides “This Act applies to the exclusion of any provision of other legislation that- (a) prohibits or restricts the disclosure of a record of a public body or private body; and (b) is materially inconsistent with an object, or a specific provision, of this Act”.

32 Pierre De Vos, “Secrecy Bill Less About Media Freedom, More About National Security State”, in *Constitutionally Speaking*, 21. 1. 2012, <https://constitutionallyspeaking.co.za/secrecy-bill-less-about-media-freedom-more-about-national-security-state/>

33 In one example was the manner in which SAHA worked with the Department of Defence to access from their archives records that concerning the treatment of LGBTQ+ members of the military during apartheid. It came to light during the TRC hearings that the military during apartheid used torturous and inhumane treatments to “treat” homosexuality. For a more detailed discussion on how these records were eventually accessed see Laura Pollecut, *Unlocking South Africa’s Military Archives*, in Kate Allen, ed, *Paper Wars: Access to Information In South Africa*, Wits University Press, 2009, 122–142.

34 The South African History Archive has expert knowledge on using PAIA as a means to access information in archives. For a deeper analysis on the challenges that around the compliance to PAIA see Nobukhosi Zulu and Yewande Adeleke, “There’s many an obstacle in exercising our right of access to information”, in the *Daily Maverick*, 4. 10. 2018, <https://www.dailymaverick.co.za/article/2018-10-04-theres-many-an-obstacle-in-exercising-our-right-of-access-to-information/>

35 For a report on the experience of visiting the SAPS Archive and the condition of the archive see [http://www.saha.org.za/news/2019/February/saps\\_archival\\_visit.htm](http://www.saha.org.za/news/2019/February/saps_archival_visit.htm)

36 PAIA section 45 states that “The information officer of a public body may refuse a request for access to a record of the body if- (a) the request is manifestly frivolous or vexatious; or (b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body”.

37 In the SAHA v. SARb matter, PAIA requests were first sent in 2014 but they were considered too broad, and the final request was eventually narrowed down after extensive consultation. That case is currently on appeal and on the papers, a definition of what constitutes a frivolous and vexatious application will hopefully be defined the courts. See [http://www.saha.org.za/news/2018/March/court\\_strikes\\_a\\_blow\\_against\\_transparency.htm](http://www.saha.org.za/news/2018/March/court_strikes_a_blow_against_transparency.htm)

apartheid.<sup>38</sup> The process of litigation is a cumbersome one that requires extensive resources and takes many years for matters to be finalised. In the meantime, requested records are at risk of being mishandled and destroyed. Litigation is an unsustainable and unattainable for the greater majority of the population. So, whilst theoretically archives are meant to be accessible to the public, this not the reality.

## DEALING WITH INDIVIDUAL RIGHTS AND PROTECTION OF INFORMATION

In 2013 the president signed into office the progressive and necessary *Protection of Personal Information Act* (POPIA) into law. The purpose of the law is to “... promote the protection of personal information processed by public and private bodies; to introduce information protection principles so as to establish minimum requirements for the processing of personal information”.<sup>39</sup> However, the drafters of POPIA failed to take into consideration the right manner in which this law would affect archives and access to archives.

POPIA places a heavy burden on archives in so far as it relates to the processing of materials that are received and processed by archives. POPIA specifies that information of a personal nature must be collected from the relevant affected individual, except for situations where that collection falls under a listed exception,<sup>40</sup> of which archives is not specifically listed. The difficulty with this section is that organisations dealing with archives receive records from donors who gather information about individuals. This means that for each collection, an archival organisation has to establish that the collection constitutes a legitimate interest to the archive. In theory, this involves testing each record individually for any personal information contained therein. Once an archive has established that a collection is legally acceptable, only then may it process the personal information. In order to store the information in the archival collection, the consent of the individual whose personal information it is, must be obtained, or the archive has to establish that it is pursuing a legitimate interest.

The resource-intensive nature of these requirements is likely to have a crippling effect on archival institutions in a sector that is already under-resourced and struggling to meet the demands of national heritage, serving another blow to the preservation of South Africa’s heritage. A further concern is that the POPIA requires institutions in possession of personal information to take steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary. It is the nature of archive that the records contained therein represent views, opinions or perceptions fixed in a particular moment. It is not appropriate to amend archival records because the information contained therein is later found to be inaccurate or incomplete. This creates an onerous burden on the archive and has the ability the greatly discourage public access to archival records.<sup>41</sup> So, whilst the protection of personal information is an admirable goal, the unintended consequences for archives are regrettable.

## LESSONS LEARNT

The *Archives Act* of 1996 held much promise, as was articulated by its optimistic and bold agenda, but this promise has not been realised as the initial energy and optimism around transformation

waned in the absence of adequate resources, funding and a lack of understanding of the work of archives. According to a recent report prepared by the UCT-based archive, heritage information and promotion agency, Archival Platform, “the optimism that marked the 1990s crumbled away as resources failed to materialise, backlogs in processing archives and records grew to unmanageable levels, training and opportunities for professional advancement became limited ...”<sup>42</sup>

In 2019, the vision of archives in the future seems dismal and unsettling, at best, beset as archives were with epistemic and political uncertainties in the present. The crisis in which the national archival system found themselves in was already flagged as early as 2007 in “Archives at the Crossroads: Open Report to the Minister of Arts and Culture” following deliberations of the conference, “National System, Public Interest” that considered the dismal state of archives in South Africa. The “Open Report to the Minister of Arts and Culture” argued that the significance of archives is, for the most part, unacknowledged and concluded that the danger herein lies in the creation of an inadequate and strained archival system that is plagued by protracted under-funding and poor service delivery.<sup>43</sup> The stark reality is that after 25 years of transformation processes that were informed by the promissory note of democratic change, archives are still under siege from both within and from outside the archival realm. In their report, Archival Platform argued that “[m]uch good work was done systematically through the 1990s, but the hopes of that period have not been realised. Today the national archival system is in trouble. Good work is being done only in isolated pockets. There is no overarching policy framework for archives beyond that implicit in national and provincial legislation. The vision of the 1990s has evaporated. Chronic underfunding and a lack of resources is ubiquitous. The political will to change things is largely absent. The system, simply put is not delivering.”<sup>44</sup>

Slightly predating this report of Archival Platform, Carolyn Hamilton attributed the crisis facing the national archival system to a combination of fractures, uncertainties, changes and ambiguities around archival inheritances of the colonial and apartheid periods. According to Hamilton, “[t]he neglect of the official archival institutions also speaks to contemporary epistemic and political uncertainties, ambiguities and contradictions surrounding the formal archival inheritance and the many forms of material

38 The records that were released were released from the DOD contributed extensively to a book that details the corruption of the apartheid government. See Hennie Van Vuuren, *Apartheid, Guns and Money*, Oxford University Press, 2017.

39 Description and title of POPI Act 4 of 2013.

40 The list of exclusions is found POPIA Section 6 and 7 and covers a broad range of exclusions such as those concerning the function of a public body in the interest of national security and journalistic organisations pursuing a legitimate public interest.

41 Although POPIA was signed into law, the effect of the full provisions has been suspended and is awaiting that all provisions become enforceable. Once these provisions become active, it remains to be seen how archives in South Africa will adapt to the enforcement of the law.

42 “State of the Archives: An analysis of South Africa’s national archival system, 2014”, prepared by Archival Platform, 2015, 32, [http://www.archivalplatform.org/images/resources/State\\_of\\_the\\_Archive\\_FOR\\_WEB.pdf](http://www.archivalplatform.org/images/resources/State_of_the_Archive_FOR_WEB.pdf)

43 “Archives at the Crossroads 2007: Open Report to the Minister of Arts and Culture” from the Archival Conference “National System, Public Interest”, April 2007.

44 Executive Summary, “State of the Archives: An analysis of South Africa’s national archival system, 2014”, prepared by Archival Platform, 2015.

held in other custodial formations".<sup>45</sup> Although Hamilton conceded that the crisis in the national archival system was much more complex than bad management and being under-resourced, her argument was mostly concerned with the way in which colonial and apartheid state archives were seemingly being relegated to the margins of history because they were tainted and dubious in nature, and therefore viewed with distrust.<sup>46</sup>

## RECOMMENDATIONS

Promoting a culture of openness and accountability is seen to be crucial for the health of a democratic society. PAIA provides a tool for civil society in the sense that it was enacted to foster a culture of transparency and accountability in public and private bodies to prevent, and counteract the secretive and unresponsive culture in public and private bodies that led to an abuse of power and human rights violations in the apartheid era, but it is piece of legislation that will unfortunately not achieve those objectives on its own. Additionally, there continues to be concerns about a work culture that allows important information not to be recorded at all, and ineffective record-keeping systems to identify and retrieve information that would be of use to government and the public. Added to this is the continuing delays in declassification of documents that appear to have been overclassified and which are then either not made available, or take months to process.

Framed against this background it is recommended that:

- The state needs to take appropriate measures to ensure the prevention of the sanitization of records in future through greater safeguarding of records through the provision of adequate resources to the national archival system both in terms of budgetary resources and legislative power;
- Greater integration between public and non-public archives, the safeguarding of records across both public and private archival institutions and promoting access thereof;
- Public archives should transform themselves into active documenters instead of passive antiquarians and foster an outreach programme in order to take archives to its citizens;
- The security establishment should assist in locating and retrieving documents removed without authorization by operatives of apartheid security structures;

- The National Archives should be given the necessary resources to process and make available to the public, as a means to fill many of the gaps in official memory resources and also to assist in the unfinished business of the TRC;
- The National Archives should be given the necessary resources to fill the gaps in official memory resources through the collection of non-public records and the promotion of oral history projects;
- There is an urgent need to revisit existing information security standards and directives that speak to classification and declassification of information, especially those that were put in place prior to the implementation of PAIA dates from the apartheid era. Certain government departments have consistently failed to ensure that their security standards and internal directives are in alignment with PAIA and the standards set therein;<sup>47</sup>
- Although some sections of PAIA mandates the release of certain information after a specified time period, South Africa does not provide for automatic declassification of records after a specified time period, such as 20 years. It is high time that South Africa opened the archive;
- South Africa is behind many other nations that have come from repressive regimes in that, South Africa has failed to automatically (at least systematically) give access to all records of gross human rights violations. This arises from the so called "right to truth" which is recognised in international law and which is fundamental to challenging impunity.<sup>48</sup>

45 Carolyn Hamilton, "Forged and continually refashioned in the crucible of ongoing social and political life: Archives and custodial practices as subjects of enquiry", in *South African Historical Journal*, 2013, Vol. 65, No. 1, 21.

46 Hamilton, "Forged and continually refashioned in the crucible of ongoing social and political life", 20.

47 The Department of Defense has at times informed the South Africa History Archive that all their records are classified. See [http://www.saha.org.za/news/2006/December/saha\\_rejects\\_claim\\_intelligence\\_records\\_outside\\_ambit\\_of\\_paia.htm](http://www.saha.org.za/news/2006/December/saha_rejects_claim_intelligence_records_outside_ambit_of_paia.htm)

48 Resolution 2005/66 of the United Nations Commission on Human Rights (UNCHR) which "recognizes the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights". The right to truth is essential to ensuring that all human rights violations, including economic crimes, are not repeated.

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# THE ABSENCE OF LUSTRATION IN THE PROCESS OF POLICE REFORM

DAVID BRUCE

## INTRODUCTION

The South African Police (SAP), the main predecessor to the current South African Police Service (SAPS), was heavily implicated in human rights violations. Nevertheless during the period of transition to democracy (1990–1994) there was no process of lustration in order to remove personnel who had been implicated in human rights violations, or other crimes, from the police. Though police reform remained a priority in the period following the transition, there was also no process of lustration in this period.

Nevertheless, during the period of roughly 15 years after the transition to democracy the composition of the SAPS was to change profoundly. The reasons for the absence of lustration, and the factors that drove changes to the composition of the SAPS, are discussed in this paper.

## POLICE ABUSES DURING THE APARTHEID PERIOD

When talking about the police in apartheid South Africa the focus often tends to be on what the Truth and Reconciliation of South Africa (TRC-SA) called “gross violations of human rights”. But apartheid was above all a system of institutionalised racial discrimination and white privilege based on the idea of white superiority. In line with this, the abuse that the South African Police (SAP) were probably associated with most frequently was casual violence towards black people, particularly those who were not deferential to white police in a manner seen to be consistent with their subordinate social status.

But serious human rights violations there certainly were. These violations were to become a major focus of public concern. This was above all when they were targeted against opponents of the apartheid government involved in resistance activities. These included members of the African National Congress (ANC), which was banned in South Africa from 1960 onwards, other liberation organisations, as well as others associated with the struggle for democracy. These political gross violations of human rights, related to the “conflicts of the past”<sup>1</sup> were the main motivation for the establishment of the TRC-SA in 1996.<sup>2</sup>

There was also a pattern of violations by the apartheid era police against alleged criminals. The TRC-SA did not address these but focused exclusively on the violations that were political in nature.

In its initial report (1998), the TRC-SA indicated that it had received information on 36 935 gross violations of human rights<sup>3</sup> against 28 750 victims that took place during the 1960 to 1994 period. These included 5002 instances of torture against over 2 900 people.<sup>4</sup> Of cases of torture, the majority involved beatings but over 2000 involved “deliberate methods of torture, such as being forced into painful postures, electric shocks, suffocation or mental torture”.<sup>5</sup> Allegations of torture overwhelmingly

implicated the SAP, and above all the Security Branch of the SAP. The Security Branch were the division of the SAP responsible for state security. Above all it focused on groups involved in opposition to apartheid, the ANC above all. The TRC found that “torture was used systematically by the Security Branch, both as a means of obtaining information and of terrorising detainees and activists”.<sup>6</sup>

In addition to the 5002 instances of torture, the TRC also recorded over 16 000 instances of what it called “severe ill treatment”. Roughly half of these were beating or shooting.<sup>7</sup> Of acts of severe ill-treatment for which a perpetrator was identified, roughly 7 300 were attributed to the SAP.<sup>8</sup> A SAP unit known as Koevoet was also heavily implicated in acts of torture in Namibia (known as South West Africa until it became independent of South African control on 21st March 1990). Under the apartheid system certain rural areas had been designated as black tribal “homelands” and some of the police forces of these homelands, notably the KwaZulu Police, were also linked to cases of severe ill-treatment<sup>9</sup> and torture.<sup>10</sup>

## POLICE AND THE TRUTH COMMISSION

A major reason for the absence of any detailed attention to questions about lustration during the transition was probably that perpetrators of human rights violations were supposed to apply for amnesty to the South African Truth and Reconciliation (TRC-SA). The TRC-SA, established in 1996, was supposed to be the primary mechanism by means of which South Africa addressed the fact that many former members of the security forces, and of the armed wings of the liberation movements, had been implicated in human rights violations of one kind or another.

Despite the fact that the state security forces had been heavily implicated in gross human rights violation, few of their members

1 Promotion of National Unity and Reconciliation Act, No. 34 of 1995, <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

2 The liberation movements were also associated with some gross human rights violations including not only killings, but also acts of torture, and some attention was given to these by the TRC-SA.

3 Gross violations of human rights are: killings, torture, severe ill treatment and abduction. Truth and Reconciliation Commission of South Africa (TRC-SA), Final Report, Vol. 3, Chapter 1, 3, <http://www.justice.gov.za/trc/report/>

4 TRC-SA, Final Report, Vol. 3, 7.

5 TRC-SA, Final Report, Vol. 3, 7. The statistics on torture and other violations in the TRC report are in fact based on analysis of 33 713 (91 %) of these 36 935 gross human rights violations (Ibid., Vol 3, pages 3–4).

6 TRC-SA, Final Report, Vol. 2, 187.

7 TRC-SA, Final Report, Vol. 3, 7.

8 TRC-SA, Final Report, Vol. 3, 10.

9 TRC-SA, Final Report, Vol. 3, 10.

10 TRC-SA, Final Report, Vol. 3, 1, E1C.1-1.

applied for amnesty from the TRC-SA. Of the 293 who did apply, 256 applied for offences that were committed while they were SAP members.<sup>11</sup> Of these, almost 90 % (229 out of 256) were Security Branch members at the time of the violation.<sup>12</sup> Out of 550 incidents<sup>13</sup> for which members of state security forces applied for amnesty 81 % (446) were committed while the applicants were employed by the SAP Security Branch.<sup>14</sup>

The relatively large number of applications received from Security Branch members did not indicate that this group was more favourably orientated towards the TRC-SA than others. Security Branch personnel who applied for amnesty constituted a small fraction of people who had been members of the Security Branch.<sup>15</sup> A high proportion of these applications were submitted by people who had been implicated in cases involving Eugene de Kock, a senior Security Branch commander. After his own involvement in a large number of serious human rights violations had been exposed, and while he was being prosecuted for his involvement in these violations, De Kock had submitted an amnesty application. The application implicated numerous Security Branch members. Many of those who did apply, therefore appear to have done so primarily to protect themselves after De Kock's amnesty application increased the risk that they would be prosecuted.

But the general response by most members of the Security Branch, and other members of the security forces, appears to have been one of resistance to, and rejection of legitimacy of the process. In addition they may have believed that there was little danger of prosecution.<sup>16</sup> In this respect they would have been correct. De Kock himself was one of the very few police ever prosecuted for apartheid era violations.<sup>17</sup> He was convicted in 1996 and remained in prison until 2015. Initially, in the face of surging levels of crime in South Africa, there was little sense that state investigative and prosecutorial resources could be committed to pursuing perpetrators of past human rights violations who had not received amnesty.<sup>18</sup> In later years, for reasons that are not entirely clear, government actively sought to discourage prosecution of those implicated in violations committed during the apartheid era.<sup>19</sup>

## ESTABLISHMENT OF THE SAPS

During the years immediately after the unbanning of the liberation organisations by the South African government in February 1990, the SAP started to integrate Security Branch members into its Detective Branch.<sup>20</sup> Some members were also transferred to other SAP components.<sup>21</sup> In 1994, the year of South Africa's formal transition to democracy, police from the "homeland" police forces were merged with the SAP to form the South African Police Service (SAPS),<sup>22</sup> the national police of the new democratic Republic of South Africa.

The only other personnel who were admitted to the SAPS were roughly 1000 former members of liberation movements. Of these, 100–200 were mainly transferred to the police intelligence component. The balance of roughly 800, most of them former members of the ANC's armed wing Umkhonto weSizwe, were appointed to a newly created Protection Services component, responsible for VIP protection.<sup>23</sup> This ensured that members of the newly elected government, many of whom were from the ANC, could be more confident of the loyalty of those who were charged with protecting them.

Therefore, with the above exceptions, the 140 848 men and women who were SAPS members in 1995 were all previously members of the 11 police forces of the apartheid system – the SAP and the ten homeland police forces. These included some members of the former Security Branch. One of the more well-known examples is that of Jeffery Benzien. Benzien, a former member of the Security Branch, was one of the police who applied for amnesty to the TRC-SA for various acts of torture and one killing. In June 1990 he was transferred out of the Security Branch and subsequently occupied a variety of positions. When he appeared before the amnesty committee of the TRC in June 1997, he was a member of the SAPS airwing.<sup>24</sup>

## SHIFTS IN THE COMPOSITION OF POLICE ORGANISATIONS IN THE EARLY AND MID 1990S

The process of reform, and negotiations between the government, the ANC and other political parties, began in February 1990. Early in this process the white National Party governments indicated that it wanted to remove the police from the "political playing field".<sup>25</sup> In August 1992 the Minister of Law and Order, HERNUS KRIEL announced that 18 white police generals, one third

11 Another two committed offences both as members of the SAP and later members of the South African Defence Force (SADF).

12 TRC-SA, Final Report, Vol. 6, part 3, 182.

13 Some incidents incorporated a number of different acts or offences. See TRC-SA, Final Report, Vol. 6, Section 3, 186, footnote 10.

14 TRC-SA, Final Report, Vol. 6, section 3, 186–7.

15 There were estimated to be 4000 Security Branch members in 1991. Janine Rauch, "Police Transformation and the South African TRC", Centre for the Study of Violence and Reconciliation, Research Report, 2004, 36, citing Cawthra, Gavin, *Policing South Africa*, London: Zed Books Ltd., 1993, 55, 58.

16 *Ibid.*, 34–36.

17 The number of applicants in De Kock-related incidents accounts for 48 % of all Security Branch applications. See TRC-SA, Final Report, Vol. 6, section 3, 184.

18 Rauch, *Police Transformation and the South African TRC*, 36.

19 Greg Nicholson, "NPA blames Mbeki government for failure to prosecute TRC cases", in *Daily Maverick*, 6 February 2019, [www.dailymaverick.co.za/article/2019-02-06-npa-blamesmbeki-government-for-failure-to-prosecute-trc-cases/](http://www.dailymaverick.co.za/article/2019-02-06-npa-blamesmbeki-government-for-failure-to-prosecute-trc-cases/)

20 Janine Rauch, *Deconstructing the South African Police*, Paper presented to the Annual Conference of the Association for Sociology in Southern Africa, Centre for the Study of Violence and Reconciliation, 1991, <https://www.csvr.org.za/publications/1479-deconstructing-the-south-african-police>

21 Mark Shaw, *Crime and policing in post-apartheid South Africa – Transforming under fire*, Cape Town: David Philip Publishers, 2002, 27.

22 Section 236(7)(a) of the interim constitution (Act 200 of 1993) provided, inter alia, that "At the commencement of this Constitution the South African Police existing in terms of the Police Act, 1958 (Act No. 7 of 1958), and all other police forces established by law shall be deemed to constitute the South African Police Service ..."

23 Elrena van der Spuy, *The integration of ANC and PAC cadres (non-statutory forces) into the South African Police Service, 1994–1996: Facets and fault lines*, in Schwikkard, Pamela-Jane, Hooctor, Shannon Vaughn (eds.), *A Reasonable Man: Essays in honour of Jonathan Burchell*, Cape Town: Jutas, 2019.

24 Truth and Reconciliation Commission, *Amnesty Hearing, Jeffery Benzien*, 14 July 1997, [http://www.justice.gov.za/trc/amntrans/capetown/capetown\\_benzi.htm](http://www.justice.gov.za/trc/amntrans/capetown/capetown_benzi.htm); Another example is provided in: Shaw, *Crime and policing in post-apartheid South Africa*, 32.

25 Mark Shaw, *Point of order: Policing the compromise*, in Steven Friedman, Doreen Atkinson, *South African Review 7: The small miracle: South Africa's negotiated settlement*, Johannesburg: Ravan Press, 1994, 206.

of the general staff of 52 white officers, would be retired from the SAP.<sup>26</sup> There were some who believed that this was intended to weed out those likely to be resistant to reform. However, several generals who had played a central role in state repression against opponents of apartheid remained in the SAP.<sup>27</sup> A more important factor may have been the need to make space for black police to be appointed to what were then the exclusively white officer ranks of the SAP. Not long after this, in April 1993, Eugene de Kock and 83 SAP members attached to the Security Branch's Vlakplaas unit "took 'early retirement' and large severance payouts from the SAP."<sup>28</sup>

A number of former SAP members, including former Security Branch members, also left the SAPS shortly after it was formed in 1994. Some of these may have left for political reasons or because they did not see a future for themselves in the SAPS. One reason for this would have been that, because of the emphasis on redressing racial imbalances in the SAPS (see further below) there would be few promotion prospects for white male police for some time to come.<sup>29</sup> Some members may therefore simply have resigned. Another option that some pursued, was to apply for a medical discharge with some reportedly applying for these for "stress."<sup>30</sup> Another factor, amongst more senior members, may have been "the scrutiny associated with the senior appointments process in the new SAPS in 1995 and thereafter."<sup>31</sup> This may have been the reason behind the departure of General Johan Van Der Merwe, former commander of the Security Branch and overall head of the SAPS from 1990 onwards.<sup>32</sup>

Whatever the number of members who left on their own initiative, this number is likely to have increased as systems were introduced to encourage members to leave. The agreement negotiated between political parties at the multi-party talks, as embodied in the "interim constitution" of 1993, made some provision for continuity for existing state employees, including members of the SAP and homeland police forces.<sup>33</sup> At the same time it provided that the public service should be "broadly representative of the South African community."<sup>34</sup> This implied that government would need to implement measures to improve the "representativity" of the SAPS, especially in its higher echelons.

In the words of George Fivaz, a former SAP officer, regarded as having clean hands, who was appointed as the first National Commissioner of the SAPS "In the interim constitution those people were protected. All the personnel had to be amalgamated into the new South African police service. There was no provision for retrenchment packages, or severance packages, or lay-off packages, or whatever the case may be. So you had to take those people into the new South African Police Service as a given, those were the material, you as the new Commissioner had to design processes to rationalise and to amalgamate and to transform."<sup>35</sup> A system of retirement and retrenchment was therefore put in place in order to create openings for "previously disadvantaged" South Africans, a category understood to include black South Africans, women and people with disabilities.<sup>36</sup>

A generous system of "voluntary severance packages" was therefore introduced<sup>37</sup> with more than 5000 SAPS members benefitting from these between 1996 and 1998.<sup>38</sup> While these were targeted at white members it was not only whites who took advantage of them. In June 1997 a SAPS spokesperson reported that of 3087 SAPS members whose severance packages had been approved, 2396 were white (78 %) including 1794 men and 602 women.<sup>39</sup> Overall 621 (20 %) of those who were granted severance packages in that year were women. Though the intention

was to create openings for black personnel to be promoted to leadership positions, the fact that a number of those who applied for packages were from the "middle management" echelons also meant that significant skills were lost to the SAPS in the process.<sup>40</sup> The severance packages were essentially about creating space at senior level for senior black appointments. They had little to do with trying to remove those who had been involved in human rights abuses. It is believed that a significant number amongst those who left became involved in the private security industry.<sup>41</sup> The industry had a tradition of recruiting former security sector personnel.<sup>42</sup>

In understanding the approach taken to personnel issues during the transition to democracy, it is important to understand some of the key considerations and constraints, which the ANC was faced with. While the ANC and others who supported democratisation were concerned to ensure a genuine transfer of power and the establishment of a fully democratic South Africa, there were profound anxieties that the security forces would resist and obstruct the process of democratic transformation.<sup>43</sup> This anxiety was mainly focused on the military, but it was seen

26 Ibid., 207–208; "South Africa moves to restore credibility of police", in *UPI*, 27 August 1992, <https://www.upi.com/Archives/1992/08/27/South-Africa-moves-to-restore-credibility-of-police/8467714888000/>

27 Shaw, *Point of Order*, 207–209.

28 Rauch, *Police Transformation and the South African TRC*, 26.

29 Interview with Martin Schönteich, *Innovations for Successful Societies*, Princeton University, 31 January 2008, [https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/interviews/transcripts/3256/Martin\\_Schonteich.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/interviews/transcripts/3256/Martin_Schonteich.pdf); "26 Step 2000: Fivaz, George", *The Heart of Hope – The O'Malley Archives*, <https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv00017/04lv00344/05lv01353/06lv01385.htm>

30 Rauch, *Police Transformation and the South African TRC*, 28.

31 Ibid., 37.

32 Ibid., 37; "Van der Merwe, General Johan", *The Heart of Hope – The O'Malley Archives*, <https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv03445/04lv03519/05lv03675.htm>

33 Constitution of the Republic of South Africa, Act 200 of 1993, Section 236, inter alia 236(2) and 236(4).

34 Constitution of the Republic of South Africa, Act 200 of 1993, Section 212(1)(b).

35 "26 Step 2000: Fivaz, George", *The Heart of Hope – The O'Malley Archives*, <https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv00017/04lv00344/05lv01353/06lv01385.htm>

36 Department of Public Service and Administration, *White Paper on the Transformation of the Public Service*, 15 November 1995.

37 "26 Step 2000: Fivaz, George", *The Heart of Hope – The O'Malley Archives*, <https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv00017/04lv00344/05lv01353/06lv01385.htm>

38 Based on 1288 in 1996, 3087 in 1997 and 701 in 1998. See: Elizabeth Sidiropoulos et al, *South Africa Survey 1997/1998*, Johannesburg: South African Institute of Race Relations, 1998, 246; Herma Forgey et al, *South Africa Survey 1999/2000 – Millennium Edition*, Johannesburg: South African Institute of Race Relations, 1999, 371. It is not clear if these figures are comprehensive.

39 Sidiropoulos et al, *South Africa Survey 1997/98*, 246; The balance were 528 African men, 11 African women, 85 coloured men, six coloured women, 57 Indian men, and four Indian women (Ibid.).

40 Interview with Martin Schönteich, *Innovations for Successful Societies*, Princeton University, 31 January 2008, 13, [https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/interviews/transcripts/3256/Martin\\_Schonteich.pdf](https://successfulsocieties.princeton.edu/sites/successfulsocieties/files/interviews/transcripts/3256/Martin_Schonteich.pdf); Sidiropoulos et al, *South Africa Survey 1997/98*.

41 Piers Pigou, Whatsapp text and voice messages, 27 and 28 June 2019.

42 Jenny Irish, *Policing for profit: The future of South Africa's private security industry*, Institute for Security Studies, 1999, <https://issafrica.s3.amazonaws.com/site/uploads/Mono39.pdf>

43 Shaw, *Crime and policing in post-apartheid South Africa*, 29.

as important to secure support for the transition process from the apartheid security forces overall. On the basis of its status as the liberation movement that could best claim to represent black South Africans, the ANC was seen as the principal rival and “negotiating partner” of the white National Party. The ANC, including its leader Nelson Mandela, consistently sought to ensure that members of the security forces would remain subject to and loyal to the newly elected government. It therefore sought to avoid measures that might be interpreted to mean that their future in South Africa would not be secure.

There was another major limitation on the ability of the ANC to intervene on the policing terrain. In the 1960s the ANC, and the other major liberation movement, the Pan-Africanist Congress, both established guerrilla “armed wings”. These had been involved in military activities in South Africa which, in the case of the ANC’s armed wing Umkhonto we Sizwe, were based on the Vietnamese model of “people’s war”. The process of transition therefore included integration of 21 000 “non-statutory force” members into the newly established South African National Defence Force (SANDF), with a further 9 800 being demobilized.<sup>44</sup> However the ANC had no personnel with backgrounds in policing.

At one point consideration was given to integrating members of Self-Defence Units (SDUs) into the SAPS. These were irregular militias based in the black townships that were composed of young political activists and other marginalized young men.<sup>45</sup> Apart from performing a military function during the period of resistance to apartheid, in some instances they had also performed a policing type role. But SPU members were generally regarded as unsuitable for recruitment into the SAPS, and were clearly not candidates for management or leadership roles.<sup>46</sup> This meant that, other than the small number of ANC members with intelligence backgrounds, who had been integrated into the SAPS, there were no other personnel who were suitable to take up leadership positions other than the former members of the SAP and homeland police forces. This meant that the ANC was dependent on the existing policing system to constitute a policing service. It also meant that senior homeland police were some of the primary candidates for populating the senior ranks with black officers.

The process of democratisation and police reform in South Africa therefore took place in the wake of the conflict between the apartheid government and the liberation movements. The fact that this was partly military in character may be seen to have provided another reason for the lack of interest in questions of lustration. Any process of this kind, which involved scrutiny of past violations by members of the security forces, would have raised questions about the involvement in human rights violations by ANC members and other liberation movements. The TRC amnesty process, in terms of which those who had committed human rights violations related to the conflict could obtain amnesty for full disclosure of their involvement in this regard, was a far more palatable option for all political parties.

Rather than removing police who were implicated in human rights violations, the process of reform of the police in South Africa therefore focused on other measures. Central ideas included those of changing the police from being police “forces” to being a “police service”, that was responsible for serving all South Africans, and the concept of community policing, intended to build better relationships between police and communities. Other

measures were of a symbolic nature such as changing the rank system from military ranks to non-military ones,<sup>47</sup> changing the colour of police vehicles, and changing the names of police stations in some cases.<sup>48</sup> Measures also included revision of the basic training curriculum for new SAPS members, the development of a human rights training curriculum for current members of the service, and the introduction, in 1997, of a code of conduct for the police.<sup>49</sup>

## CHANGING THE PROFILE OF THE SAPS

As a result of resignations, deaths and other factors contributing to natural attrition, as well as the voluntary severance packages, there were significant shifts in the composition of the SAPS, and a decline in the overall number of SAPS members, during the late 1990s. The number of SAPS members reached its lowest point, at 120 549, in 2002. By 2003, the number of white personnel had declined from 50 097 in 1995 to 33 523, a reduction of 33 %. At this point the process of en masse recruitment (discussed below) had also begun. As a result, by 2003 the number of black members (including Africans, coloureds and Indians) had already increased by 8 % from the 90 751 that there were in 1995, to 98 049. After having constituted 36 % of SAPS members in 1995, whites now constituted 25 %.<sup>50</sup> If judged relative to the overall population of South African, whites, and particularly white men were still over-represented in the SAPS. But this would change in the nine years that followed.

Between 2002 and 2012 the SAPS recruited 123 606 new members. Due to natural attrition, the net gain was however in the region of 80 000 members with the SAPS reaching a total of 199 345 personnel in 2012. During this period the emphasis was not only on increasing SAPS numbers but also on changing the racial profile of the SAPS. For instance, during the years 2006

44 Department of Defence, Final integration report to the Portfolio Committee on Defence, 9 November 2004, <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2004/appendices/041109final.htm>

45 Monique Marks, *Young Warriors: Youth Politics, Identity and Violence in South Africa*, Johannesburg: Wits University Press, 2001.

46 See Shaw, *Crime and policing in post-apartheid South Africa* and van der Spuy, The integration of ANC and PAC cadres (non-statutory forces) into the South African Police Service, 1994–1996: Facets and fault lines, in Schwikkard, Pamela-Jane, Hooctor, Shannon Vaughn (eds.), *A Reasonable Man: Essays in honour of Jonathan Burchell*. ANC provides no basis for constituting an alternative policing system (e.g. example of ANC marshals in SAR 222, and later debate about SPU members – on this also see Shaw 30 as well as van der Spuy).

47 This was reversed in 2009. See, for example, “The role of the South African Police Service at Marikana on 16 August 2012”, Submission by CASAC to the Marikana Commission of Inquiry, Council for the Advancement of the South African Constitution (CASAC), January 2013, page 13, paragraph 20b, <http://www.casac.org.za/wp-content/uploads/2015/02/Farlam-Submission-final-220113.pdf>

48 Janine Rauch, Police Reform and South Africa’s Transition, Centre for the Study of Violence and Reconciliation, Paper presented at the South African Institute for International Affairs conference, 2000, <http://www.csvr.org.za/docs/policing/policereformandsouth.pdf>

49 David Bruce, New Wine from an Old Cask? The South African Police Service and the Process of Transformation, Centre for the Study of Violence and Reconciliation, Paper presented at John Jay College of Criminal Justice, New York, 9 May 2002, <https://www.csvr.org.za/docs/policing/newwinefromold.pdf>

50 David Bruce, “New blood: Implications of en masse recruitment for the South African Police Service”, in *SA Crime Quarterly*, March 2013, No. 43, 18, <http://www.issafrica.org/uploads/SACQ43Bruce.pdf>

to 2012, 97,6 % of recruits were black.<sup>51</sup> By 2012 the South African government had come close to achieving its goal of ensuring that the racial profile of the SAPS was aligned with that of the South African population. However, with the number of white SAPS members at 12 %, their numbers still exceeded white representation in the South African population which was then at 8.9 %.<sup>52</sup> By 2012 women constituted 34 % of SAPS personnel.

In South Africa, police were therefore reconstituted, though this was largely for reasons other than those that are supposed to motivate lustration. There are no policy documents that show the motivation for the process of en masse recruitment. Therefore the motivation for this process is a matter of speculation. For some time the South African government had been under pressure to improve its responses to crime, and this may have been one factor. More important perhaps, is that in 2002 the Fédération Internationale de Football Association (FIFA) opened the bidding for the 2010 World Cup.<sup>53</sup> South Africa at the time had an international reputation for high levels of crime. In 2004 South Africa secured the bid for the 2010 World Cup. Reassuring FIFA, and potential visitors to South Africa, that their safety would be assured was a key government priority. Finally the process of en masse recruitment provided an opportunity to address racial imbalances in the SAPS that were a legacy of the apartheid. At the time the new democratic government was having little success in addressing high rates of unemployment. The creation of large numbers of new police jobs provided an opportunity for state investment in expanding the black middle class. By doing so, the ANC may have hoped to consolidate support for it to continue to govern South Africa.

## CONSEQUENCES OF THE ABSENCE OF LUSTRATION

Processes of lustration are not the same as processes of accountability, such as requirements for the disclosure of past human rights violations in return for amnesty, or prosecutions. Lustration is instead primarily intended to serve as a means of purifying the security forces that are established during a transition to democracy. Their function is partly symbolic and may be intended as a means of trying to secure greater legitimacy for security agencies. They may also be intended to assist in and ensure that the security forces of the new regime do not reproduce the “bad habits” of the old.

It is not clear how many apartheid era police who had been involved in human rights violations remained in the SAPS after the transition. Many of those who left in the 1990s are likely to have been individuals who were implicated in these violations. Nevertheless the involvement of the SAP, and other apartheid era police forces, in human rights violations was extensive, and there is little question that the SAPS continued to employ many of those who were involved in these violations. These may not have been primarily members of the Security Branch. SAP units involved in ordinary “crime related” policing functions, including notably the Murder and Robbery Units, were also extensively involved in torture and other abuses including extra-judicial executions.<sup>54</sup>

The latter issue was highlighted in a report on police violations of human rights published, in the immediate aftermath of the transition to democracy, in 1995. One issue highlighted in the report was the killing of people in suspicious circumstances in KwaZulu-Natal province, frequently involving Murder and

Robbery units.<sup>55</sup> The Murder and Robbery Units were later shut down, but many of their members continued to serve in new SAPS specialised units that were established in the post-apartheid era. It is therefore likely to be more than a coincidence that some of these new specialised units have been linked to allegations of human rights violations in the post-apartheid era. In the most highly publicised case of this kind, members of a branch of a unit in KwaZulu-Natal, the Durban Organised Crime unit, were accused of the extrajudicial killings of up to 45 people.<sup>56</sup> The case against members of the unit has been highly controversial. Allegations have been made that it was motivated by the desire to neutralise corruption investigations against prominent persons with high level political connections. There may be some truth to this. But there is also significant evidence that members of the unit were connected to many irregular killings.<sup>57</sup>

Numerous police who had been involved in violations that were not of a political nature were absorbed into the SAPS. The amnesty process was focused on perpetrators of human rights violations connected to the political “conflicts of the past”, and was of no relevance to these individuals. Calls for the prosecution of those who did not receive amnesty have also only focused on those who were implicated in political violations. In order to deal comprehensively with the legacy of past human rights violations, any process that was implemented would have had to address the legacy of violations both against political opponents and suspected criminals. This highlights one of the major limitations of the process of reform, or transformation as it has often been called, of the police in South Africa.

## CONCLUSION

The personnel profile of the SAPS therefore changed dramatically in the period after apartheid. However the reconstitution of the police was largely for reasons other than those that are supposed to motivate lustration. In practice, what was prioritised was changing the racial and gender profile of the police. This motivated for retaining black or female members of the former police forces. On the other hand, there was a strong focus on encouraging white male members of the police to leave, with this being encouraged through retrenchment packages. The position of white female SAPS members would have been more ambiguous. Official policy aimed to reduce the overall number of white SAPS members, but improve the representation of

51 Bruce, “New blood: Implications of en masse recruitment for the South African Police Service”, 19.

52 Ibid.

53 “2010 FIFA World Cup”: bidding process opens”, Fédération Internationale de Football Association, 23 October 2002, <https://www.fifa.com/about-fifa/who-we-are/news/2010-fifa-world-cuptm-bidding-process-opens-83657>

54 Breaking with the past? Reports of alleged human rights violations by South African Police, 1990–1995, The Trauma Centre for Victims of Violence and Torture, Independent Board of Inquiry, Johannesburg: Network of Independent Monitors, 1995, 171–206.

55 Ibid.

56 “Charges against Booysen and Cato Manor unit dropped”, in *The Citizen*, 17 July 2019, <https://citizen.co.za/news/south-africa/courts/2155817/charges-against-booysen-and-cato-manor-unit-dropped/>

57 “Former Sunday Times editor Ray Hartley’s blistering response to ‘death squad’ criticism”, in *News24*, 21 October 2018, <https://www.news24.com/SouthAfrica/News/read-former-sunday-times-editor-ray-hartleys-blistering-response-to-death-squad-criticism-20181021>

women, including at senior levels. Some white women members had police experience that recommended them for senior positions. This concern with racial and gender representation, not a concern about past human rights violations, had the most impact on the composition of the police in the period after apartheid.

In addition, it is clearly important that a mechanism was established for addressing involvement in apartheid-era politically motivated human rights violations. This was the amnesty committee of the TRC-SA. This may have encouraged those involved in police reform to give little attention to the continued presence in the security forces of those who had been involved in human rights violations. In the end the commitment made to prosecute those who were implicated in serious human rights violations and who had failed to apply for, or been denied, amnesty, was largely neglected.<sup>58</sup> Perpetrators may have remained in the SAPS, or chosen to leave, possibly in response to the incentives provided by severance packages.

However, the fact that some of them remained in the SAPS, and the generalised impunity that they had enjoyed, received little public attention. Coinciding with the transition to democracy, violent crime became a major pre-occupation in South Africa. With the criminal justice system overwhelmed by the task

of addressing crime, there was little public energy for, or interest in, re-directing the energies of criminal justice personnel to dealing with the abuses of the past.

Throughout this time the fact that abuses by police extended far beyond the political terrain received little attention. The question of dealing with perpetrators of past non-political violations was largely disregarded, whether in relation to discussions about amnesty, or prosecution. Torture and extra-judicial executions continue to be features of policing in post-apartheid South Africa, and in some cases this clearly reflects the legacy of practises from the apartheid era. However, it also reflects officially sanctioned processes of re-militarisation of policing, as well as on the ground adaptations by police to pressure to deliver results in fighting crime.

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58 Hugo van der Merwe, Prosecutions, pardons and amnesty: The trajectory of transitional accountability in South Africa, in Nicola Palmer, Phil Clarke and Danielle Granville et al (eds.), *Critical Perspectives in Transitional Justice*, Cambridge: Intersentia, 2012, 447.

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# INVESTIGATION AND PROSECUTION OF CRIMES OF THE REGIME

**NOBUKHOSI ZULU**

## INTRODUCTION

In 1948 the official policy of apartheid was introduced in South Africa by the minority white government. South Africa has been under colonial rule since the 17th century; however, apartheid was special and unique in that it codified the already existing oppressive laws, and the government went to great lengths to enforce the laws. As the power of apartheid rested primary on the oppression of the black majority, it was not long till already existing liberation forces such as the African National Congress (ANC), Pan African Congress of Azania (PAC), the South African Communist Party, and others, began to resist. The ANC, which originally espoused the principles of non-violence and peaceful resistance formed Umkhonto Wesizwe (MK), the militant wing of the party, after it was clear that the apartheid forces were not willing to change through peaceful means. The period of conflict intensified during the 1980s, as the struggle forces became more militant in their resistance, the apartheid government responded with more brutal violence. A prominent tactic of the apartheid government was enforced disappearances and unexplained deaths in police custody. The arm of the South African Police (SAPS) that was tasked with destroying the resistance was the Security Branch.<sup>1</sup> The operations of the Security Branch were shrouded in secrecy, with protection of the State.

At the end of apartheid, in 1994, a historic negotiated settlement was agreed upon by all political parties in the bid to avoid any further bloodshed and to foster in a democratic era. Part of this negotiated settlement included the establishment of the Truth and Reconciliation Commission (TRC).

## THE TRUTH AND RECONCILIATION COMMISSION

The Promotion of National Unity and Reconciliation Act 34 of 1995 (TRC Act) established the TRC. Like other truth commissions, the TRC was established to deal with issues that transpired within a specified time period. The period of investigations began in March 1960 (the commencement of the Sharpeville massacre) and ended in May 1994 (the month in which Nelson Mandela was inaugurated as president). The task of the Commission was a bold one, to “facilitate, initiate and co-ordinate where necessary inquiries into the nature, cause and extent of human rights violations in South Africa.” It was believed that through open and public dialogues, the truth about the very secretive apartheid apparatus would come to light giving families closure and foster the beginning toward reconciliation. This was to be done through public hearings where both victims and perpetrators could appear before the Commission and have their truths heard.

The South African TRC was different from other traditional commissions in that it veered from the norm. Instead of granting blanket immunity for prosecutions, the amnesty

was conditional. The TRC consisted of different committees that were responsible for different areas. The pertinent commission in this case was the Commission on Amnesty. A key component of the TRC process was that individuals who were guilty of vile acts of gross human violations during apartheid could come before the Commission, fully disclose their actions and the Commission would make a decision on whether or not to grant amnesty. The Commission was open to individuals who simply wanted their criminal records cleared for things like printing ANC pamphlets, which were criminalised by the apartheid State.

Granting of amnesty was conditionally dependant on whether an individual had fully divulged their part in the apartheid system. The Committee was guided by certain criteria, which focused on the questions around the motive of the act, context and objective of the act, omission or offence and “whether the above was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or supporter”; the relationship between the act, offence or omission and the political objective pursued. A fundamental precondition for the granting of amnesty was that the “applicant made full disclosure of all relevant facts”.

A challenge that was faced with the amnesty proceedings is the complex political stance that the TRC took of holding both freedom fighters and apartheid defenders culpable of human rights violations, granting both sides the opportunity appear before the TRC as perpetrators and victims. In many ways, this act tainted the view the public had of the TRC and caused individuals to doubt the legitimacy of the TRC. Many people at the time, and even to date, feel that the granting of amnesty was in some way disrespectful to the families and survivors of the crimes and that it promoted impunity. The TRC was aware of these criticisms but also had to deal with the real issue of ensuring that the peaceful transition of power was secured and avoiding unnecessary loss of life. It thus noted, “prosecutions could endanger the peace process; hence the need for an accountable amnesty provision which did not encourage impunity”.<sup>2</sup> Not all amnesty applications were granted; the main reason being that the applicants had failed to disclose adequate information, so as to bring real resolution to the matters.

The TRC process was wrought with issues of legitimacy, with accusations on all sides raising concerns of bias and the unfair nature of the hearings. One of the reasons that allowed people to be willing to compromise was the promise that those individuals

1 Kevin O'Brien, “Counter-Intelligence for counter-revolutionary warfare: The South African police security branch 1979–1990”, in *Intelligence and National Security*, 2001, Vol. 16, 27–59

2 Truth and Reconciliation Commission of South Africa: Report, Vol. 6, Section 5, Chapter 1 at para 24

who failed to appear before the TRC and give adequate testimonies, or were denied amnesty would face the full extent of the law once the process was concluded, thus justice would be served eventually.

The final report of the TRC was delivered in 2003. In the last volume, the report clearly states that, “where amnesty has not been applied for, it is incumbent on the present state to have a bold prosecution policy in order to avoid any suggestion of impunity or of contravening its obligations in terms of international law”. At the end of the TRC, over 300 cases were handed over to the National Prosecution Authority (NPA) for further investigation and possible prosecutions. It was now up to the NPA under a democratic government to pursue justice and fulfil the strong recommendations made by the TRC.

## IDENTIFYING THE PERPETRATORS OF APARTEID ERA CRIMES

A number of perpetrators of apartheid era crimes are well known. Their existence came to be known most through the testimonies of the victims and perpetrators of apartheid. During the TRC hearings, family members and survivors were able to tell their stories and identify specific state officials who were involved in their victimisation. Other state agents who turned state witness were also able to implicate their co-agents and partners in a number of crimes. Investigators, such as Frank Dutton, have been instrumental in going through available records and identifying cases that could lead to real prosecution. Unfortunately, with the government seemingly lackadaisical to continue with the work of the TRC, this work is largely funded by civil society organisations and individual family members who were not satisfied by the government’s intervention and are desperate for answers.

A well-known example of the State’s unwillingness to prosecute is that of Stephen Bantu Biko, the much-revered leader of the South African Black Consciousness Movement, who was savagely murdered in police custody by members of the Security Branch. The apartheid operatives who committed the murder appeared before the TRC, applying for amnesty and confessed their part in his death. They were denied amnesty because the Commission was of the opinion that they had not made full disclosure and their actions were not politically motivated as required by the Act.<sup>3</sup> Despite their clear and self-confessed culpability, the NPA refused to pursue the matter claiming there was insufficient evidence.

During apartheid, disappearances were an effective means to get rid of activists, without the mess of paperwork or public scrutiny. It was also effective in psychologically torturing the families of the missing, and instilling fear of the unknown among the communities where the activists came from. It is estimated that roughly 2,000 people might have disappeared during apartheid at the hands of the government.<sup>4</sup> The Khulumani Apartheid Reparations Database at present contains the records of the disappearance of 1,200 people.<sup>5</sup> While 477 of these cases were officially recognised by the TRC, those working in the field have estimated that there are another 1,500 cases that are not officially recorded.<sup>6</sup> These are well documented, but the government has been unwilling to prosecute.

After the end of apartheid, the NPA established the Missing Person’s Task Team. The mandate of the task team is to search for

and bring back home the remains of political activists. The testimonies provided at the TRC provided a starting point for the team of experts to begin searching. The Missing Person’s Task Team is housed under the NPA, as it was hoped that through the location and exhumation of bodies, prosecutions would follow. Although a number of individuals have been exhumed, prosecutions have yet to be done. The head of the task force has very controversially claimed that prosecutions would undermine perpetrator assistance in locating bodies. This is an argument that has been vehemently rejected by other activists and former TRC commissioners.

Identification of perpetrators has also been done through the release of classified records. The Promotion of Access to Information Act (PAIA) was designed to ensure that the public can gain access to public records held by the State. The South African History Archive (SAHA) has been a leading organisation in South Africa in using PAIA to gain access to records that reveal the crimes of the apartheid government. Through the access of now declassified records, individual researchers and investigators have been able to weave a thread that begins to sift out the atrocities of the government and pinpoint who the perpetrators in the system were. An example of this are records released through SAHA whose documents show the planning of the assignation of the liberation operatives known as the Craddock Four by the apartheid government.<sup>7</sup> The released records detail the plot and the names of those who were involved and aware of the impending murders. And yet even with this information available, the prosecution process has still been stalled.

The courts in South Africa have been clear about the duty of the prosecutors to investigate where there is a possibility of justice being served. In the case *S v Basson* the Constitutional Court held that the NPA is under an international obligation to prosecute crimes committed during the apartheid era. It held that: “the State’s obligation to prosecute offences is not limited to offences which were committed after the Constitution came into force but also applies to all offences committed before it came into force. It is relevant to this enquiry that international law obliges the State to punish crimes against humanity and war crimes. It is also clear that the practice of apartheid constituted crimes against humanity and some of the practices of the apartheid government constituted war crimes.”<sup>8</sup> There is no doubt in law that the prosecution of identified and known perpetrators is imperative for the legitimacy of the post-apartheid government.

3 Amnesty decision on death of Steve Biko, 16 February 1999, <http://www.justice.gov.za/trc/media/pr/1999/p990216a.htm>

4 Jeremy Sarkin, “Dealing with Enforced Disappearances in South Africa (With a Focus on the Nokuthula Simelane Case) and Around the World. The Need to Ensure Progress on the Rights to Truth, Justice and Reparations in Practice”, in *Speculum Juris*, 2015, Vol. 1, 21–48.

5 See <http://www.khulumani.net/truth-memory/item/519-khulumani-remembers-the-unresolved-loss-and-pain-offamilies-affected-by-enforced-disappearances-on-this-anniversary-of-international-day-for-the-disappeared.html>

6 Jay Aronson, “The strengths and limitations of South Africa’s search for apartheid-era missing persons”, in *International Journal of Transitional Justice*, 2011, 262–281.

7 “Unveiling the mystery of the Craddock Four: 25 years later”, South African History Archive, 27 June 2010, [http://www.saha.org.za/news/2010/June/commemorating\\_the\\_craddock\\_four\\_25\\_years\\_later.htm](http://www.saha.org.za/news/2010/June/commemorating_the_craddock_four_25_years_later.htm)

8 *S v Basson* 2007 (3) SA 582 (CC), at paragraph 37.

## **POLITICAL INTERFERENCE WITH INVESTIGATIONS AND PROSECUTIONS**

In January 2018, the NPA identified 20 cases dating back to the apartheid era that would be prioritised for investigation. Disturbingly, it was later revealed the two of the officers who had been deployed as lead investigators in the matter were in fact former Security Branch officers themselves. One of the officers has been identified and accused of being involved in the torture of a surviving anti-apartheid activist. The NPA responded by removing the officers, but the damage was already done. These events raise serious questions about the competency of the NPA, and whether the State institutions are still riddled by apartheid forces.

Despite the fact that the NPA was handed hundreds of potential cases for investigation, to date none have been prosecuted. There appears to be an intricate web of political manipulation that has been persistent in blocking prosecutions from taking place. For a number of years, it was unclear what exactly the reasons were for failure to prosecute, until the landmark case of Nokuthula Simelane began to reveal some of the background interference that halted prosecutions.<sup>9</sup>

In an application brought by Simelane's sister to compel the NPA to fulfil its duties, there were affidavits submitted by prominent figures including former NPA head Vusi Pikoli and former head of apartheid prosecutions, Anton Ackermann. In their affidavits they allege that there was high level interference from the current government that hampered any effective prosecutions. It appeared from the papers submitted that the reason for the ANC's position on prosecutions was linked to the fear that if they began to prosecute the apartheid agents, then those ANC operatives, who were vulnerable, would also be prosecuted. This reaction from the ANC is consistent with previous actions that included attempting to block the release of the TRC reports publicly.<sup>10</sup> In addition to the fear that ANC activists would be prosecuted, there has been speculation that there were additional secret deals that were struck amongst the political parties, which gave assurances that there would be no prosecution of apartheid era crimes on either side.

Nokuthula Simelane was an ANC activist who joined the military forces, Umkhonto Wesizwe, as a university student. She was betrayed and taken by apartheid state police and tortured, presumably to death. After years of her missing, the apartheid police claimed to have conducted an investigation, which amounted to nothing. For years there was no lead until the TRC was established. Five police officers appeared before the TRC requesting amnesty for her abduction and torture.<sup>11</sup> They were all granted amnesty in relation to her abduction and torture except for one. They presented contradicting stories to the TRC as to her whereabouts, and what they did to her, claiming they last saw her alive. Since they all claimed she was alive; however, they were not granted amnesty for her death.

It was decades after her disappearance and relentless campaigning by her family that eventually led to the NPA instituting prosecution proceedings, using the evidence that was gathered at the TRC to hold accountable the three remaining officers of her likely murder. They were finally arrested and charged in 2016. The trial is the first of its kind which led to the actual prosecution of perpetrators for apartheid crimes. The case itself encountered a number of delays. The most significant delay to the matter leading to the trial was that the accused insisted that the South African Police had to pay their legal fees, as they were employed

by the State and they were acting under orders. The judge made a decision in 2018 that was in agreement with their demands, mandating the State to cover their legal costs thus paving the way for the trial to finally begin.

## **POST-TRC PRESIDENTIAL PARDONS**

Over and above the failure to prosecute, there was an attempt to further subvert the TRC process. In 2007, the then president of South Africa, Thabo Mbeki made the decision to use his Presidential Powers to pardon individuals who were implicated in the criminal activities during apartheid. He stated that pardons would serve to assist the country in truly moving forward and achieve national unity, as was the mandate of the TRC. The Pardons Reference Group, consisting of all political parties represented in Parliament, considered 2114 applications for pardons and made recommendations. Civil society organisations vehemently opposed the process as it did not involve any public participation and consultations. The desire to further pardon individuals and absolved them of their guilt was another signal that the new dispensation was not interested in following-up with prosecutions or holding individuals accountable for their crimes.

Currently, the process of pardons has still not been finally resolved. There has been a series of setbacks and interruptions, specifically, the two previous presidents, Thabo Mbeki and Jacob Zuma, did not complete their full terms as they were recalled by the ANC. There has been a lot of other, more pressing, political issues in more recent years which can be partly attributed to the halting of the entire process. Another reason for the delays of the process has been the incessant activism by civil society groups to ensure that the political pardons are not granted. The main source of activism has come from a group known as the South African Coalition for Transitional Justice (SACTJ), which sought to interdict the president from granting pardons without consulting the victims of past human rights violations and communities which had the same experience. The matter was appealed all the way to the Constitutional Court which upheld the principle that victims have the right to be consulted.<sup>12</sup> The process has thus been temporarily stalled and it remains to be seen whether the new president, Cyril Ramaphosa, will continue the work of his predecessors and finalise the project.

## **RE-OPENING OF INQUESTS**

At the height of apartheid violence and brutality, a number of activists died whilst in custody. The causes of death that were given by the police at the time were never satisfactory. A common cause

9 Thembisile Phumelele Nkadimeng vs. National Director of Public Prosecutions & 8 Others, Gauteng Division Case Number 35554/2015.

10 "Anc Interdict Throws TRC's Final report Into Disarray", SAPA, 28 October 1998, <http://www.justice.gov.za/trc/media/1998/9810/s981028n.htm>

11 The original transcripts applying for amnesty are available here <http://sabctrc.saha.org.za/hearing.php?id=53362&t=Nokuthula+simelane+coetzee&tab=hearings>

12 *Albutt v Centre for the Study of Violence & Reconciliation* 2010 (3) SA 293 (CC) at par 61 notes "the principles and the spirit that inspired and underpinned the TRC amnesty process must inform the special dispensation process whose twin objectives are nation-building and national reconciliation. As with the TRC process the participation of victims and their dependents is fundamental to the special dispensation process".

of death proffered by the state security agents was that individuals committed suicide. However, some families had the opportunity to question the narratives put forward by the security branch, and demanded that the government open an inquest investigating the true cause of death. These inquests were nothing more than a public relations stunt that would eventually corroborate the initial report that the police had submitted. This was the case with Ahmed Timol, whose inquest in 1972 alleged that he had committed suicide when that was unlikely the case.

Timol's nephew, Imtiaz Cajee, has been a relentless champion in pursuing justice for his uncle. Since 2003, Imtiaz has been at the forefront in advocating for the NPA to prosecute the individuals who murdered Timol. As is clear from the Simelane matter, the NPA was operating under orders not to continue investigations and prosecutions. At some point, the NPA was disingenuous and pretended to have investigated the matter, when in actual fact no such investigation had taken place.<sup>13</sup> The family of Timol had to go to great lengths, including threatening the NPA with possible court action, to ensure that action was taken. Both the Timol and Simelane cases revealed in shocking detail the lengths to which the State would go to prevent the police from investigating and the prosecutors from pursuing matters further.<sup>14</sup>

After the victory of the inquest being re-opened with the court finding that the cause of Timol's death was not a suicide as previously reported, the hope of a prosecution was ignited. Joao Rodrigues, the only surviving officer involved in the direct murder of Timol was charged with murder. Rodrigues however, applied to the High Court requesting that a permanent stay of prosecution be granted on the matter. The Court rejected the application, and he is due to stand trial for the murder of Ahmed Timol. Rodriguez has applied for leave to appeal the decision. This case has the potential to be revolutionary in matters related to the investigation and prosecution of regime crimes in South Africa, and has ignited the hope of other families that perhaps justice will eventually be served.

The Timol matter has ignited renewed activism in other organisations such as the Southern African Litigation Centre (SALC), who joined in the proceedings. The submissions made by SALC assert that it is not sufficient to prosecute Rodrigues only for the crime of murder, but that there is a clear basis for him to be prosecuted under international law for crimes against humanity.<sup>15</sup> According to SALC's Executive Director, Kaajal Ramjathan-Keogh, the Timol case is not an isolated matter, rather "it is about how a single murder is connected to the human rights violations committed during apartheid and therefore becomes a crime against humanity. This case should pave the way for the crime of apartheid to be prosecuted".<sup>16</sup>

The re-opening of these inquests has been hailed as a step in the right direction by activists who advocate for accountability

of apartheid crimes.<sup>17</sup> In February, 2019, a group of former TRC Commissioners wrote an open letter to the President. The letter calls upon the President to "appoint a Commission of Inquiry into the political interference that has stopped the investigation and prosecution of virtually all the cases referred by the TRC to the NPA".<sup>18</sup> Thus far, it has been up to the civil society organisations, partnering with law firms and legal advocates on a pro-bono basis, to support the families who are seeking prosecution. No meaningful prosecution has been instituted willingly by the State at its own behest. The limited cases that have made it to the courts have been as a result of sustained public pressure and relentless pressure by family members. However, not every family has the social capital and resources to fight this battle on their own. Hopefully, the government will fulfil its promises, and mandate, of ensuring that justice is ultimately served.

## RECOMMENDATIONS

- The NPA should immediately re-open all cases handed over by the TRC and honestly pursue prosecutions.
- A public investigation should be conducted into the operations on the NPA and SAPS since the end of apartheid and the reasons for the delay in prosecution to be made public.
- The government should urgently re-open all inquests that were carried out during apartheid involving the deaths of activists who died in police custody or under suspicious circumstances.
- A dedicated process should be established for the prosecution and judicial hearings of apartheid era crimes. The constant delays currently in the system are only serving to deny survivors of their right to justice.

13 Kevin Bloom, "History Suppressed: What Didn't Get Revealed in Timol Inquest", in *Daily Maverick*, 22. 8. 2017, <https://www.dailymaverick.co.za/article/2017-09-22-history-suppressed-what-didnt-get-revealed-at-the-timol-inquest/>

14 Ra'eesa Pather, "NPA Admits to Political Interference in Prosecutorial Decision", in *Mail & Guardian*, 6. 2. 2019, <https://mg.co.za/article/2019-02-06-npa-admits-to-political-interference-in-prosecutorial-decisions>

15 Rodrigues v NDPP et al, Permanent Stay of Prosecution, Seventh Amicus Curiae Heads of Arguments, Case No. 76755/18, 18 Feb 2019

16 "Johannesburg High Court dismisses apartheid police officer's application to cease prosecution", Southern African Litigation Centre, 3 June 2019, <https://www.southernafricalitigationcentre.org/2019/06/03/statement-johannesburg-high-court-dismisses-apartheid-police-officers-application-to-cease-prosecution/>

17 Other cases that are now currently pending are the matters relating to the assassination of the Cradock Four and the murder of Dr. Neil Aggett.

18 Yasmin Sooka and Dumisa Ntsebenza, "Inquiry needed into political interference in post-TRC prosecutions", in *Politics Web*, 7. 2. 2019, <https://www.politicsweb.co.za/archive/inquiry-needed-into-political-interference-in-post>

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# REHABILITATION OF VICTIMS

TASNEEM KALLA, HUGO VAN DER MERWE

## INTRODUCTION AND DESCRIPTION OF THE DEFAULT SITUATION

During the oppressive apartheid era (1948 to 1994) and the preceding three centuries of colonial rule, the majority of South Africans were subject to human rights abuses and violent and dehumanising treatment. The scope of what black South Africans were forced to endure ranged from economic, social and cultural injustices, such as the dispossession of their land, displacement, cultural marginalisation, unequal access to health and education and civil and political rights abuses such as political disenfranchisement, arbitrary arrests, extrajudicial executions and torture. The majority of the South African population was excluded and economically marginalised to the point of keeping them “just above destitution”.<sup>1</sup> The apartheid system of racial discrimination and the accompanying repressive measures were implemented through a legal framework that rendered most of these human rights abuses as legal measures, leaving victims with very limited recourse to remedies through the courts.

With a history characterised by brutality, South Africa’s democratic transition presented an opportunity to construct a democracy and secure protection for human rights, as well as the prospect to provide redress for the historical injustices perpetrated by the State. As part of the transitional justice process, the South African government established numerous mechanisms to address the injustices of the past, including land redistribution, affirmative action in employment, education and tenders. The mechanism that drew particular attention however was the Truth and Reconciliation Commission (TRC), which included processes to address rehabilitation for victims of gross human rights violations.

In the South African context, reparations and rehabilitation are terms often used interchangeably to refer to the measures that can be taken to help “victims overcome the damage that they suffered, to give them back their dignity and to make sure that these abuses do not happen again”.<sup>2</sup> While not formally recognising the rights of victims to reparations, the Promotion of National Unity and Reconciliation Act 34 of 1995 (the TRC Act) makes provision for various forms of reparations for victims of gross human rights violations.<sup>3</sup> However, chapter 5 of The Act, which deals with the entire reparations process, falls short in spelling out what reparations should be provided. Instead it states that the committee established to receive reparation applications “may make recommendations which may include urgent interim measures ... as to appropriate measures of reparations to victims”.<sup>4</sup> The final outcome of the reparations process however, was left undefined and remained at the discretion of the Parliament and the President, once they have considered the recommendations developed by the TRC.

## TRANSITION

The transition to democracy occurred as part of a negotiated settlement which granted amnesty to those who had committed politically motivated human rights abuses during the conflict.

This meant that these perpetrators could not be held criminally or civilly responsible for their actions. It also meant that victims could not hold them accountable. Instead of criminal accountability, victims were promised truth and reparations. The TRC was established by the South African parliament in 1995 by means of the Promotion of National Unity and Reconciliation Act, No. 34 of 1995. The South African TRC was the product of a widely consultative process involving civil society, political parties, human rights lawyers, religious communities, as well as international actors who had dealt with similar challenges, particularly in Latin America.<sup>5</sup> The TRC operated between 1996 and 1998 with the mandate to investigate gross human rights violations committed from 1960 to 1994. It was tasked with facilitating truth-telling, justice, reconciliation, rehabilitation, and reparations – with the expressed aim of restoring the human and civil dignity of victims of gross human rights violations.<sup>6</sup> The Act stated that the TRC must aim to “make proposals for measures that will give reparation to victims of human rights violations; and rehabilitate and give back the human and civil dignity of people who suffered human rights violations”.<sup>7</sup> The Rehabilitation and Reparations Committee (RRC) was one of the three committees established to carry out the TRC mandate, along with the Human Rights Violations Committee, and the Amnesty Committee. While the Human Rights Violations Committee investigated and made findings regarding human rights abuses, and the Amnesty Committee considered, approved and denied amnesty applications, the RRC was established to restore the dignity for victims by formulating policies and recommendations on reparation and rehabilitation for victims, including their families and affected communities.<sup>8</sup>

In the South African transitional justice context, rehabilitation was envisioned to address the needs of victims for medical and psychological care and services and include interventions at both community and individual levels.<sup>9</sup> The TRC’s framework for reparations were broad and provided for two stages of

1 “A history of apartheid in South Africa”, in *South African History Online*, 2016, <https://www.sahistory.org.za/article/history-apartheid-south-africa>

2 Ibid.

3 Government Gazette, 1995-07-26, TRC Act, Vol. 361, No. 16579, Promotion of National Unity and Reconciliation Act 34 of 1995, <http://www.justice.gov.za/legislation/acts/1995-034.pdf>

4 Department of Justice and Constitutional Development, Republic of South Africa, “A Summary of Reparations and Rehabilitation Policy, Including proposals to be considered by the President”, (no date), <http://www.justice.gov.za/trc/reparations/summary.htm#SECTION%201>

5 Alex Boraine, Janet Levy, Ronel Scheffer, eds., “Dealing with the Past: Truth and Reconciliation in South Africa”, in *Institute for Democracy in South Africa*, 1997, 175.

6 We acknowledge that the term “victims” has been challenged as imposing a narrative and experience on people that they might not identify with. Some people who experienced human rights violations prefer the term “survivors”.

7 TRC Act op cit note 3, chapter 1.

8 Desmond Tutu, “Truth and Reconciliation Commission, South Africa”, in *Britannica*, 2019, No. 8, <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa>

9 Truth and Reconciliation Commission Website, TRC Final Report, Vol. 6, 93, <http://www.justice.gov.za/trc/report/>

a reparations processes, Urgent Interim Reparations and Final Reparations. The Act provided that Urgent Interim Reparations be made for those who are in urgent need of reparations to deal with the immediate consequences of the human rights violations they suffered while the TRC was still operating.<sup>10</sup> The Final Reparation were to be included as recommendations in the Report to the President at the conclusion of the TRC process, and only implemented by the State after the report was submitted.

The RRC drew on the TRC framework for reparations and developed extensive recommendations for victim-centred reparations that the state was expected to fulfil. The TRC Final Report (in contrast to the TRC Act) recognises the legal rights of victims to receive reparations. It spells out the legal basis for reparations, in relation to the national legislation and constitutional provisions, as well as the international law obligations of the state. The report dedicates a whole chapter to unpacking “The Case for Reparation and Rehabilitation: Domestic and International Law”<sup>11</sup> which unpacks the state’s obligation in relation to victims legitimate expectations to receiving reparations. Drawing from the international normative frameworks and debates about reparations, the Committee’s recommendations for reparations encompassed the five principles of reparations (the five R’s): redress, restitution, rehabilitation, restoration and reassurance of non-repetition. Within this framework, the Committee’s policy recommended that reparations be approached on the individual, community and institutional levels.

The RRC acted within the TRC Act’s definition of victim which recognised both individual and collective victims, as well as direct and indirect victims. The definition includes “persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights” as a consequence of gross human rights violations or an act “associated with a political objective for which amnesty has been granted”; those whose suffering and harm was a result of their “intervening to assist” direct victims “who were in distress or to prevent ‘victimisation’; and relatives and dependants of direct victims.”<sup>12</sup>

## FRAMEWORK FOR REPARATIONS

### SCOPE AND TYPOLOGY

The TRC proposed a raft of measures to provide reparations and rehabilitation. This included individual reparations and community reparations, along with a range of measures called symbolic, which had both individual and collective components. Individual reparations were mainly framed in terms of individual financial payments, as well as medical and health services. But recommendations were also made to assist with finding and reburying the remains of victims. Individual financial payments were both in the form of Urgent Interim Reparations implemented by the TRC and as part of the Final Reparations recommendations to be implemented by the State.

In relation to communal reparations, these were framed as state-funded community programmes set to restore fractured and damaged communities, but also encompassed symbolic measures related to collective memory in the form of memorial sites. All these measures were strictly tied to the TRC legislation, which specified the time frame and nature of victims who would be considered eligible for reparations.

## INDIVIDUAL REPARATIONS

As stated in the Act, only individuals who made statements to the commission or were referred to in others’ statements were considered for reparations. The beneficiaries of reparations were those who were formally declared victims by the Commission who decided this on a case-by-case basis.

The first consideration for the TRC was the provision of Urgent Interim Reparations. These took the form of small financial payments to those victims who were considered to be in urgent need. These were intended to support victims just till Final Reparations for individuals could be implemented on a more comprehensive basis. The Urgent Interim Reparation provided 16 855 payments, totalling R 50 million by the time the TRC final report was released.<sup>13</sup> Payments were delayed largely due to the State’s slow processing of the related regulations.<sup>14</sup> The payments were assessed on a case-by-case basis and began in mid-1998, just as the TRC was drawing to a close. Final reparation payments were only disbursed after the conclusion of the amnesty process in 2003. This was in marked contrast to the amnesty process which led to the immediate release of prisoners upon the finalisation of their individual cases.

The TRC’s recommendations for individual Final Reparations presented a framework encompassing a range of measures including (1) financial assistance to victims, (2) provision of services to victims and (3) individual symbolic measures to acknowledge the wrongs they had suffered and support healing. The payment of financial reparations – the monetary compensation for gross human rights violations – was intended to help victims deal with the consequences of the violence, while acknowledging the victims suffering and ensuring the provision of a basic standard of living.<sup>15</sup> The recommendation was for all individual victims to receive roughly R 20,000 per year for a period of six years.<sup>16</sup>

The TRC also recommended that the state provide victims with other services to alleviate the impact of the victimisation. These included access for them and their families to medical services, education, support with finding remains and the reburials of those who had been disappeared, and legal support with death certificates and clearance of criminal records. Symbolic measures were also suggested to acknowledge individuals such as through renaming of public streets and buildings

## COMMUNITY REPARATIONS

The TRC Act had anticipated the need for the Reparations fund to also provide for measures to promote community rehabilitation.<sup>17</sup> The TRC recommendations for Collective Reparations

10 Ibid., 94.

11 Ibid., 98–111.

12 TRC Act op cit note 3.

13 TRC Final Report, op cit note 9. (R 50 million is equivalent to roughly US\$ 3.5 million)

14 Ibid.

15 Oupa Makhalemele, *Still Not Talking: The South African Government’s Exclusive Reparations Policy and The Impact of the R 30,000 Financial Reparations On Survivors*, in Carla Ferstman, Mariana Goetz and Alan Stephens, eds., “Reparations for Victims of Genocide, War Crimes and Crimes against Humanity”, Brill, 2009.

16 Truth and Reconciliation Commission Website, TRC final report, Vol. 5, 185, <http://www.justice.gov.za/trc/report> (R 20,000 is equivalent to roughly US\$ 1,400)

17 TRC Act op cit note 3 [section] 42(2A).

were predominantly addressed in the forms of community benefits, namely community symbolic reparations and rehabilitation interventions to restore divided and conflict-affected communities. Symbolic reparations included the legal and administrative measures to facilitate the process of memorialisation and commemoration of the losses and victories of the past. This involved both provincial authorities who needed to take responsibility for the implantation of certain symbolic reparations such as the renaming of streets and facilities – in order to remember and acknowledge individuals, spaces and events important to communities. On a national level, public facilities were to be renamed, monuments and memorials erected and national holidays, such as a national day of remembrance and reconciliation, established. The responsibility for this would mainly fall with the South African Heritage Resource Agency.

Community reparations recommendations also included community rehabilitation programmes for the “resettlement of persons and communities who were displaced, establishment of treatment centres in communities for physical and psychological healing and rehabilitation, providing support to community-based victim support groups, educational bursaries and skills training, among other things.”<sup>18</sup>

## CURRENT STATUS

The State’s failure to implement the TRC’s recommendations on reparations led to extensive criticism and protest by victims and other civil society organisations. The reparations process has been characterised by long delays, reluctance by the state to implement the recommendations in full, and concerns about the political manipulation of the measures. Disputes regarding the finalisation of the regulations to implement reparations continue till today, 16 years after the finalisation of the TRC process and 25 years after the transition to democracy.

On 28 March 2003, following the conclusion of the extended amnesty process, the TRC tabled its Final Report which spelled out its various recommendations.<sup>19</sup> The government responded to the TRC’s reparations recommendations with a plan that included four categories of reparations: final individual reparations, symbols and monuments, rehabilitation of communities, and medical benefits and other forms of social assistance, but which provided limited concrete commitments to their implementation.<sup>20</sup>

The implementation of the various forms of reparations were pursued through processes involving different regulations for these respective measures, namely individual financial payments, exhumations and reburials, educational support, medical support and community reparations. Except for community reparations, these regulations have been adopted and implemented to some extent.

## INDIVIDUAL

Instead of the individual payments of R 20,000 per year for six years (R 120,000 total) recommended by the TRC, and after much delay, the State made the decision to provide a once-off payment of R 30,000 per victim. This decision to only pay a quarter of the recommended amount was met with protests from victims.<sup>21</sup>

CSOs and survivors also raised the concern that the reparations payments were restricted to only those who were recognised

by the TRC. Those who fell within the TRC definition of victim, but who had been unable or unwilling to apply for this status during the time of the TRC were disqualified from receiving any payment.<sup>22</sup> Many victims were unable to approach the TRC during its short time span as it had limited reach into rural areas, conflict was still ongoing in some parts of the country, and there had been limited communication with victims about how to approach the TRC. The TRC formally identified and acknowledged 21,676 victims of apartheid, of whom 17,408 received reparations in the form of monetary payment from the government.<sup>23</sup>

Not only were the payments significantly delayed and substantially lower than recommended, survivors were left with the sense that the State had prioritised perpetrators whose situations were immediately addressed after the amnesty hearings.<sup>24</sup> Furthermore, the State introduced additional measures for pardoning political perpetrators – covering those who had failed to apply for amnesty and covering an extended period (till 1999) while making no similar provisions for victims.<sup>25</sup>

After further delays, in 2011 the State proposed three additional sets of reparation regulations: Regulations Relating to Assistance to Victims in Respect of Basic Education, Regulations Relating to Assistance to Victims in Respect of Higher Education and Training, and Regulations Relating to Medical Benefits for Victims.<sup>26</sup> These measures have however been very slowly implemented and the bureaucratic procedures involved have meant that very few victims have managed to access such benefits since their introduction.

Regulations on the Exhumation, Reburial or Symbolic Reburial of Deceased Victims were published by the Department of Justice and Constitutional Development on 7 May 2010.<sup>27</sup> These

18 Oupa Makhalemele, op cit note 15.

19 The TRC’s mandate concluded in 1998, however, the Amnesty Committee was granted an extension of their mandate due to the volume of applications received. This consequently meant that the disbursement of reparations was also delayed since the amnesty process was a means toward identifying victims on the basis of the accounts given by perpetrators.

20 Parliamentary Monitoring Group, “Final Report: adoption, Reparation Committee, Meeting Summary”, Appendix 1: *Provisional Draft Report on Recommendations by Sub-Committee on Reparations*, 23 June 2003, available at <https://pmg.org.za/committee-meeting/2624/>

21 Shirley Gunn, “South Africa Reparations Advocacy: The Case of Khulumani Support Group”, *Conference Presentation, African Transitional Justice Research Network Workshop “Advocating Justice: Civil Society and Transitional Justice in Africa”*, 30–31. 8. 2010, Johannesburg

22 Annah Moyo, Maxine Rubin, Hugo van der Merwe, Reparations for Apartheid-Era Victims in South Africa: The Unfinished Business of the Truth and Reconciliation Commission, in Carla Ferstman, Mariana Goetz, Alan Stephens, eds., *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, 2018, 17.

23 Adam Yates, “Justice Delayed: The TRC Recommendations 20 Years Later”, in *Daily Maverick*, 5. 9. 2018, <https://www.dailymaverick.co.za/article/2018-09-05-justice-delayed-the-trc-recommendations-20-years-later/>

24 Ibid.

25 Hugo van der Merwe, Prosecutions, Pardons, and Amnesty: The Trajectory of Transitional Accountability in South Africa, in Nicola Palmer, Phil Clark and Daniella Granville, eds., *Critical Perspectives in Transitional Justice*, Antwerp: Intersentia, 2012.

26 Department of Justice and Constitutional Development, Republic of South Africa, Invitation for Public Comments on A: Regulations Relating to Assistance to Victims in Respect of Basic Education, B: Regulations Relating to Assistance to Victims in Respect of Higher Education and Training, and C: Regulations Relating to Medical Benefits for Victims, 2011.

27 Promotion of National Unity and Reconciliation Act 34 of 1995: Regulations on the Exhumation, Reburial or Symbolic Reburial of Deceased Victims, 2010.

regulations provide financial assistance to relatives of missing or deceased persons to locate their relatives' graves, and if applicable, to exhume their bodies to allow for reburial. Where bodies cannot be located, financial assistance is offered for the symbolic reburial of the missing/deceased persons. This assistance is only available to relatives of victims classified as such by the TRC. These funds were specifically made available for relatives involved in reburials carried out by the Missing Persons Task Team which was mandated to follow up on TRC missing person's cases.

## COMMUNITY

Regulations for Community Reparations have still not been finalised as they were only drafted in 2013 and were subjected to intense criticism both within parliament<sup>28</sup> and by civil society and survivors. The draft regulations for the community rehabilitation reparations strategy were criticised on several grounds, the lack of criteria in making an assessment and identifying which communities were most-in-need was one of these criticisms. More so, the lack of transparent and consultation in developing the regulations for community rehabilitation measures in addition to the long delay in initiating these reparations were also remarked upon as a concern that the state was not taking its obligations towards reparations seriously.<sup>29</sup>

A major point of contestation was the link between the rehabilitative measures proposed and redressing human rights violations as defined by the TRC Act. The community rehabilitation measures were more developmental in nature prompting concerns that the responsibility to address developmental needs which should be funded by the general budget rather than through reparations funds intended to support victims. The lack of specifics in the draft Regulations may allow for the reparation funds to be used for developmental projects instead of the TRC mandated aims.

## SOCIAL SATISFACTION

In response to the ineffective reparations process and the disappointment and frustration of the victims of the apartheid system, many civil society groups have been very outspoken on issues of reparations. One of the most visible voices in civil society is the Khulumani Support Group (Khulumani) who continue to publicly voice their concerns about the lack of sufficient reparations measures and the failures of the states to adequately consult with victims.

Khulumani, in collaboration with other civil society organisations formed a coalition (South African Coalition for Transitional Justice) which has campaigned around the unresolved issues of the TRC, paying particular attention to reparations as the key challenge. This coalition also receives support in its stand from a range of other civil society organisations. Many of the marginalised population "have lost hope in a government that has made false promises",<sup>30</sup> not only in reference to the reparations process but also to the State's pursuit of justice, truth and reconciliation.

## LESSONS LEARNT AND RECOMMENDATIONS

1/ The delays in the provision of financial reparations undermined the value of the reparation process, the legitimacy of

the TRC and transitional justice process in South Africa more generally. The credibility of the process was questioned as the victim's sense of justice was violated and their situation, suffering and loss perceived as less important than the granting of amnesty to perpetrators.<sup>31</sup> Prioritizing the needs of victims is paramount to healing the growing mistrust and dissatisfaction with the "unfinished business of the TRC" and the unfulfilled reparations.

2/ The ambiguous legal framework and unclear information policy (before, during and after the TRC hearings) remain a huge challenge. The Interim Constitution suggested the need for reparations as a part of the South African democratic transition, however, there was no mandated implementation of these reparations. Thus there remains no legal obligation on the state to provide and follow-through on reparation processes.<sup>32</sup> In contrast, the implementation of the amnesty process was constitutionally mandated furthering marginalizing victims and their access to redress. Although the provisions concerning the need for reparations were included in the Final Constitution, this was done within the context of legitimizing the TRC Act.<sup>33</sup> The legal ambiguity and lack of State obligation to provide and follow-through on reparations raises the issue of accountability. Particularly, how the individual citizens can hold their State accountable for the reparations they are entitled to as part of the TRC process.

3/ The governments input on reparations remains inconsistent and offhand, the piecemeal approach utilized since the establishment of the reparations programme remains ineffective and without meaningful or sustained conversation between governments, civil society and representatives of the victims.<sup>34</sup> There is a need for an integrated framework to function within other mechanisms of transitional justice and justice reforms in general.

4/ The lack of a clear consultation process during the development of the regulations governing implementation of reparations has undermined confidence in the accessibility and commitment of the state. Civil society groups and representatives of victims need to be involved by establishing clear channels of consultation and dialogue about what reparations entail and the implementation of these processes.

5/ Reparations were not implemented in conjunction to the other transitional justice mechanisms. The South African case highlights and questions the holistic implementation of transitional justice mechanisms, specifically reparations in the process of reconciliation.<sup>35</sup> The credibility of the entire transitional justice process depends largely on how the government addresses reparations as it represents the prioritisation of victims needs and acknowledges their suffering.

28 Parliamentary Monitoring Group op cit note 20.

29 Ibid.

30 Adam Yates, op cit note 23.

31 Ruth Picker, *Victims' Perspectives about the Human Rights Violations Hearings*, Centre for the Study of Violence and Reconciliation, Research Report, 2005, 17.

32 Christopher J. Colvin, Overview of The Reparations Program in South Africa, in Pablo de Greiff, eds., *The Handbook of Reparations*, Oxford University Press, 2006, chapter 5, 203.

33 Ibid.

34 Ibid., 201.

35 Warren Buford, Hugo van der Merwe, "Reparations in Southern Africa", in *Cahiers d'études africaines*, 2004, Vol. 44, 1-2.

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# EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE

GERALDINE FRIESLAAR

## INTRODUCTION

At the heart of a society in transition, particularly one that was built on institutionalized racism, secrecy, inequality, human rights violations and state-imposed amnesia characteristic of the apartheid era, are its cultural, heritage and memory institutions. In trying to grapple with the legacies of a complex, contested and fragmented past and in the recasting of a new nation, various mnemonic devices, such as museums, memorials, monuments, public holidays, public art and performance, archives, historiographies, autobiographical writing, social activism and recreational tourism amongst others, have been deployed in the service of the production of collective memory in the post-apartheid. In an effort to serve as a pedagogic tool and *aide-mémoire* of the past, collective remembrance draws on elements from the past to speak to the present and an imagined future. However, the post-apartheid commemorative culture which has gripped South Africa has also accentuated the tension, contestation and compromise between remembering and forgetting, all intertwined with multiple stories of loss, triumph, sacrifice, heroism, victimhood, trauma and violence.<sup>1</sup>

## HISTORICAL BACKGROUND

The reality is that post-apartheid South Africa is still haunted by the spectre of white minority rule which is palpable in all spheres of life, whether it is through the spatial design of cities, resilient patterns of racialized inequality or through the representation of racial and gender imbalances in cultural, heritage and memory institutions that was established during apartheid. Moreover, the legacy of apartheid left an indelible scar on the landscape of South Africa, when looked through the lens of forced removals, racial segregation and campaigns of state terror, so even if there were no memorialization projects, the materiality of physical sites and objects (whether it contains built environment or have been left vacant after forced removals or displacement), offers a stark reminder to a painful past. In as much as the making of a new “rainbow nation” was premised on the notion of looking forward to the future by forgetting some painful and potentially divisive aspects of the past, in the spirit of reconciliation and nation-building, especially after the fall of apartheid, the creation of a new nation forged out of the crucible of the “triumphing of good over evil”, also required the constitution of processes of collective remembrance. These processes necessarily involved the construction, and reconstruction, of heritage institutions in South Africa, all of which has had varying degrees of success in respect of the production of a shared sense of memory interwoven around the tension between remembrance and forgetting.

With the demise of apartheid and the euphoria accompanying the transition to democracy, the early 1990s saw a flowering of new heritage institutions, national museums, community

museums, memorial projects, monuments and archival institutions. Informed by the newly adopted ethos of the democratic government, these institutions focused on forging a shared and collective sense of history and heritage aligned to the new democratic government’s commitment to reconciliation, redress and nation-building. The early 1990s also saw the beginnings of a transformation discourse which offered a means through which existing heritage institutions could be reimagined, in order to reflect the cultural sensibilities of the changing political conditions within the country, as South Africa transitioned from an authoritarian regime to a democracy.<sup>2</sup> The political developments and intense transformation processes saw the emergence of various post-apartheid institutions such as community museums, like the District Six Museum and the Lwandle Migrant Labour Museum (both in Cape Town), and national museums such as Robben Island Museum in Cape Town, the Nelson Mandela National Museum in Mthatha, Qunu and Mvezo and Freedom Park in Pretoria, to name but a few.<sup>3</sup> The proliferation of post-apartheid heritage institutions and memory projects continued well into the late 1990s and was at the coalface of leading discussions on policy formation around heritage, the politics of issues of heritage and the production of history and heritage.

Framed within national debates regarding transformation and various consultative processes which started to emerge during the early 1990s, the African National Congress’s (ANC) Arts and Culture Desk set up a Commission for Museums, Monuments and Heraldry (CMMH) in 1991 as a vehicle for the formulation of a national policy on museums, monuments, archives, heraldry and national symbols. The purpose of the CMMH was to formulate a policy that would both safeguard and educate people about the heritage of South Africa. Chaired by Wally Serote, head of the ANC’s Arts and Culture Desk and coordinated by Professor Themba Sirayi, director of Centre for Cultural Studies (CCS) at the University of Fort Hare (UFS) in the Eastern Cape, the objective of the CMMH was to work towards “a common integrated and integrating cultural framework that [would help] to promote

1 Marita Sturken, *Tangled Memories: The Vietnam war, the Aids Epidemic and the Politics of Memory*, Berkeley and Los Angeles: University of California Press, 1997, 43.

2 Leslie Witz, Transforming museums on post-apartheid tourist routes, in Ivan Karp, Corinne Kratz, Lynn Szwaja and Tomás Ybarro-Frausto, with Gustavo Buntix, Barbara Kirshenblatt-Gimblett, and Ciraj Rassool (eds.), *Museum Frictions: Public Cultures/Global Transformations*, Durham: Duke University Press, 2006, 108; Also see Verne Harris, “The Archival Sliver: Power, Memory and Archives in South Africa”, in *Archival Science*, 2002, Vol. 2, 76.

3 Ciraj Rassool, Memory and the Politics of History in the District Six Museum, in Noeleen Murray, Nick Shepherd and Martin Hall (eds.), *Desire Lines: Space, Memory and Identity in the Post-Apartheid City*, Abingdon: Routledge, 2007, 113; Also see Ciraj Rassool, Community Museums, Memory Politics and Social Transformation in South Africa: Histories, Possibilities and Limits, in Ivan Karp et al (eds.), *Museum Frictions: Public Cultures / Global Transformations*, Durham & London: Duke University Press, 2006, 288.

the shared cultural identity and to put such identity at the centre of the development paradigm.<sup>4</sup>

Criticizing heritage institutions that were created under apartheid, the CMMH castigated these institutions for being “otiose, monuments of privilege, waste of money, institutionalized proof of white hegemony and abuse of the environment and culture”.<sup>5</sup> Having recognized that there was no coherent national policy for the management of heritage resources, the CMMH sought to advance a national policy through which heritage institutions and structures could “foster national unity, reconciliation and democratic values and be accessible to and preserved for the education, benefit and development of all South Africans”.<sup>6</sup> For example, in the ANC’s proposed national policy, archives were positioned “at the nexus of cultural and civil rights” their role was accentuated as one in which they “should collaborate with cultural and heritage institutions in a people’s history programme aimed at empowering the voiceless, and [where] archival centres [are] positioned as community resources, not simply repositories”.<sup>7</sup>

Following the 1994 general elections that saw the ANC win with a landslide victory, the Minister of Arts, Culture, Science and Technology, Dr. Ben Ngubane, appointed 23 people to form the members of the Arts and Culture Task Group (ACTAG) in November 1994. The purpose of ACTAG was to make detailed recommendations on arts and culture policies which were in line with the principles of South Africa’s new constitution. The emergence of ACTAG, which in turn informed the White Paper on Arts, Culture and Heritage in 1996 and other administrative and legislative framework that stemmed from these recommendations, such as the *National Heritage Resource Act* (No.25 of 1999) also led to the launch of the National Legacy Project “with the aim of redressing and transforming the heritage landscape of this country to ensure that it truly represents the diversity of our society”.<sup>8</sup>

In their analysis of the centrality of nation-building in the formation of museums, archives and libraries, Richard Harvey Brown and Beth Davis-Brown concluded that these institutions “help to preserve a collective national memory and thence, to constitute a collective national identity”,<sup>9</sup> and “thereby contribute to the social stability and solidarity amid rapid and otherwise more centrifugal change”.<sup>10</sup> Following from their argument, it can be argued that these post-apartheid institutions were configured as one of the ways in which to create modern “imagined communities”<sup>11</sup> where heritage institutions became integral in the shaping of new publics and the education of the country’s citizenry. Recognizing that cultural, memory and heritage institutions are “[far] from ... passive receptacles or neutral storehouses for holding onto the remembered past, these mnemonic devices are active agents in shaping the construction of a tenuous collective identity and shared meaning in the everyday lives of South African citizens”,<sup>12</sup> the new democratic government embarked on a process of commemorative practices and nation-building.

Cognizant of the limitations and omissions inherent in heritage institutions formed during apartheid, the new democratic government sought to redress historical imbalances of racial, class and gender representation within the knowledge economy of these institutions. It is in this regard, that the *National Heritage Bill of 1998* came into existence in order to foster an integrated approach to all the national heritage institutions, including museums, archives, monuments, living heritage and national symbols. The Bill makes provision for the national museums and heritage institutions of the colonial and apartheid eras to be subsumed

into two new national flagship museums, the Iziko Museums in Cape Town and the Ditsong Museums in Pretoria. The amalgamation of the museums into flagship museums was intended to facilitate transformation in respect of employment, exhibition strategies and collection policies.<sup>13</sup>

## THE NEED FOR PRESERVATION OF WITNESS MEMORY

Although the demise of apartheid signalled the end of institutional racism through a brokered transfer of political power, heritage institutions in apartheid South Africa were traditionally regarded as “spaces where black people were represented only in ethnographic collections and exhibits”.<sup>14</sup> Framed against the apartheid legacies of large scale destruction, imbalances in representation, distortion and the sanitization of historical memory, the birth of the new nation was always going to be fraught with contestation in redressing the imbalances and injustices of the past. The tension around the struggle between forgetting and remembering in the service of the negotiated settlement and the subsequent political compromise that was reached among the multi-party democracy in 1994, has played itself out in various ways in heritage institutions established during the apartheid era and in the post-apartheid in the form of contestations and tenuous debates. The contestations around the politics of remembrance have problematized what should be remembered and the way in which it should be remembered in the post-apartheid.

Notwithstanding the underlying tensions inherent in the act of remembrance, the repressive apartheid regime has

4 ANC Policy for Transformation and Development of Heritage Resources (Museums, Monuments, Archives and National Symbols) for a Democratic South Africa, Discussion paper presented on behalf of the ANC Commission for Museums, Monuments and Heraldry to the ANC Culture and Development Conference, Civic Theatre, Johannesburg, May 1993 (NA-HECS, University of Fort Hare, Alice), 1.

5 Ibid., 1.

6 Ibid., 2.

7 State of the Archives: An analysis of South Africa’s national archival system, 2014, prepared by Archival Platform, University of Cape Town: Cape Town, 2015, 28.

8 Arts and Culture on National Legacy Projects <https://www.gov.za/speeches/arts-and-culture-national-legacy-projects-24-jun-2017-0000>; The National Legacy Project was a memorial project mandated to commemorate leaders, cultures and historic places that had been neglected in the past. See Khwezi ka Mpumlwana, Gerard Corsane, Juanita Pastor-Makhurane and Ciraj Rassool, Inclusion and the Power of Representation: South African Museums and the Cultural Politics of Social Transformation, in Richard Sandell (ed.), *Museums, Society, Inequality*, Abingdon: Routledge, 2002, 250.

9 Richard H. Brown and Beth Davis-Brown, “The Making of Memory: The Politics of Archives, Libraries and Museums in the Construction of National Consciousness”, in *History of the Human Sciences*, 1998, Vol. 11, No. 4, 19.

10 Ibid.

11 See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1991, 6-7.

12 Martin Murray, *Commemorating and Forgetting: Challenges for the New South Africa*, Minnesota: University of Minnesota Press, 2013.

13 Leslie Witz, Transforming Museums on Postapartheid Routes, in Ivan Karp, Corinne A. Kratz, Lynn Szewaja and Tomás Ybarra-Frausto, with Gustavo Buntinx, Barbara Kirshenblatt-Gimblett and Ciraj Rassool (eds.), *Museum Frictions: Public Cultures/ Global Transformations*, Durham & London: Duke University Press, 2006, 108.

14 Ibid., 107.

demonstrated the importance of the preservation of memories, especially when juxtaposed with State machinery that not only destroyed records of those it oppressed, but also sought to dehumanize, classify and codify its citizens in line with its discriminatory policies and legislation. Preceding the end of apartheid, were the emergence of resistance art and literature the 1970s, and the conceptualization of a people's education and oral history programmes during the 1980s. The development of resistance art, literature and a people centred education was to counter apartheid and to document the memories of those opposed to apartheid. Although these developments can be traced back to the 1970s, it finally gathered momentum during the 1990s with the emergence of a transformation discourse.<sup>15</sup> More importantly, as Gary Minkley and Ciraj Rassool argued, “[p]eople’s history produced a politics of history as weapon, tool, and vehicle for empowerment, as part of ‘a broad project to develop an education for a post-apartheid South Africa’”.<sup>16</sup> The transformation discourse facilitated an acute impetus to memorialize “as a form of symbolic justice or reparations to the victims, an instrument for reconciliation, a mechanism for nation-building and political legitimacy, and a pedagogical tool to inculcate the preventative lessons of ‘never again’”.<sup>17</sup>

## ROLE OF MEMORY INSTITUTIONS

As mnemonic devices, post-apartheid sites of memory in South Africa have primarily attempted to provide a space for reflection or mourning in addition to functioning as pedagogical instruments and conduits for reconciliation and forgiveness as framed within the confines of the ideals of South Africa’s “rainbow nation”. Given the apartheid legacy of exclusion, post-apartheid sites of memory were also tasked with the responsibility of giving voice to the hidden and marginalized voices of society by focusing on an inclusive approach to heritage. More importantly, as “theatres of memory”,<sup>18</sup> sites of memory affirms the humanity of those that suffered as a result of apartheid’s atrocities and as result the heritage landscape of post-apartheid South Africa are dotted with memorials, monuments, museums and heritage sites. Some of these include, but is not limited to:

- Robert Sobukwe Memorial, Graaff-Reinet
- Red Location Museum, Port Elizabeth
- Freedom Park, Pretoria
- Nelson Mandela Museum, Mthatha
- Heroes Park, East London
- Mandela House, Soweto
- Bhisho Massacre Memorial, Bhisho
- Freedom Charter Monument, Kliptown
- Steve Biko statue, East London
- Hector Pieterse Memorial and Museum, Johannesburg
- Nkosi Albert Luthuli Statue, KwaDukuza
- Holocaust Centre, Cape Town
- Solomon Mahlangu statue, Mamelodi
- Slavery Emancipation Monument, Elim
- The Workers’ Library and Museum, Johannesburg
- Mahatma Gandhi statue, Pietermaritzburg
- The Gallows, Pretoria Central Prison
- The Unknown Miner, Johannesburg
- The Apartheid Museum, Johannesburg

While it falls outside of the scope of this chapter to discuss each post-apartheid memory institution in detail, I will provide

a brief overview of three memory institutions that have been built around respective campaigns of social justice, human rights, education, preservation and reconciliation.

## TYPES OF MEMORY INSTITUTIONS

### THE DISTRICT SIX MUSEUM

The District Six Museum is regarded as a site of memory and of conscience in the sense that it functions at the intersection of human rights advocacy and heritage conservation, as it interprets the history of District Six through the site and engages its community in public programming. The District Six Museum emerged out of the developments of material restitution for those affected by forced removals in District Six after its demarcation as a white group area in 1966 under the *Group Areas Act*. In 1989, the District Six Museum Foundation emerged as a living memory project around the history of District Six and the impact of forced removals on the once vibrant and diverse community of District Six. Out of these early developments, the District Six Museum was established and was officially opened in 1994 with an exhibition entitled, *Streets: Retracing District Six*, which focused on the people and streets that made up the District. In reclaiming the space, the aim of the exhibition was “not to recreate District Six as much as repossess the history of the area as a place where people lived, worked, loved and struggled”.<sup>19</sup> It is significant that the emergence of the museum in the 1980s occurred at the same moment that the social history movement gained momentum in South Africa. Emanating from its memory work around the histories of District Six and memory retrieval, “[o]ral history practice, as means of bringing to light the hidden and erased histories of the area, was embraced by the museum as an empowering methodology which would facilitate memory work around District Six”.<sup>20</sup>

### THE ROBBER ISLAND MUSEUM

Following in the footsteps of the District Six Museum, after an intense period of contested discussions regarding the future of Robben Island, it was proclaimed a national monument in January 1996. With this declaration, Robben Island came under the jurisdiction of Department of Arts, Culture, Science and Technology

15 Considered to be the forerunners of some post-apartheid heritage institutions, the History Workshop at the University of the Witwatersrand (Wits) and the Western Cape Oral History Project at the University of Cape Town (UCT), the People’s History Project at the University of the Western Cape (UWC) sought to teach students how to do research before sending them into their communities to write the “hidden” or marginalised histories of these oppressed communities.

16 Gary Minkley and Ciraj Rassool, *Orality, Memory and Social History in South Africa*, in Sarah Nuttall and Carli Coetzee (eds.), *Negotiating the Past: The Making of Memory in South Africa*, Cape Town: Oxford University Press, 1998, 93.

17 Lisa M. Moore, “(Re)covering the Past, Remembering Trauma: The Politics of Commemoration at Sites of Atrocity”, in *Journal of Public & International Affairs*, 2009, Vol. 20, 47.

18 Raphael Samuel, *Theatres of Memory: Past and Present in Contemporary Culture*, London: Verso, 1994.

19 See [www.districtsix.co.za](http://www.districtsix.co.za)

20 For a richer discussion on the oral history strategies employed by the District Six Museum see Chrischene Julius, *Oral history in the exhibitionary strategy of the District Six Museum*, Cape Town, MA dissertation, University of the Western Cape, 2007, ii.

(DACST). After centuries of being used as a site of banishment, repression and imprisonment, the island prison finally closed its gates in 1996 in anticipation of being developed into the first national museum of a new democratic South Africa. As argued by Harriet Deacon, “[l]ike the death camps of the Holocaust, the island prison, a site of repression built by its inmates, [was] to be the first monument to the death of apartheid.”<sup>21</sup> Although Robben Island was envisioned as a place of commemoration, the general consensus among the leaders of the liberation movement was that it should be represented as a site of resistance and “a symbol of the triumph of the human spirit over adversity” rather than as a site of suffering and repression.

With the establishment of the Robben Island Museum in January 1997, the museum became the first and foremost intervention of the National Legacy Project Programme, which was constituted in 1996. With the museum focused on fostering reconciliation and nation building by transforming the representation of the island into positive and universal terms, Nelson Mandela fittingly opened the Robben Island Museum on Heritage Day in September 1997. In attempting to navigate the tensions of being a sacred site and a tourist destination framed within the bureaucracies of heritage, only served to exacerbate a very contentious environment which has continued to haunt the museum.<sup>22</sup> This contestation was further exacerbated by fierce debates about the role of ex-political prisoners in the development of the museum.<sup>23</sup> Despite the raging debates about the ownership over Robben Island’s history, between the interests of tourism and the demands for memorialization, the Island attained World Heritage status in December 1999. Strengthening its iconic and universal status, Robben Island was declared a World Heritage site as a result of its long historical association with imprisonment and banishment.

As the museum positioned itself as part of a nation-building project fostering reconciliation and promoting a shared sense of identity through the production of a national heritage, tensions ultimately arose, especially within political circles about the way in which liberation history was constructed and interpreted. These tensions were expressed even before the establishment of the museum and have since continued, with some critics charging that the “ANC had hijacked the island narrative as *the* narrative of the struggle.”<sup>24</sup> In fact, as Noel Solani argued, “[w]hen the Robben Island Museum was opened in 1997, it perpetuated the Mandela myth.”<sup>25</sup> This focus on Mandela, or the “Mandelaisation” of Robben Island can, in part, be understood given his centrality in brokering a relatively peaceful transition from apartheid to democracy and in answering the demands of an international tourism market that desired to participate in South Africa’s liberation story as epitomized through the figure of Mandela.<sup>26</sup>

Despite these contentious debates that have plagued the museum since its establishment, Robben Island has become one of South Africa’s premier cultural tourist destinations with high volumes of visitors flocking to the island each year. According to Ciraj Rassool, this was in line with the new government’s efforts of “constructing, packaging, and transmitting images and representations of the ‘new’ society and its past to a perceived growing audience of international visitors”<sup>27</sup> in post-apartheid South Africa “in the service of nation building, social justice and economic advancement.”<sup>28</sup> Marketed as a site of resistance and a symbol of the “indomitable nature of the human spirit”<sup>29</sup> and its triumph over adversity, the Robben Island Museum has offered its visitors the opportunity to share in the “South African miracle” through

a narrative of peace and reconciliation. Commemorated of as one of the primary sites that deploy the healing logic of restorative justice in South Africa, Robben Island has drawn universal appeal, primarily because of the way in which its dark past has been reshaped into a story of victory over oppression.<sup>30</sup>

## CONSTITUTION HILL

Facing similar challenges, “at the often fraught intersection of nation-building, urban renewal and tourism,”<sup>31</sup> Constitution Hill struggles to navigate between the tensions of positioning itself as a site of memory and conscience, and as a tourist destination. Emerging as one of a host of post-apartheid memorial projects, Constitution Hill came into existence in the very same space that once was a punitive symbol of the apartheid regime, and was occupied by the Old Fort Prison, which at different points in time held Mahatma Gandhi and Nelson Mandela for opposition against discrimination. Functioning as a multi-purpose urban space which includes prison buildings, a museum, the Constitutional Court and various non-governmental organizations primarily focused on social justice and human rights, Constitution Hill became one of the foremost sights in Johannesburg to commemorate the past through its guided tours, education programmes and exhibition strategies of engaging the audience through accounts of witness memory or special guided tours by ex-political prisoners, specifically those that were held in the Women’s Jail. In as much as Constitution Hill serves as a sacred space for commemorating the injustices of apartheid, the precinct has also been charged with the responsibility of reinvigorating the surrounding area through its urban renewal priorities. This in itself presents a daunting challenge in the way Constitution Hill will have to navigate the demands of heritage tourism juxtaposed with preserving the sanctity of the space as a site of conscience.

21 Harriet Deacon, Remembering tragedy, constructing modernity: Robben Island as a national monument, in Sarah Nuttall and Carli Coetzee (eds.), *Negotiating the Past: The Making of Memory in South Africa*, Oxford: Oxford University Press, 1998, 164.

22 Heather Hughes, Rainbow, Renaissance, Tribes and Townships: Tourism and Heritage in South Africa since 1994, in Sakhela Buhlungu, John Daniel, Roger Southall and Jessica Lutchman (eds.), *State of the Nation: South Africa 2007*, Pretoria: HSRC Press, 2007, 276.

23 Deacon, “Remembering tragedy, constructing modernity”, 170–171.

24 Annie E. Coombes, *History after Apartheid: Visual Culture and Public Memory in a Democratic South Africa*, Johannesburg: Wits University Press, 2003, 99 (emphasis in the original).

25 For a further discussion on the Mandela myth see Noel Solani’s article about the construction of the Mandela myth in which Solani explored the making of Mandela through autobiographical accounts, the media and the museum. Through a careful consideration of the various constructions of Mandela, Solani attempted to unsettle the Mandela myth. In Noel Solani, “The Saint of the Struggle”, in *Kronos*, August 2000, Vol. 26, No. 1, 51; Also see Ciraj Rassool, “The Rise of Heritage and the Reconstitution of History in South Africa”, in *Kronos*, August 2000, Vol. 26, 17.

26 Coombes, *History after Apartheid*, 95.

27 Rassool, “The Rise of Heritage”, 5.

28 Hughes, “Rainbow, Renaissance, Tribes and Townships”, 276.

29 Robben Island Museum Nomination File: World Heritage Site Status, (1999) Cape Town, Robben Island Museum.

30 Desmond Tutu, *No Future Without Forgiveness*, London: Rider, 1999, 33–36; Veronique Riouful, “Behind Telling: Post-apartheid Representations of Robben Island’s Past”, in *Kronos*, August 2000, Vol. 26, 24.

31 Marie Kruger, “Commemorating the past in the urban present: Living heritage on Constitution Hill/Johannesburg”, in *African Studies*, 2019, 4.

## LESSONS LEARNT

The South African heritage landscape is punctuated with various forms of mnemonic devices, some of which are reminiscent and nostalgic of a colonial and apartheid past, and some of which speak to a more inclusive past informed by the drive to memorialize the hidden and marginalized histories that were suppressed during the oppressive regimes of colonialism and apartheid. The nostalgia and yearning towards the old regime, perhaps better understood through the lens of the compromises of a brokered peace deal, has found expression in the maintenance and prominence of apartheid era heritage institutions, as primarily national heritage institutions which at once indicates the recalcitrant and resilient patterns of apartheid, and in a way, also arrests the possibility of post-apartheid memory institutions problematizing the very presence of these apartheid inherited heritage institutions. Far from being “embarrassing reminders of a discredited past”,<sup>32</sup> or removed or destroyed, apartheid heritage institutions enjoy prominence within the heritage landscape, both in respect of funding and a steady flow of visitors, nicely packaged within the framework of a reconciliation meta-narrative.

While this has been the dominant approach to heritage making and memorialization in South Africa, specifically with a focus on the biography of leaders during the liberation struggle and their contribution to reconciliation and redress, contestation continues to plague both sites of memory of the apartheid era and post-apartheid sites of memory. There have been growing calls to address sites of memory dedicated to the colonialism and apartheid as was evident from the emergence of the #Rhodesmustfall movement.<sup>33</sup> Within the same vein, there have been mounting discontent in the way in which post-apartheid memory institutions primarily have been framed around the memorialization of the great man paradigm of history with the exclusion of

ordinary citizens that also contributed to the liberation struggle. The contestation around sites of memory in the post-apartheid era, is also particularly fraught when framed within the socio-economic disparities and inequality prevalent in South Africa.

## RECOMMENDATIONS

- Encouraging public debates and providing a forum for public discussions on future memorialization projects as a way of engaging all stakeholders in a consultative process that will encourage ownership and a shared sense of history.
- Undertaking a campaign in which to document and record stories and testimonies of victims, witnesses and perpetrators of apartheid era atrocities in furthering the ideals of the Truth and Reconciliation Commission.
- Identification of physical traces of the regime’s atrocities, mass graves of the victims, sites of torture, prisons, offices (those known and underground) of state security units, as it could become sites of conscience and memory, and could also be used as a pedagogical tool in the teaching the lesson of “never again”.
- Civil society should further develop the preservation of sites of memory as part of working with issues of social and transitional justice and in the ongoing work of truth recovery, however government should also work towards creating a memorial framework that speaks to a more inclusive agenda of the contribution of women, the youth and others that have been marginalized by the dominant narrative of nation-building and reconciliation.

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<sup>32</sup> Murray, *Commemorating and Forgetting*, 20.

<sup>33</sup> See Derek Peterson, Kodzo Gavua, Ciraj Rassool, *The Politics of Heritage in Africa: Economies, Histories and Infrastructures*, Cape Town: Cambridge University Press, 2015 for a discussion on the #Rhodesmustfall movement.

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# TIMELINE OF THE MAJOR EVENTS

<b>1922</b>	The national archives service under the auspices of the Department of the Interior came into being
<b>May 1948</b>	National Party wins national elections on platform of promoting apartheid as official state policy
<b>1950</b>	Population classified by race with the implementation of the Population Registration Act and Group Areas Act passed to segregate blacks, coloureds and whites
	Suppression of Communism Act led to the banning of the Communist Party
<b>1952</b>	Launch of Defiance Campaign led by the African National Congress
<b>March 21, 1960</b>	Sharpeville Massacre where 69 unarmed protestors were killed during a peaceful march
<b>April 1960</b>	Banning of political parties including African National Congress (ANC) and Pan Africanist Congress
<b>December 1961</b>	Launch of ANC military wing, uMkhonto weSizwe
<b>1962</b>	Implementation of the Archives Act, transformation of the State Archives Service (SAS) into a formidable system with wide-ranging regulatory powers
<b>1964</b>	ANC leader Nelson Mandela and other Rivonia Treason trialists sentenced to life imprisonment
<b>1976</b>	More than 600 killed in clashes between black protesters and security forces during uprising, which started in Soweto
<b>1982</b>	Adoption of Protection of Information Act (PIA)
<b>1984</b>	Township revolt
<b>June 1986</b>	State declares National State of Emergency and bans various anti-apartheid organisations
<b>1989</b>	FW de Klerk replaces PW Botha as president, meets Mandela
<b>February 2, 1990</b>	President F.W. de Klerk announces the unbanning of the African National Congress and other pro-democracy organisations
<b>February 11, 1990</b>	Nelson Mandela released after 27 years in prison
<b>1991</b>	Commission for Museums, Monuments and Heraldry (CMMH) was created as a vehicle for the formulation of a national policy on museums, monuments, archives, heraldry and national symbols
<b>December 1991</b>	Opening of the Convention for a Democratic South Africa (CODESA)
<b>December 1993</b>	Multi-party negotiations conclude with agreement on interim constitution with provision for amnesty for apartheid era crimes
<b>April 27, 1994</b>	South Africa holds its first democratic elections in which the African National Congress wins a majority of the seats in parliament. At this point the 11 existing police forces are merged to form the South African Police Service.
<b>November, 1994</b>	Appointment of the Arts and Culture Task Group (ACTAG) to make detailed recommendations on arts and culture policies which were in line with the principles of South Africa's new constitution
<b>May 10, 1994</b>	Nelson Mandela inaugurated as first president of democratic South Africa
<b>July 26, 1995</b>	Promotion of National Unity and Reconciliation Act, providing for the establishment of the Truth and Reconciliation Commission (TRC), is passed by Parliament
<b>December 1, 1995</b>	TRC legislation adopted after lengthy consultations and parliamentary discussions
<b>1996</b>	The National Archives of South Africa Act comes into being in response to the shifting political changes and the need for transformation within the national archival system
<b>April 1996</b>	First hearings of the TRC are held in city of Port Elizabeth
<b>May 1996</b>	The Constitutional Assembly approves a draft final constitution
<b>December 1996</b>	President Nelson Mandela signs the final constitution into law
<b>February 1997</b>	The final constitution takes effect

<b>1998</b>	The National Heritage Bill of 1998 comes into existence in order to foster an integrated approach to all the national heritage institutions, including museums, archives, monuments, living heritage and national symbols
<b>1999</b>	Adoption of the National Heritage Resource Act (No.25 of 1999) to provide standards for conservation and maintenance of heritage resources that are in control of State Departments and Supported Bodies
<b>2000</b>	Promotion of Access to Information Act (2000), also known as PAIA, was passed which gives effect to the constitutional right of access to information held by public and private bodies as outlined in the South African Constitution
<b>March 2003</b>	TRC concludes its works and submits final report with recommendations
<b>2003</b>	State starts implementation of financial reparations for victims
<b>November 2007</b>	President Thabo Mbeki announces pardons process for political perpetrators
<b>2019</b>	State reopens investigations into various apartheid era cases where TRC did not grant amnesty

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