Children and the South African Truth and Reconciliation Commission: Reflections and recommendations.¹

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Those who grew up under conditions of violence will carry traces of their experiences into adulthood. Many have suffered the loss of loved ones. Many carry physical and psychological scars. The life opportunities of many have been compromised through disruptions to their education. Some have transplanted the skills learnt during the times of political violence into criminal violence, as they strive to endure ongoing poverty. However, perhaps the most disturbing and dangerous aspect of this legacy for the future of the nation is the fact that those who sought to transform the country, and in the process gave up so much, see so little change in their immediate circumstances.³

Summary

Often vulnerable, young people invariably bear the brunt, directly and indirectly, of hostilities and the instruments of repression that typify societies in conflict. Indeed, most of the gross violations of human rights reported to South Africa’s Truth and Reconciliation Commission (TRC) were perpetrated against children and youth between the ages of 13 and 24.⁴

The South African TRC’s mandate focused on gross violations of human rights—violent crimes, such as murder, disappearances, detentions, torture and assaults.⁵ The story of repression and resistance in South Africa, however, takes us beyond such blatant abuses of civil and political rights that characterised apartheid security practices, and also permeated most aspects of political, social, economic, cultural and linguistic life. Apartheid, in other words, was a holistic assault on the fundamental rights now enshrined in South Africa’s Constitution and the country’s black,⁶ especially African children were on the front line of these abusive policies and practices. For the most part, these experiences were not probed in any depth by the Commission, with the result that much of the architecture of apartheid and its social, economic and political impact and consequences for adults, as well as children were not adequately addressed.⁷

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¹ The author would like to thank Yasmin Sooka, Graeme Simpson and Charlotte McClain-Nhlapo for their comments and inputs during the drafting of this paper.
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³ TRC Final Report, Volume Four, Chapter Nine, paragraph 117
⁴ Op Cit, paragraph 47
⁵ Promotion of National Unity and Reconciliation Act, No.34 of 1995, Chapter 2, Section 3 (2)(a)
⁶ In the South African lexicon, ‘black’ incorporates, African, coloured and Indian groupings.
Children and youth were drawn into the ranks of resistance, as exemplified by the 1976 schools protests, the subsequent radicalism of the 1980s and the community governance and security structures that evolved during the 1980s and 1990s. Many children and youth joined and participated in the activities of anti-apartheid formations, including involvement in more radical and confrontational actions. For some, this also included direct involvement in Umkhonto we Sizwe and self-defence unit structures and related activities in street committees and other local community structures. Youth invariably played also often played a front-line role in protest and defensive actions. They also played a role in ensuring compliance with boycotts and other political directives.

Not surprisingly, such activities attracted the attention of the security services which responded brutally. It is unclear how many children under the age of 18 years were affected, although it is evident that many were. Between 1984 and 1986, for example, 300 children were killed by the police, 1000 wounded, 11,000 detained without trial, 18,000 arrested on charges arising out of protest and 173,000 held awaiting trial in police cells. Children constituted between 25% and 46% of detainees at any one time during this period.

These experiences and the consequences thereof, especially from a child’s perspective, were not examined in detail by South Africa’s Truth and Reconciliation Commission and the TRC gave only limited attention to the participation and protection of children in their processes. Initially, the Commission actively avoided receiving testimonies from children under the age of 18 years, even though many had direct experience of violence, particularly of incidents from the early 1990s. This reflected advice given by child specialists who insisted that children's direct involvement would be inappropriate. Subsequently, the Commission convened ‘special hearings’ that publicly examined the experience of children and youth, although children did not testify at these hearings either.

There are regular references to children and youth in preparatory research briefs developed for the Human Rights Violation hearings across the country, and throughout the TRC’s final report, as well as a dedicated chapter based on the special hearings. In addition, the Commission developed a number of recommendations specific to children and their needs were contained in the TRC’s final report.

In retrospect, it could be argued that the TRC should have given greater consideration to ensuring a more dedicated focus on the experiences and related impact of multiple

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8 Umkhonto we Sizwe (aka MK) was the armed wing of the African National Congress
9 See for example, detail on conditions in which children were being held and the effects of detention, contained in Memorandum on the detention of children, compiled by Committee of Concern for Children, circa 1986, available online in the CSVR Collection on the Traces of Truth website, http://truth.wwl.wits.ac.za.
12 Interview with Ms Yasmin Sooka, former TRC Commissioner, 15 January 2009.
13 Volume Four, Chapter 9 of the TRC Report.
levels of violation against children, as direct and indirect victims of apartheid policies and practices. This could have been done in a more systematic and planned way, and would have required the identification of this objective and related processes in the planning stages of the Commission's work, something few truth commissions give adequate attention to.

The model and focus adopted by the South African TRC, however, drew heavily on experiences from Latin America commissions where the overwhelming focus was on civil and political rights violations. The TRC's mandate, therefore, did not provide for a direct focus on structural and thematic considerations, such as gender, children and youth. Despite this lack of reference, it is to its credit that the TRC was able to give some attention, albeit limited, to these issues.

**Introduction**
The South African TRC retains a unique presence in the fast evolving field of transitional justice. As the first truth commission to conduct the bulk of its work in public, and the only one (with the exception of the forthcoming Kenyan Truth and Justice Commission) to have powers to grant amnesty to perpetrators, it has become a touchstone for other transitional justice processes and related comparative analyses. A closer examination of the Commission’s work certainly provides a basis for many lessons learnt, although these also relate to aspects that should not be replicated, as well as ‘best practices’. Indeed, as scholarship in the transitional justice field has continued to grow, this has been accompanied by a growing body of critical analysis about the South African process. Nevertheless, at the time, the South African process proved to be a remarkable step forward in terms of state sponsored initiatives to promote accountability and truth recovery.

This chapter explores how the TRC addressed the experience of South African children during the conflict and is divided into six sections;

(a) The Commission’s mandate
(b) The import of international standards
(c) Description of how the Commission addressed and involved children in its proceedings
(d) Strategies developed for children’s participation and lessons learned
(e) Challenges, issues and questions for discussion
(f) Recommendations for child participation and protection in transitional justice mechanisms.

**A. The TRC and Children – mandate and context**

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The TRC was mandated to explore and uncover as much as possible about the past conflict in South Africa between 1960 and 1994, through the lens of gross violations of human rights. Through related processes of statement taking, research, investigations and the holding of testimonial and inquisitorial hearings, the Commission was tasked to: identify the causes and effects of violence associated with repression and resistance; to establish and make known the fate and whereabouts of victims; to facilitate the granting of amnesty to perpetrators; to make recommendations about reparations and rehabilitation, and; to prepare a comprehensive report about the Commission’s activities and findings.

The National Unity and Reconciliation Act was passed under the interim 1993 Constitution which gives specific commitments to the rights of children. The TRC's governing legislation, however, made no reference to children in terms of foci or methodology. This silence did not, however, preclude a focus on this or any other subject for that matter, especially with respect to an interrogation of 'causes and effects' of the violence and violations that remained the primary foci of the Commission's work. Given the scale and complexity of the conflict and its multiple fault lines, it was evident that the Commission could not practically deal with everything.. As mandated, the TRC's focus remained on taking statements relating to the perpetration of gross violations of human rights and giving people an opportunity to testify in public hearings that were convened across the country between April 1996 and June 1997. The Commission was, however, concerned that attention be given to different sectors, institutions and themes. Consequently, during the course of 1996 there was a subsequent shift to institutional foci and special hearings, which then included a particular focus on ‘children and youth’.

There is a growing body of literature relating to the import of the TRC's limited mandate in terms of the violence and damage caused by structural aspects of apartheid governance. This has significant implications for the how South Africa assesses some of its current challenges, especially as they relate to issues violence and exclusion, and notions of accountability, responsibility and identity. Although the Commission did attempt to ground the analyses of its 'blood crime' focus (i.e. torture, assassination etc.) in the broader context of apartheid policies, it did not mount a broader investigation of apartheid policies and its institution. This narrow definition of gross violations of human rights effectively marginalised the forms of violation

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15 TRC Final Report, Volume One, Chapter Four, paragraphs 33-36
16 Promotion of National Unity and Reconciliation Act, No.34 of 1995, Chapter 2, Section 3 (2) (a-d)
18 'Children and Youth' hearings were one of three 'special hearing' foci undertaken by the Commission
which most seriously impacted on a wider cross section of particularly black South African children. Indeed, the thematic hearings on children and youth focused on issues of death, torture, disappearance and severe ill-treatment, but it is critical we appreciate these abuses within the broader context of apartheid's victimisation of children, which was much more pervasive and devastating in its everyday impact, both directly and indirectly.

An absence of engagement with structural, institutional and social aspects of violation and remedy, as well as perpetration also diverted the Commission and others from examining the roots, relationships and trajectories of violence with respect to past and contemporary manifestations. This is a significant omission given the current levels of violence in South Africa and the problems associated with addressing this.

Responding to advice from many activists and professionals working on children’s rights issues, the Commission took a decision not to take statements from children, (in other words from anyone under the age of 18 years), which in turn meant that no children’s testimonies would be available for the public hearing process. As such, this automatically removed any immediate concerns to employ special attention to children’s needs in terms of testimony and the difficulties associated with securing such testimony. In the circumstances, this may have been unavoidable, but to a certain extent this marginalised children’s voices from the process.

Many of the violations perpetrated during the TRC focus period (1960-1994) were done so at a time when the victims / survivors were children; the opportunity to testify before the Commission, however, arose when victims / survivors were already adults, a number of years later. The bulk of violations reported to the Commission covered the most violent period of South Africa’s conflict, namely the negotiation period between 1990 and 1994. In 1996, when the Commission began its hearing processes, testimonies from this period included potential deponents who were still minors, yet could have testified about incidents in the previous six year period. Many children who were also direct and indirect victims of violence during this period were also barred from submitting statements to the TRC’s statement takers.

As noted above, the TRC’s database demonstrates that “the largest category of victims reported to the Commission fell into the thirteen to twenty-four age bracket” and that “those in the 13-18 age group suffered as much as those in the 18-24 group.” It is not clear how many from within this age group actually testified, as many of the violations reported were done so by other family members, especially female relatives. Indeed, it is evident that many children and youth who were affected chose not to testify for reasons that have yet to be confirmed. This may relate to anecdotal concerns raised with the author over the last decade that many activists decided not to engage with the Commission.

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21 Interview with Ms Yasmin Sooka, former TRC Commissioner, 15 January 2009.
22 TRC Final Report, Volume Four, Chapter Nine, paragraph 47
**Methodology**

Despite a slew of academic texts on the work of the South African TRC, virtually no attention has been given to how the Commission addressed the thorny issue of children’s participation in its processes and related considerations for children in terms of responding to the impact of human rights violations, assistance and protection issues. This appears to reflect the dearth of available information, and indeed related actions taken by the TRC in this regard. As such, this chapter has focused on a detailed review of the TRC’s seven volume report as it relates to (the involvement of) children and youth, as well as public testimonies available on the TRC’s website. The only consideration given by the Commission to this issue, like that of gender and women, was that it would hold special hearings and that it would as far as it was possible disaggregate the data it collected.

In addition, the chapter draws on a submission made to the Sierra Leone TRC, entitled 'Children and the Truth and Reconciliation Commission for Sierra Leone: Recommendations for policies and procedures for addressing and involving children in the Truth and Reconciliation Commission.' This document provided a useful template for reflection and recommendations as they related to the South African experience and demonstrates how the ability of Truth Commissions to deal with such vulnerable groups have evolved over time.

**B. International standards**


The TRC’s focus on gross violations of human rights provided “a focus on what might be termed ‘bodily integrity rights.’ These include the right to life, the right to be free from torture, the right to be free from cruel, inhuman or degrading treatment or punishment, and the right to freedom and security of the person, including freedom from abduction, and arbitrary and prolonged detention.”

Although neither the TRC' governing legislation nor its final report (and subsequent codicil) makes specific mention of either the Convention or the Charter, it does so implicitly by endorsing the international position that children and youth under the age of eighteen are entitled to special protection from government and society. This

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23 The archive of the Truth and Reconciliation Commission remains largely unprocessed and inaccessible to the public. Detail on what government action has been taken with respect to recommendations made by the TRC is also scant and currently subject to access to information requests by several human rights organizations, including the South African History Archive (SAHA). Only a handful of documents elating to children and the TRC are currently accessible on the Traces of Truth website [http://truth.wwl.wits.ac.za](http://truth.wwl.wits.ac.za).


25 TRC Final Report, Volume One, Chapter Four, para 56.

26 TRC Final Report, Volume Five, Chapter Six, para 159.
is also reflected in key findings relating to gross violations of human rights perpetrated against children and youth (as outlined in Section E below).

The CRC and ACRWC incorporate fundamental principles that should be adhered to with respect to processes, including truth recovery principles, relating to children. These are that:

- in all actions concerning children, the best interest of the child shall be a primary consideration;
- children have the right to participate at all levels of society and are to be provided with the opportunity to express themselves;
- children have the right to expect their civil, political, economic, social and cultural rights to be adequately protected to ensure their survival and development; and
- children should never be subjected to discrimination of any kind

The absence of a discussion and related decisions on how the TRC would address the issue of children's concerns and considerations understandably raises questions about the extent to which the Commission was able to adhere to these principles in terms of the processes and methodologies employed. This has yet to be fully evaluated, although it is evident that the Commission did seek expert advice on several issues as part of its response to issues arising that concerned children. At the same time it is evident that more attention could have been given to integrating a specific focus on children into the various working methodologies and in this process 'mainstreaming' the principles raised above from the get go. Statement taking and testimony processes could have been used to gather specific child-related data (relating to the violation, impact of the violation and recommendations for reparation and rehabilitation), and specific research should have been commissioned to test and evaluate the evidence gathered.

A critical debate arose in the preparatory phase of the special hearings on children and youth as to whether or not children under the age of eighteen should appear and testify at the hearings. The TRC had already taken the unprecedented step of holding many of its other hearings in public, but conventional wisdom held that the formal structure of the hearings might intimidate children and subject them to additional trauma. The Commission held a series of meetings and workshops to discuss this and related issues and sought the opinions of international organisations such as the United Nations Children’s Fund (UNICEF) and over thirty South African non-governmental organisations (NGOs) working with children and youth. The final decision of the Commission was that children under the age of eighteen would not testify, and it was argued that this was in the best interest of the child. Although this decision appears to contradict the principle of promoting children's participation, it is unclear the extent to which this position was contested. With the necessary experienced professionals, appropriate facilities and support, it could be argued that the Commission should have provided space for children to testify and have their statements taken. A Commission does not have to adhere to the same protocols as a court of law, and can employ a more flexible approach. Instead, NGOs and other professional people working with children were asked to testify on their behalf. The Commission did, however, make extensive efforts to involve children directly in the
The TRC relied heavily on human rights and legal standards to support and legitimise its findings and recommendations. The codicil to the final report, released in March 2003, dedicated a further chapter to the “Legal framework within which the Commission made findings in the context of international law.” Further detail was provided on the application of international law in terms of findings made with respect to ‘Holding the State Accountable’ and ‘Command Responsibility’ and ‘Complicity’, and ‘Holding the ANC Accountable’. The CRC and ACRWC also informed the standards by which the Commission made its findings in relation to children and youth. This complemented a range of international human rights and legal standards informed the Commission’s findings.

C. How the TRC addressed and involved children in its proceedings

As deponents under the age of 18 years were excluded from the TRC statement taking process, no children were involved in the geographically-focused Human Rights Violation hearings that were subsequently held across the country. Nevertheless, given the number of cases in which children and youth were involved and/or affected, it was soon evident to the Commission that the experiences of children and youth necessitated specific attention. This resulted in the holding of the ‘children and youth’ hearings.

**Children and Youth Special Hearings**

There is limited public information and documentation available about the background and genesis of the children and youth hearings convened by each of the Commission’s four regional offices. These preparatory work for these hearings were driven by the Commission's Reparations Committee and were not mainstreamed into the primary work of the Commission. Very little secondary research has been written

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27 TRC Final Report, Volume Four, Chapter Nine, para 7.
28 TRC Final Report, Volume Six, Section Five, Chapter One
29 Op Cit, Chapter Two
30 Op Cit, Chapter Three
on the subject and during the course of research for this chapter, no specific reports focusing on children and the SA TRC were identified. This situation is further exacerbated by restricted access to TRC archives, which remain largely unprocessed and inaccessible.

The Commission’s Human Rights Violation Committee convened five special hearings in May and June 1997 on the experience of children and youth, in Cape Town, Johannesburg, Durban, Bloemfontein and East London. Most of those who testified at the hearings were themselves youth and a number of children attended the hearings and participated in cultural and dramatic arts presentations that were undertaken ‘around’ the actual testimonial process. Children were invited to tell their stories about their direct involvement in the liberation struggle, and about things that had happened to their families. It was “imperative that the trauma inflicted on children and young people be heard and shared within the framework of the healing ethos of the Commission. Recognition of the inhumanity of apartheid was seen as a crucial step towards establishing a human rights framework for children and young people in order to ensure that they be given the opportunity to participate fully in South Africa’s new democratic institutions.”

The hearings were intended to examine the impact of apartheid on children; as victims, both primary and secondary, as well as witnesses to violations. In addition, the TRC identified the impact of exile on children and youth as a specific issue requiring further attention. Children did not testify at the hearings themselves, as the Commission felt that “the formal structure of the hearings might intimidate children and subject them to additional trauma.” This decision was reached after an extensive consultation process with representatives of international organisations (including UNICEF) and domestic NGOs working with youth and children. In retrospect, it would have been possible to facilitate direct children’s testimony, employing methodologies that allow for a controlled environment, such as holding closed hearings, setting parameters for cross examination, and providing requisite support etc.

The Commission wanted to document children’s specific experiences, as well as explore “the effects of exposure”. This entailed recognition of the ‘structural violence’ that characterized apartheid and the inequalities and poverty that compounded the situation and experience of many who were caught up in the vortex of repression and resistance.

Indeed, such consequences of apartheid policies exacerbated unstable and violent conditions that manifested in many parts of the country, and the Commission found that children and youth “were drawn into an arena that exposed them to three particular kinds of violence: state oppression, counter-violence and inter- and intra-community violence.”

32 Taken from NCRC’s contribution to Initial reports of States parties due in 1997 : South Africa. 22/05/99. CRC/C/51/Add.2. (State Party Report), paragraph 492.
33 TRC Final Report, Volume Four, Chapter Nine, para 78
34 Op Cit, para 7
35 Op Cit, para 11
36 Op Cit para 18
The TRC itself was concerned that its hearing processes focused too narrowly on the consequences of violation and did not allow for a more rounded engagement with how children and youth had engage with and responded to violence. As such, their involvement as perpetrators of violence and the complex relationship between victimhood and perpetration was not explored. Although a certain amount of security force and state-related documentation regarding the youth’s involvement in violence remained theoretically available, this archival material was not excavated or utilised by the Commission. In addition, human rights NGOs tended to focus on children and youth as victims of state repression, rather their own involvement as perpetrators and bystanders.

As such, the TRC’s hearings tended to focus on only certain aspects of children’s and youth exposure to violence he majority of people who came to the hearings spoke of experiences of extreme hardship, pain and suffering, whilst also providing testimony of the bravery and enthusiasm of young people. The Commission provided a process through which some of the hurt that many people had been carrying silently for years could be released. Thus, while recognising the largely positive role that children and youth played in the liberation of South Africa, many of the testimonies and statements refer only to the generally negative consequences of repression in the period under review.”

**State Oppression**

Children and youth were inevitably both pushed and pulled towards engagement with the growing resistance movement, often under the rubric of youth and student structures. In some cases, this led to involvement with more militant groupings and direct participation in violent acts. The security police had specific sections of its infrastructure that focused on investigations and intelligence collection about youth formations. As repression intensified, children and youth “became the primary targets of detention, torture, bannings, assassination and harassment”. Contemporaneous data collection by non-governmental organizations such as the Black Sash and the Detainee Parent Support Committee, provided basic paralegal assistance to the available under-resourced legal infrastructure, financed predominantly from outside the country. Such interventions helped to temper and expose some of the worst excesses of the security establishment and the apartheid executive, as well as provide empirical data for international organizations that were taking an increasing interest in how children were being affected.

“(T)housands of children, some as young as seven years old, were arrested and detained in terms of South Africa’s sweeping security and criminal legislation. Sometimes, entire schools were arrested *en masse.* All the available figures indicate that the largest number of children and youth was detained between 1985 and 1989, during the two States of Emergency. Of 80 000 detentions, 48 000 were detainees under the age of twenty-five.

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37 TRC Final Report, Volume Four, Chapter Nine, para 87
38 Op Cit, para 16
39 See for example, *The War Against Children; South Africa’s Youngest Victims*, Lawyers Committee for Human Rights, 1986
40 TRC Final Report, Volume Four, Chapter Nine, para 54
41 Op Cit, para 55
In detention, children and youth were invariably subjected to torture. Of those cases reported to the TRC, mostly young men were affected. This largely corroborated allegations levelled at the apartheid government in September 1987 at an international conference convened in Harare, entitled ‘Children, Repression and Law in Apartheid South Africa’. This seminal conference demonstrated the brutality of apartheid through the experiences of South African youth and also provided an opportunity for the anti-apartheid movement and its primary political opposition, the African National Congress, to profile the impact of Pretoria’s policies across the region:

“We are meeting here to discuss the situation of children in apartheid South Africa. As we discuss this issue, we should not forget the similar plight of children in Namibia who, in addition, are forcibly recruited into the army of occupation, corrupted into joining the various terror gangs and forced to serve as prostitutes to satisfy the animal needs of the army of terror. Neither should we, overwhelmed by the harrowing stories that describe the abuse of children in South Africa, ignore the plight of millions of children throughout southern Africa who are also dying in unimaginable numbers, thanks to the criminal campaign of destabilisation and aggression carried out by the Pretoria regime and its surrogate puppet groups.”

Youth were also subject to post-detention restrictions; “Upon release from prison, many young people were subjected to bannings and other restriction orders, turning the young person’s home into another kind of prison. They were forced to report to police stations once a day and were prevented from participating in political and social activities.”

**Counter-violence**

Despite vastly differing experiences, the escalating conflict and deterioration of conditions in South Africa was also reflected in the evolving militarisation of both black and white youth. Many black youth left the country especially in the wake of the 1976 Soweto school uprisings, and the insurgencies of the mid 1980s. Whilst this obviously included some youth under the age of eighteen, by and large most were older than this and could therefore not be classified as ‘children’.

Most youth, however, remained in South Africa, and a number became engaged in organized resistance. Some joined nascent MK units, received clandestine training and became operational, although command and control over such units was largely limited, resulting in a number of incidents that fell outside the ANC's operational jurisdiction. Several incidents recorded by the Commission also revealed security force infiltration and ‘false flag’ operations that resulted in the death and maiming of

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42 Op Cit, para 62
43 Oliver Tambo, ANC President, Speech at the International Conference on ‘Children, repression and the Law in Apartheid South Africa’, 24/09/87 - http://www.anc.org.za/ancdocs/history/or/or87-19.html
44 TRC Final Report, Volume Four, Chapter Nine., para 60
45 See set of questions provided to the ANC by the TRC after the first party political hearings (http://www.doj.gov.za/trc/submit/q_anc), the ANC's second submission to the TRC (http://www.doj.gov.za/trc/submit/anc2) and the transcript of the the submission and question and answer session convened on 12 May 1997 (http://www.doj.gov.za/trc/special/party2/anc2)
young men who thought they were being recruited into liberation movement structures, but were in fact being ‘recruited’ by security force agents.

In the late 1980s and particularly the early 1990s, more and more youth were recruited into self defence and self-protection unit structures, (especially in KwaZulu Natal and a number of townships in the province now known as Gauteng) some of which became actively involved in violent conflict with security forces and opposing ‘political’ forces. Some detail of these experiences were provided at amnesty hearings of former SDU members, especially the grouping that applied en masse from the violence-wracked township of Tokoza on Gauteng’s East Rand.

The TRC’s special hearings into children and youth did not examine in great detail the involvement of children in militarized structures linked to the liberation movements (let alone those who were part of the broader ‘exile family’), but rather focused on children and youth from a perspective of victims that . Indeed, the Commission was dependent almost exclusively on testimonies provided at various amnesty hearings in this regard, but these processes also did not focus specifically on this issue.(see below). Indeed, as inferred above it could be argued that significant, opportunities were missed in terms of developing our understanding of children and youth as actual agents and perpetrators in the South African context. This aspect is crucial in terms of future work around recommendations that seek to rehabilitate and reintegrate those affected back into communities, as well as developing a more nuanced understanding of the trajectories and continuities of violence and contributing factors.

White youth were also affected; The government’s ‘Total Strategy’ required an increasingly militarized response to political, economic and social realities. The TRC conducted special hearings on compulsory military service which touched on experiences of young white males who were drafted as young as 17 years old, but did not make any specific differentiation between those over or under the age of 18 years.

**Inter and intra community violence**

The children and youth special hearings did not explore inter and intra-community violence in any great depth. Indeed, with the exception of the major fault line of conflict between the ANC/UDF and Inkatha, the TRC struggled to develop a comprehensive overview of the temporal and spatial manifestations of these conflicts or to get to grips with the some of the core dynamics of these fault-lines of violence. The Commission did, however, give some attention to the role of vigilante groups that affected many communities and acted as surrogates working with the security forces to counter radical community elements, especially the youth. ‘Many vigilante attacks were rooted in intergenerational conflicts. Some men saw the dramatic surge of women and youth to political prominence as a threat to the patriarchal hierarchies of age and gender. Young people were perceived to be undermining the supremacy of traditional leaders who saw it as their duty to restrain them. Vigilantes mobilised around slogans such as, ‘discipline the children’, and frequently described themselves as ‘fathers’.”

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46 TRC Final Report, Volume Four, Chapter Nine, para 30,31
In addition, the Commission conducted an in-depth investigation into the violent activities of the Mandela United Football Club which involved mainly youth and certainly some children who operated from the Mandela family home in the late 1980s.

The genesis and evolution of most inter and intra-community violence, as well as its import for children and youth, was largely absent from TRC inquiry and analysis and remains a significant component of the TRC’s ‘unfinished business’. Indeed, it can be argued that limitations in this regard have had a profound impact on our understanding the multi-dimensional nature of violence, and how this relates to the sustained patterns of alienation that continue to affect many black youth in South Africa. This profound drawback has been compounded by representations of violence and conflict in the pre-94 era as political, and in the post-94 era as political, which masks aspects of what really transpired in terms of the politicisation of crime and the criminalisation of politics.

**Self Defence Units (SDUs)**

Detail about the activities of the SDUs came from several sources. Although several incidents were recorded in testimonies recorded by the Human Rights Violation Committee, and in the powerful testimony of one former SDU member in the Johannesburg Children and Youth Special Hearings, the bulk of information about the SDUs was provided in amnesty applications and hearings. Most of these involved came from SDU structures in the township conurbation of Katorus (Katlehong, Tokoza and Vosloorus), which became an epicentre of post-1990 violence. Several SDU members voluntarily applied for amnesty, without fear of potential prosecution. Others came forward as they had been imprisoned, or faced criminal investigations. Others came forward, simply because their comrades had. As the Commission itself concluded, some applications “did not, strictly speaking, require a hearing, but were ultimately heard to ensure that the Committee obtained a complete account of SDU activities.”

Most of the SDU amnesty cases related to the violence of the early 1990s which saw a proliferation of SDU structures. The Commission did, however, receive some detail from the 1980s period during the Cape Town children and youth hearings. The Bonteheuwel Military Wing (BMW), which was formed in 1985 was an earlier example of a coordinated armed response, involving primarily youth aged between 14-18. The BMW was tasked to render the coloured community of Bonteheuwel ungovernable, and to hit out at state organs. It became increasingly militant operating as a paramilitary structure, independent of United Democratic Front structures and after forging links with MK, was brutally crushed by security force clampdowns. Several former BMW members testified about their treatment in detention and other

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48 TRC Final Report, Volume Six, Section One, Chapter Three, para 14
49 TRC Final Report, Volume Four, Chapter Nine, Appendix on the BMW in the Chapter on Children and Youth
50 The United Democratic Front was launched in 1983 and at its peak had over 600 affiliate organizations. It was widely regarded as the internal front of the ANC.
families testified about the murder of combatant relatives. Less attention was given to their own involvement and complicity in acts of violence and retribution.

The Katorus SDU amnesty applications were heard by two of the six amnesty committees, and it was agreed that efforts would be made to develop a broader contextual understanding of the situation in the affected communities. This was a unique departure from the individualized process that characterized all other hearings. This also allowed for testimonies of non-governmental workers who had been involved in monitoring the violence, as well as the ANC who also made specific representations.

Many of the SDU applications came from persons who were incarcerated and were seeking early release. A number of others were persuaded by community activists, especially from the East Rand township of Tokoza, to engage the process. The Amnesty Committee in its final report provided detail on the legal technicalities and competences of the applications and testimonies provided. A number of applications were simply refused and in cases where applicants claimed they had been falsely convicted, these matters were theoretically returned to the courts. The irony of releasing those claiming guilt and keeping those who claim innocence in prison was not lost on the Committee.

Although all the applicants were adults at the time of applying for amnesty, the Committee’s report is silent on whether any special efforts were made to accommodate the fact that many applicants were children and youth at the time of the incidents. As in other amnesty hearings, testimonies and questioning focused on the establishing whether certain criteria for a successful application had been met. As with other amnesty applications, the requisite criteria for securing amnesty were employed somewhat unevenly and the amnesty committees did not operate in terms of (internal or external) precedence or international legal guidelines, despite its quasi judicial modus operandi.

Indeed, Amnesty Committee members had not been selected on the basis of particular skills or as a result of experience and understanding with respect to issues of international law and transitional justice.

Consequently, many issues, such as the gendered dimensions of the conflict or the involvement of youth and the developments in international law pertaining to children were not reflected upon. In spite of this, and often because SDU applicants did not benefit from legal advice with respect to crafting their applications, some of the richest content informing our understanding of violence from the 1990s period and related underlying struggles was divulged in their amnesty applications and testimonies.

51 TRC Final Report, Volume Three, Chapter Five, paras 309 - 322
52 TRC Final Report, Volume Six, Appendix 6, Chapter Three, paras 26-41
Having said that, the somewhat artificial dichotomy between crime and violence imposed on the process was also a deterrent for some to come forward.\textsuperscript{53} It it also important to remember that amnesty applications and testimonies were essentially contrived (albeit in different ways) to fit amnesty criteria. As such, versions provided are also likely to have promoted a politicized veneer and selective reflection on the incidents and context under scrutiny. Information generated through the TRC processes should therefore not necessarily be automatically accepted on face value.\textsuperscript{54}

C. Strategies developed for children’s participation

Apart from the five special hearings on children, no specific strategies were developed for the inclusion of children’s participation.

As we have seen, however, the inclusion of children’s experiences was profiled and recorded in various ways. Indeed, background documents for community hearings that were prepared by the TRC’s research unit invariably referred to specific and generic issues that had affected children.\textsuperscript{55} The the impact of violations on children was also mentioned in most public hearings,\textsuperscript{56} as well as institutional hearings (i.e. faith communities, prison, business, women’s hearings etc). Many parents testified on behalf of their children. Significant, too, was the fact that many women and girls chose not to testify about violations they themselves had experienced, but rather spoke instead of the violations committed against others, notably their fathers, sons and brothers.\textsuperscript{57}

**Children and Youth Hearings**

Unlike other ‘event hearings’, the children and youth hearings were the specific responsibility of the Reparation and Rehabilitation Committee and relevant commissioners, committee members and staff were involved in planning, preparing and conducting of the respective hearings.

According to the TRC Final Report, several non governmental organizations were also involved in the preparatory processes for hearings,\textsuperscript{58} although no detail on which organizations and how they were involved is provided.\textsuperscript{59}


\textsuperscript{54} See examples of background documents prepared for hearings available online in the Laura Pollecot and CSVR Collections on the Traces of Truth website, http://truth.wwl.wits.ac.za

\textsuperscript{55} See for example the synopses of cases heard at various public hearings in the Eastern Cape, in reports compiled by Janet Cherry (a TRC researcher), available online in the Janet Cherry Collection on the Traces of Truth website, http://truth.wwl.wits.ac.za

\textsuperscript{56} TRC Final Report, Volume One, Chapter Eleven, para 24

\textsuperscript{57} TRC Final Report, Volume Four, Chapter Nine, para 48

\textsuperscript{58} TRC Final Report, Volume Four, Chapter Nine, para 2
Internal TRC documents secured by the South African History Archive show that the preparatory process began in 1996. National consultative workshops convened in September 1996 and February 1997 subsequently fed into the work of an internal TRC task team, which was set up to facilitate the hearing process. The September 1996 workshop focused on the physical, psychological and social aspects that affected children in the South Africa conflict. The workshop was addressed by child's rights activist, Graca Machel, who profiled the implications of the challenges in terms of process and content faced by the Reparation and Rehabilitation Committee. These included the provision of relevant counseling, psycho-social and educational interventions, inclusive approaches for engagement around children's issues and the direct participation of children in processes affecting them.  

Although efforts were made to ensure there was consistency between these special hearings and other processes developed for the TRC for the purpose of standardisation, the capacity and opportunity to do so, and the types of initiative taken varied between the regions. The Gauteng office, for example convened four consultative workshops in preparation for its hearings, which allowed for participation from a range of stakeholders in the non-governmental, academic and faith communities.

It was agreed that “(t)he aim of these hearings would be to articulate the experiences of children in respect of gross human rights violations” and that the hearings should accommodate instances of 'indirect violation' as well as 'direct violation'. It was also agreed that the hearings should also accommodate experiences from 'young adults' who were children at the time they experienced the violation, as this would assist in identifying relevant 'coping strategies'.

In the March 1997 task team meeting, it was also agreed that “there was an urgent need to provide the TRC with an indication as to the types of precautions which will be taken in respect of the hosting of these potentially high risk hearings. The task team is therefore briefed to conceptualise the principles which should guide the holding of these hearings.” At this point, the Commission finally decided that children under the age of eighteen would not testify at the special hearings, and that NGO representatives and other professional people working with children were asked to testify on their behalf. The Commission did, however, make extensive efforts to involve children directly in the hearings and in the collection of data before the hearings.

The format of the regional special hearings varied, although distinct efforts were made to engage children from surrounding communities in the process, even if not in the actual testimony process. “Throughout the country, school children participated in the hearings and listened to the evidence presented. At the KwaZulu-Natal/Free State hearing, school children from a number of schools presented a play and other schools

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61 Report of the Children's Hearings task team from 5 March 1997 meeting available online in the CSVR Collection on the Traces of Truth website, http://truth.wlv.wits.ac.za
62 Ibid.
63 TRC Final Report, Volume Four, Chapter Nine, para 7
performed songs. A dramatic presentation by school children of the Soweto uprising was a highlight of the hearing hosted by the Johannesburg office, moving members of the audience to tears. This hearing was opened by Ms Graça Machel, chairperson of the UNICEF Study on the Impact of Armed Conflict on Children, who brought an important international perspective on this issue. In the Eastern Cape, musical presentations by school choirs assisted in the process of reconciliation while, in Cape Town, three high school students read a submission by Professors Pamela Reynolds and Andrew Dawes on the impact of apartheid on children.”

In KwaZulu Natal, during the two days before the hearings in May 1997, children who had been affected by violence were given the opportunity to express themselves through art and drama workshops. Their stories were subsequently presented at the hearing by caregivers / facilitator, and some recordings of the children’s voices were played. The KwaZulu Natal office also convened a special hearing on Children’s experience the following month in the Free State. In East London ‘youth structures and surrounding schools made submissions’ at the hearings. Conversely, in Johannesburg, “very few child victims testified at this hearing, which consisted mainly of submissions from organisations that had dealt with children and children’s issues for many years. The Commission heard about the physical and mental abuse of children when they were detained and about the efforts that were made to assist these victims.”

The special hearing process on children and youth provided space to explore a range of contextual factors, ‘in that they allowed participants to reflect on, or critically analyse, the root causes of apartheid and its effects on children. Most parties providing testimony supplied written submissions ahead of the hearing and were asked to summarise their submissions orally and answer questions posed by the panel. The hearings also allowed for the participation of children in ways other than by testifying; this included finding creative ways to access and share the children’s experience. Before the KwaZulu-Natal/Free State hearings, for example, children spent a day telling their stories and making drawings that reflected their experiences. These were shared at the hearings the following day.’

A number of formal submissions were also made to these special hearings. The 1998 ‘Final Report’ contained a list of written submissions, but specified this was not a comprehensive listing. No update on the issue of children and youth was provided in the 2003 report and consequently, we do not have clarity on the totality of submissions. Transcripts of oral testimonies from these hearings are available on the TRC website.

Other TRC processes

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64 Op Cit, para 9
65 TRC Final Report, Volume One, Chapter Twelve, Durban Office Report para 36(n)
66 Op Cit, para 36(q)
67 TRC Final Report, Volume One, Chapter Twelve, East London Office Report, para 36 (p)
68 TRC Final Report, Volume One, Chapter Twelve, Johannesburg Office Report, para 44 (s)
69 TRC Final Report, Volume Four, Chapter Nine, para10
70 http://www.doj.gov.za/trc - see section on ‘Special Hearings’
Although a number of amnesty applicants were technically children at the time of the alleged violations, they were applying as adults and as we have already seen the Amnesty Committees provided no special considerations in terms of how it proceeded with the hearings in this regard.

The Reparation and Rehabilitation Committee was not given a specified mandate to address the needs and situation of children and youth affected by the conflicts of the past.\(^{71}\) The chairperson of this committee, Commissioner Hlengiwe Mkhize, however, had a specific interest and history working with children and violence and was instrumental in promoting this work. This focus on children also developed through various aspects of its work, in terms of the Committee’s outreach and networking activities, its psychosocial support programmes and workshops, policy development work etc. Once again, no detail of this work as it relates specifically to children is provided in the final report and lack of access to the official TRC record means that we have no available documentation to determine what transpired in this regard at this time. It is important to note that the Committee did conduct surveys that highlighted the plight of children and youth, which in turn influenced the discussion around how reparations could be used to deal with this aspect\(^ {72}\).

According to the National Children Rights Committee, a local non governmental organisation very involved in the consultative processes, “The TRC has been well supported by a number of NGOs who have provided psychological services for victims who testified before the Commission. The Religious Response to the Truth Commission has (also) played an important role in reaching out to those who are unable to participate in the hearings.”\(^ {73}\) Detail on such support, however, remains largely anecdotal.

It is evident, however, that in a context of very limited resources and despite developing a strategy to engage psycho-social support within local communities, the Commission provided a largely ad hoc referral system for psychological services for those in need. Conditions in this regard were extremely challenging due to the “fragmented nature of (available) service provision”. In this regard, the Commission’s regional offices were supported in varying degrees by churches, NGOs and CBOs. Efforts were also made to secure political support for enhancing the provision of and access to state services (i.e. medical, educational etc), and these experiences helped to guide the more detailed recommendation process about the development of these sorts of services.\(^ {74}\) Any assessment of what was achieved in this regard, must be understood in the context of existing service provision and the challenges of rectifying

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\(^{71}\) The Reparation and Rehabilitation Committee had five broad areas of responsibility; to consider matters referred to it by the Commission, the Human Rights Violations Committee and the Amnesty Committee; to gather evidence relating to the identity, fate and whereabouts of victims, and the nature and extent of the harm suffered by them; to make recommendations to the President on appropriate measures for reparation and rehabilitation of victims and on measures to be taken to restore the human and civil dignity of victims; to make recommendations which might include urgent interim measures on reparation to victims; and, to make recommendations on the creation of institutions conducive to a stable and fair society, and on the measures to be taken in order to prevent the commission of human rights violations. (TRC Final Report, Volume One, Chapter Ten, para1)

\(^{72}\) Interview with Ms Yasmin Sooka, former TRC Commissioner, 15 January 2009.

\(^{73}\) NCRC’s contribution to Initial reports of States parties due in 1997 : South Africa. 22/05/99. CRC/C/51/Add.2. (State Party Report), paragraph 493.

\(^{74}\) TRC Final Report, Volume One, Chapter Ten, paras 11-15
the distortions of racial preferences that characterised service provision in the apartheid era.

Regrettably, no evaluations were conducted of people who made statements to the TRC, although deponents frequently referred to psychological impacts in their submissions. Certainly, individuals who testified at public hearings were often asked about these issues and what their needs were in this regard, but this information was not passed through to other sections of the Commission in a coordinated or structured manner. A subsequent attempt to evaluate these and other (i.e. socio-economic) needs was crudely attempted as part of Urgent Interim Reparation (UIR) process. The UIR protocol provided for data to be captured relating to the needs of victims and dependents, and in this regard, a considerable amount of detail was gathered. Unfortunately, this information was never utilised by the President’s Fund for the purpose of assessing individual reparation needs, and instead the South African government responded to the Commission’s recommendations with a once off generic payment that did not differentiate between specific needs.

The Research Department of the Human Rights Violations Committee was tasked to examine the impact of gross violations of human rights on people’s lives, and did so by; examining the consequences of violations on individuals and communities, and assessing expectations of the Commission. The research investigated four areas of differentiation, of which the impact on children and youth were one. The TRC report is, however, largely silent in terms of an analysis of its methodologies and the ‘lessons learnt’ on this subject, which in turn challenges the credibility and foundations of ‘findings’ and recommendations. Certainly, there is recognition that children and youth suffered disproportionately, especially in terms of the direct and indirect impact of gross violations of human rights, as well as an array of other violations that characterised apartheid governance. The broader implications of these findings, in terms of contemporary problems and challenges, are not explored in the report, and consequently still require attention.

**The Final Report**
The TRC delivered its five volume (interim) final report in November 1998. Although some detail was provided on principles adopted and methodologies employed, the bulk of the report provided a descriptive overview of what had been uncovered by the Commission, in terms of reported violations and their impact. A dedicated chapter on the Children and Youth Hearings read in combination with the chapters on ‘Women’ and ‘Consequences of Gross Violations of Human Rights’, provided considerable detail “on the patterns and trends in relation to psychological effects, physical consequences and how these have affected families and communities in

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75 In an effort to determine urgent reparations needs, the Commission developed a protocol that was sent by post to each of the 22,000 people who testified to the Commission. Ideally, this information should have been gleaned at the time of the deponents’ interviews, but it was only later that the Commission realised the importance of securing this data to facilitate urgent interventions.

76 Based on discussion with former Secretary of the Reparation and Rehabilitation Committee, 20 April 2009

77 TRC Final Report, Volume Four, Chapter Nine

78 TRC Final Report, Volume Four, Chapter Ten

79 TRC Final Report, Volume Five, Chapter Four and TRC Final Report, Volume Two, Section Two, Chapter Four, paras 59 - 74
Particular attention was also given to the impact and disruption of violations on family life. 

The Chapter in the Final Report dedicated to ‘youth and children’ provides an overview of children and youth experiences under apartheid, gleaned from the hearings and other statements submitted to the Commission. This chapter provided an oversight of ‘evidence and emerging themes’, demonstrating how male children and youth were the most affected grouping in terms of deaths, abductions, torture, detention and other forms of ill-treatment. Particular attention was given to the consequences of these violations, both in terms of physiological and psychological impacts, and the practical effects of disrupted education, dislocation, displacement and exile. Reflecting the foci of these hearings, issues relating to children and youth as perpetrators was not canvassed. As with other components of the 1998 report, the information that subsequently emerged from the amnesty process was not available when the children's report was written.

The codicil report (Volume 6) was released in March 2003, providing detail on the amnesty process, including considerable anecdotal evidence locating youth and children at the receiving end of a range of heinous violations. The codicil included specific recommendations regarding reparation drew on international comparative experiences, including detail on targeted recommendations for affected children contained in other commission reports (i.e. from Argentina and Chile).

**E. Challenges, issues and questions for discussion**

**TRC Findings**

Although the decision to exclude direct children's testimony compromised the potential of their participation in the process, the TRC was able to avoid a host of sensitivities and potential difficulties by doing so. Consequently, TRC statement takers were not trained to elicit detail that might shed further light on the impact of violations on children and their development, and an opportunity to systematically collect information about this aspect of the conflict was not pursued. This information was not specifically requested from older youths that testified.

Nevertheless, the Commission received a considerable amount of detail about violations and children and subsequently made a series of specific findings regarding the situation of children and youth. Whilst the state was singled out for particular criticism, these included findings against all the major protagonists. These included a number of specific findings relating to children and youth:

- The state, in the form of the South African government, the security forces and the civil services, was, in the period 1960–94, the primary perpetrator of gross

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80 op cit. para 5.  
81 Op cit, paras 73-134  
82 TRC Final Report, Volume Six, Section Two, Chapter Three, para 4(d) (I & ii), 9 (a), (c) & (d)  
83 The following findings are derived from the ‘Findings and Conclusions’ chapter of the TRC Final Report, Volume Five, Chapter Six.
violations of human rights against children and youth in South Africa and Southern Africa.

- The policy of apartheid resulted in the delivery of inferior, inadequate education to black children and deprived them of the right to develop in mind and body. This deprivation constitutes a violation of human rights.

- The banning by the government of student and youth organisations denied young people an avenue for discussion and protest and resulted in the criminalisation of legitimate political activity, thus encouraging youth to turn to violent forms of protest. The state is further accountable for the political repression which forced young people to go into exile, leaving their families and communities. Exile distorted the normal socialisation of youth and normal family relationships.

- The state identified and targeted schools as centres of resistance. Schools were occupied, and students and teachers intimidated and arrested. This created a climate within which unnecessary violence occurred. As a result, education was severely disrupted. Many children were unable to complete their schooling and/or advance to tertiary education.

- Black children and youth were demonised as the ‘enemy’ by the security forces in particular and, more generally, through the political representation of youth and children as part of ‘a communist onslaught’, thus facilitating and legitimating the use of violence and force against them. The Commission has found that the security forces unnecessarily resorted to lethal force in public order policing, where alternative mechanisms of crowd control would have been adequate to control marches, protests and demonstrations. The use of lethal force against children and youth is particularly singled out and condemned.

- The state was responsible for the detention without trial and torture, including solitary confinement, of children and youth under the age of eighteen. Such detention included detention in terms of security legislation as well as the abduction of youth and their forcible removal to places where they were detained illegally and tortured. The state was responsible for the severe ill treatment in custody of children and youth under the age of eighteen, in the form of harassment and the deliberate withholding of medical attention, food and water.

- The state, through its security forces, exploited and manipulated divisions in society and engaged in the informal repression of children and youth by identifying youth leaders, isolating them and, through violence or financial inducement, inducing them to act as informers or vigilantes.

- In certain cases, proactive measures taken by the security forces during the 1980s included infiltrating youth and student structures, posing as members of
the liberation movements, recruiting young people for military training and then killing them.\textsuperscript{84}

- The state is responsible for the militarisation of young white males through conscription.

- The mass and liberation movements mobilised and, in the case of the latter, armed and trained children and youth as part of their armed formations. The liberation movements and the IFP are responsible for recruiting youth into the SDUs and SPUs in the 1990s and training them to kill, thus dehumanising and desensitising them.

- The war between the ANC and the IFP displaced large numbers of youth, leaving them homeless. In this respect, the state, the ANC and IFP are responsible for the commission of gross violations of human rights.

- The failure by the ANC and the IFP after 1994 to reintegrate youth to enable them to become valued members of society and to develop a sense of self-esteem, has led to their criminalisation and created the potential for further gross violations of human rights.

None of the key protagonists have embraced the TRC’s findings or accepted specific responsibility for policies and actions taken as they impacted on or related to children and youth. Indeed, the major players have denied culpability and actively avoided taking responsibility in most instances. This presents a major challenge in terms of developing a national discourse and plans of action around the plethora of issues that need to be addressed. Both the government and ruling party have in most instances palpably avoided further engagement with issues relating to the past conflicts.

**TRC Recommendations**

These (and other) findings provided a basis for a range of recommendations adopted by the Commission, including a detailed set of recommendations for a ‘Reparation and Rehabilitation Policy’.\textsuperscript{85} This policy was rooted in several key principles; namely that it was development-centred, culturally appropriate, simple and efficient, community based, and that it would promote healing and reconciliation.

The reparation policy argued that victims who were children at the time of the violation qualified for reparation. Indeed, Children were specifically identified as a category of relatives and dependents of victims who would qualify for reparation.

In response to concerns raised about militarised youth, specific recommendations were included to target youth in a ‘systematic’ demilitarization programme; “Secondary and tertiary educational institutions and sporting bodies should be involved in the implementation of this programme. The programme should consist of

\textsuperscript{84} TRC Final Report, Volume Five, Chapter Six, para 160

\textsuperscript{85} TRC Final Report, Volume Five, Chapter Five
a combination of social, therapeutic and political processes and interventions, appropriate to the area in which they are being implemented.”

To complement this, recommendations were included for “the establishment of community colleges and youth centres be prioritised, to facilitate the re-integration of affected youth into society”, and that “accelerated adult basic education and training (ABET) programmes should be established to meet the needs of youth and adults who are semi-literate and have lost educational opportunities due to human rights abuses.” Specific recommendations were also included for the rebuilding of demolished schools, and the introduction of “remedial and emotional support … in mainstream educational programme” and the development of institutional capacity for educational facilities to cater for the needs of mature students.

In addition, recommendations were also made to develop a Peace Corps “not only as a means of helping communities in need, but also for developing the skills of less privileged youth. Such a body could also be used to expose more privileged members of the community to the needs and the living conditions of the majority of South Africans.”

A number of other specific recommendations relating to children were also contained in the TRC’s report. These included proposals to support families of the disappeared and affected children.

In terms of ‘reconciliation and unity’, the Commission highlighted the importance of being sensitive to “those groups which have been particularly disadvantaged in the past, specifically women and children.” Not surprisingly, the report highlighted the importance of giving priority to the needs of children and youth.

Other recommendations were also made to include human rights curricula into formal education, including teachings that specifically deal with the rights of the child. The Commission also advised that the work of youth and gender commissions be combined with SAHRC, in order to improve efficiency, co-ordination and cost-effectiveness.

**Responding to the TRC’s recommendations**

In terms of the panoply of recommendations endorsed by the Commission, a detailed evaluation on what has been done by state and civil society actors remains outstanding. Anecdotal evidence suggests that in many instances, the Commission’s recommendations have been largely ignored. As with many aspects of the government’s response to reparation, the government has chosen to merge its response to these recommendations with its development agenda, thereby
incorporating specific needs into its broader delivery programme. Although the integration of reparation and development goals does not exclude prospects for prioritising specific groups, in practice this has not occurred, with respect to victims and survivors recognised by the TRC. Consequently, no specific / targeted efforts have been taken to address specific socio-economic or psychosocial needs for those individuals whose cases were looked at by the TRC and were addressed in the recommended reparation and rehabilitation policy. This has particular ramifications for those children and youth who were caught up in the militarisation that characterized the 1980s and 1990s.

Elsewhere, the linkage of TRC recommendations with existing government programmes and processes emanated from the TRC itself. Following the children and youth special hearings for example, it was agreed that the National Programme of Action (developed from government’s commitments as set out in the UN Convention on the Rights of the Child), “provides an appropriate vehicle for the institutional reparations” relating to the needs of children and youth.

**Children and the TRC – reflecting on the process challenges**

A number of other challenges as they relate to children also arose from the TRC process itself. Some of these also have more generic implications and include:

- The TRC’s mandate to limit its enquiries to gross violations of human rights presented a formidable challenge, not only in terms of the practicalities of ensuring access and opportunities for people to testify, but also with respect the types of experiences, challenges and needs that were uncovered during the process. The Commission did not have adequate resources or capacity to address these needs, and in most instances did not institute necessary referrals to relevant state and non-governmental agencies.

- The somewhat disjointed way in which issues relating to children and youth were handled in the various TRC processes did not facilitate a properly planned and consolidated approach that could ensure that more practical needs, such as dedicated research and investigation, access to the TRC, counseling, protection and other special needs were systematically addressed.

- Many potential deponents did not submit statements or testify for one reason or another. Some activists actively refused to engage with the TRC, although many communities were simply not afforded an adequate opportunity to participate in TRC processes.

- The Commission recognized that its own focus on gross violations of human rights meant that it was largely concentrating on the most egregious types of violations inflicted on children and youth. This to a large extent obscured the broader set of experiences of children living under apartheid. Partially in response to this, the TRC report recognized that the hardships experienced under apartheid also generated positive qualities and leadership; “Children

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94 NCRC’s contribution to Initial reports of States parties due in 1997 : South Africa. 22/05/99. CRC/C/51/Add.2. (State Party Report), paragraph 492
were agents of social change and harnessed vast amounts of energy, courage and resilience during the apartheid era. For many young people, active engagement in political activity resulted in the acquisition of skills such as analysis, mobilisation and strategising, as well as the ability to draw strength from friends and comrades in times of hardship. "95 This aspect of children and youth experience were not explored in any great detail during the hearing process.

- In terms of psychosocial needs and considerations, the TRC raised concerns that it struggled to adequately gauge the impact of individual events on the family as a whole. Cases often present complex and multiple layers of abuse and victimization. The TRC’s statement taking and public hearing methodologies focused almost exclusively on the individual victim / survivor. “Although the family was often a powerful support system in the event of trauma, the focus on the primary victim drew attention away from the trauma experienced by family members. The Act made provision for this, describing victims as "such relatives or dependants of victims as may be prescribed". However, dependants or relatives only received supportive intervention in cases of urgency, which were picked up in consultation at case conferences or at the urgent interim stage.”96 As indicated above, this ad hoc response never developed into a comprehensive service, or the possibilities of one, and the Commission did not explore options for therapeutic, empowerment and other psychosocial interventions either in terms of immediate referrals or longer-term recommendations.

- The abnormalities of living under apartheid and the consequences for children in terms of violence, poverty, inequalities of opportunity, disruptions to education, dislocation and displacement, have not been quantified. Ensuring these aspects were captured in testimonies and identifying consequences and related contemporary needs for deponents were not adequately incorporated into the statement protocols. These shortcomings highlight the importance of ensuring child rights specialists are involved during the conceptual, design and implementation stages of the various Commission processes.

- The TRC received very few cases /testimonies relating to sexual abuse in general, and only a very limited amount of information relating to the sexual abuse of minors.97 Sexual abuse was specifically examined in the special hearing into the experiences of women, although the related silences that continue to surround this issue reflect deep-seated and ongoing problems in relation to this subject. This also reflects the limited points of access within the Commission for those women and girl children who might be inclined to share the stories of their experiences.

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95 TRC Final Report Volume Four, Chapter Nine, para 86.
96 TRC Final Report Volume One, Chapter Eleven, para 19
97 See for example, TRC Report, Volume Four, Chapter 10, para 54.
F. Recommendations for enhancing child participation and protection – lessons for and from South Africa

Each conflict is unique and each has its own particular ramifications for children. South African youth were instrumental in the struggles against apartheid, both inside and outside the country. Many children were adversely affected by apartheid policies and the consequences of repressive security actions. White children were largely beneficiaries of apartheid, and most young white males were also active in the apartheid security structures.

As in many other jurisdictions, most of those who were children and youth during the conflict were adults by the time there was an opportunity to testify before a truth commission. In South Africa, many who were activists chose not to participate and engage. Likewise, but in proportionately greater numbers, whites, including those who had been conscripted youth chose not to take part.

Reasons for non-participation are obviously varied, and reflect a range of personal and political positions that have not been adequately interrogated. Although the TRC’s statement taking process endeavoured to elicit statements from a wide temporal and spatial base, the process did not proactively engage communities with a view to interrogating particular experiences, patterns or trends. Little investment was given to enhancing the statement taking and skills of interviewers. The Commission often fielded inadequate resources and spent too little time in any one community or with individual deponents to build the levels of trust required for victims and survivors to want to impart details of the abuse they experienced and witnessed.

Adequate psychosocial backing must also support interventions designed to probe and recover experiences about gross violations of human rights. In South Africa, this was certainly not the case. Indeed, there was inadequate opportunity to properly consider a range of activities and options undertaken by the Commission. The complete absence of provisions for a ‘start-up’ period in the TRC’s founding legislation fundamentally undermined opportunities in this regard. This has profound implications for the operational and substantive planning work the TRC was forced to undertake whilst actually doing the work. In this context, it is hardly surprising that special interest areas did not receive adequate attention during this all important preparatory phase. Subsequent Commissions have been given limited start up operational periods, although it can be argued that these remain largely insufficient and do not correspond realistically with conditions on the ground. Such inadequacies are likely to impact on the efficacy with which child and youth considerations are mainstreamed within the planning process.

With respect of making preparations for the effective inclusion of children, there are certainly examples of what might be achieved. In 2001, the United Nations Children’s Education Fund (UNICEF), Sierra Leone’s National Forum for Human Rights and the Human Rights directorate of the United Nations Assistant Mission in Sierra Leone (UNAMSIL) drew up a report based on a technical meeting around the involvement

98 False Promises, Wasted Opportunities? Inside South Africa’s Truth and Reconciliation Commission, Piers Pigou in Commissioning the Past, Simpson and Posel (ed)
of children for the forthcoming Truth and Reconciliation Commission. The report set out a series of recommendations for the principles, policies and procedures required for involving children in the Sierra Leone TRC processes, and made specific recommendations for children who were under the age of 18 at the time of their engagement with the Commission. This was particularly important for a context where so many children had been directly affected by the war.

The report was the result of a significant preparatory process by those engaged with transitional justice concerns in Sierra Leone, and drew on international best practices, as well as an important domestic knowledge base of conditions and opportunities. Many of the recommendations contained in the report have generic application, some of which were addressed, at least in part, by the South African process. These included:

(a) Ensuring children’s experiences and perspectives receive special attention throughout the various phases and processes of the Commission - This was missing from the South African TRC’s preparatory focus and resulted in children’s issues being grafted onto the Human Rights Violation Committees workload in the latter half of its operational life.

(b) Ensuring the work of Commission to be guided by international norms and standards (i.e. CRC and ACRWC) – this was the case in South Africa, but because children and youth concerns were not incorporated into the mainstream of the Commission’s work, their potential was not realised.

(c) Ensuring special procedures for children apply to all children regardless of whether they are victims, witnesses or perpetrators – recommendation that “child perpetrators must be seen and treated, primarily as victims”100 Distinct guidelines should be developed for dealing with adults who were child perpetrators. The South African Commission did not develop specific procedures and protocols for children's participation,

(d) Ensuring special attention is given to the experiences of girl children and that the Commission mainstreams its consideration to gender based violence - This particular issue requires considerable intervention and should be closely tied to broader gender considerations that are incorporated into the Commission’s operations.

(e) Ensuring that children’s participation is voluntary and not coerced - This requires investing in civil society partnership to engage community and organizational structures that can provide professional assistance to ensure voluntary participation. Guidelines based on appropriate norms and standards should be developed to guide such partnerships.

(f) Ensuring that the anonymity of children who testify (as a victim, witness or perpetrator) is maintained and children that testify in formal sessions of the Commission do so in camera - The South African TRC had provision for in camera testimony, but this was not an option as no testimony from children was sought or accepted.

(g) Ensuring appropriate interviewing / testimonial techniques are utilized according to levels of maturity, capacity of the child etc - This relates to a

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100 *Children and the Truth and Reconciliation Commission for Sierra Leone* - p.2
wider concern regarding the need to ensure that statement takers are adequately trained and resourced to take quality statements, and particularly those from special interest categories. It may be necessary to have specialist statement takers, who would most likely adopt a different methodology for taking a statement from a child, necessitating the utilisation of a variant on the statement protocol.

(h) Ensuring confidentiality in statement taking process is maintained - The statement taking process should provide for confidentiality, although the protocol should address issues of disclosure and the varying levels of disclosure with the deponent, as well as the reasons for this. This will facilitate subsequent use of the data collected and enable future research. The TRC released the names and case summaries of over 16,000 persons it found to be victims of gross violations of human rights. Detail from the Commissions Human Rights Violation Database is currently inaccessible.\(^1\)

(i) Working with child protection agencies and services and allowing their representatives to provide testimony on the situation of children and make recommendations – they can provide testimony relevant to both conflict and post-conflict scenarios.

(j) Ensuring the Commission works closely with existing state and non-governmental structures and processes, with a particular focus at a community level - This, in turn requires developing a profile of existing infrastructure, programmes, capacities, opportunities etc. This could provide important entry points for the Commission into communities, and relates directly to another objective of raising awareness about Commission and its work. In East Timor, considerable attention was given to their ‘socialisation’ processes, which introduced their Commission to particular communities. Such methods could be adapted to facilitate engagement with and promote the participation of children.

(k) Ensuring the Commission works closely with available child protection agencies and services – capacities vary tremendously in different country contexts. The TRC has access to the South African Police Service's Child Protection Unit and the Department of Social Welfare, although both have very limited capacities in context of other contemporaneous needs.

(l) Ensuring Commission constructively engages traditional and customary leadership / practices, linking them to the Commission’s healing and reconciliation work – South Africa’s Commission had very limited interaction with the country’s traditional leaders and more could have done in this regard to facilitate relations with respective communities.

(m) Ensuring the Commission’s interventions are grounded in quality background research, in terms of violations, impacts and remedial options as the scale and quality of interventions is determined by human and monetary resources. It is important that realistic targets are set and that the work of the Commission is posited as a stepping stone towards addressing such violations, rather than a panacea for the issues profiled. The TRC took on an extremely heavy workload and where possible tried to ensure that a certain amount of background research was available for Commissioners and other functionaries. The quality of this varied depending on a number of variables, not least

\(^1\) The South African History Archive is in dispute with the Department of Justice, the legal custodian of the TRC’s legacy over access to the database. SAHA has requested that fields of data that protect anonymity be masked, but the Department claims that this is not possible.
available secondary source materials relating to the issue or area under examination.

(n) Ensuring that the Commission is a child friendly environment and that child friendly techniques for interviewing etc are adopted.

(o) Ensuring Commission staff are appropriately on rights and protection issues, statement taking, analysis of information from children Both these points relate directly to the requisite skills (and experience) that should be contracted, directly or indirectly by the Commission, both in terms of management and implementation roles.

(p) Ensuring Commission’s report is utilized for promoting reconciliation and children’s rights, and that it is widely disseminated, especially to schools etc. In South Africa, the work of the TRC has now become a small part of the school curriculum, but teaching resources remain very limited. Most South Africans have never seen the findings and recommendations of the TRC and a popular report of the TRC’s work, although written, was never published and distributed.

(q) Ensuring the Commission adopts communication strategy that ensures clear and regular messaging from the Commission. This also requires the development of a productive relationship with the media. Journalists should not be allowed access to the work of the TRC that directly involving children, although efforts should be made to ensure media sensitivity towards the multiple ways in which violations and children intersect. Consideration might be given, as it was in East Timor, to the inclusion of a radio unit within the Commission, that was able to ensure that particular issues were addressed and aired.

Conclusion

There are two key elements to the “critique” of the SA TRC process in its dealings with children; firstly, the narrow interpretation of mandate in respect of gross violations of human rights, which in turn precluded the more generic examination of children’s experience of the conflict and the less direct dimensions of victimisation, and; secondly, the process issues relating to the Commission’s work, findings and recommendations that have been set out above.

Consequently, children were something of an ad hoc focus, adjacent to the primary mandate of the Commission, rather than an explicit target group. This has a range of implications both in terms of what transpired and in terms of recommendations for enhancing similar process, covering a range of issues from the content of statement protocols, the need for a dedicate research foci, staffing of the Commission, investigation capacity, construction of the database, protection and counselling issues, networking and alliances etc. It is evident that there are a number of avenues for improving the way in which commissions address the experiences of children.

The Commission had the resource potential to ensure a more methodical engagement with how South Africa’s conflict impacted on children and how those consequences still manifest. This could well have included an option for children to give statements and provide testimony. It did not, and the Commission lost an opportunity to engage with the conflicts’ youngest participants.
Nevertheless, the Commission did gather a considerable amount of data on violations relating to children through its statement taking, public hearings and special hearings on children and youth, much of which has yet to be carefully analysed. There does however appear to be an important gap between the processes undertaken by the Commission with respect to children and the findings and recommendations made. A closer linkage could have been established, for example, between the findings and recommendations of the Commission and the objectives, monitoring and reporting obligations of South Africa with respect to furthering the objectives of the Convention on the Rights of the Child. In this regard, further attention is needed with respect to how the various clusters of recommendations made by the Commission have been addressed, and in a context that takes into account other developments (in terms of policy making, service delivery, educational curriculum and product development etc). Such a focus, however, is beyond the scope of this paper, although it is evident that the politics of engagement with TRC-related issues in the aftermath of the Commission's work has been fundamentally undermined by a lack of will to engage, on the part of government, as well as other political parties and significant sections of civil society. This is not unique to the South African context, but does highlight the imperatives of employing of strategies and tactics crafted for particular circumstances and varying conditions that are designed to promote and implement effective political, economic and social support for the promotion of children's best interests in these and other transitional justice endeavours.

Vis recommendations - s of political will and capacity that affect the extent to which reparations recommendations of truth commissions are actually implemented. This is a widespread problem, nowhere more evident than in the SA case. The lesson that may need to be drawn out later is therefore, to be wary of merely framing all the recommendations regarding children as part of the “reparations package” or practical and implementable approaches may die on the sword of their association with the reparations cause. Just a thought and a question of strategy rather than principle.

Response to recommendations – development / reparation - There is a wider debate to be canvassed on which approach might be in the best interests of children that this paper (through the South African TRC case) might offer some reflections on. These may then be contrasted with other contexts, such as Liberia and Canada perhaps? This comparative perspective would be more of an issue for the collection as a whole, than it is for the paper on SA specifically.

the extent to which the Commission did actually proactively try to engage and secure the participation of children – even if this was not in the more exposed context of the public hearings – and targeted statement taking could have been a more designed and planned way to do this with children. This relates to my earlier points about the Commission not having really planned the engagement with children’s experiences beyond the special hearings processes. These interesting and useful comments and observations need to be connected to the main theme of the paper by relating them more directly to the issues and engagements with children.