CHILDREN AND TRANSITIONAL JUSTICE

Truth-Telling, Accountability and Reconciliation

Edited by:
Sharanjeet Parmar
Mindy Jane Roseman
Saudamini Siegrist
Theo Sowa

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CHAPTER 4

CHILDREN AND THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION

Piers Pigou

Archbishop Desmond Tutu, Chair of the South African Truth and Reconciliation Commission, speaking at the fourth annual Day of the African Child, declared by the Organization of African Unity in 1990 to commemorate the 1976 killing of children in Soweto, South Africa.

1 Piers Pigou is a Senior Associate at the International Center for Transitional Justice. The author would like to thank Yasmin Sooka, Graeme Simpson, Charlotte McClain-Nhlapo and Saudamini Siegrist for their comments and input during the drafting of this chapter.
INTRODUCTION

Children and young people invariably bear the brunt of hostilities and the instruments of repression that typify societies in conflict. Indeed, most of the gross violations of human rights during South Africa’s apartheid period, as later reported to its Truth and Reconciliation Commission (TRC), were perpetrated against children and young people between the ages of thirteen and twenty-four. Children were both indirect victims and direct targets, as evidenced by the Umtata Raid documented by the TRC.

On 8 October 1993, a Special Forces Unit of the South African Defence Force (SADF) shot dead five sleeping children, including two twelve year-olds, in a failed raid on an alleged terrorist base in Umtata, the capital of the “independent homeland” of the Transkei. The operation had been authorized by then State President F. W. de Klerk and other members of the State Security Council in response to the escalation of attacks on white civilians by the Azanian People’s Liberation Army, the armed wing of the Pan Africanist Congress. According to “intelligence reports,” the house contained a weapons cache, yet no weapons have ever been produced.

The murder of five children, during an operation that was sanctioned by the former government, on the eve of finalizing the negotiated settlement, was a tragic illustration of how “normalized” state violations had become, even against minors. It also came at a time when the State was resolute in its denial of the existence of security force death squads. The TRC later found that:

…the killing of the five youths in the so-called Umtata Raid was a gross violation of human rights for which the former SSC [State Security Council] and the former SADF are held accountable. In particular, the Commission finds that the withdrawal of the reconnaissance team some eight hours before the operation meant that the SADF had no real way of knowing who was in the house at the time of the raid.
and regards this as grossly negligent. The Commission further finds that the failure of the SADF to produce the weapons allegedly seized in the house for the independent forensic examination casts doubt on the existence of the said weapons.2

The TRC’s mandate focused on gross violations of human rights—murder, disappearances, detentions, torture and assaults. However, repression in South Africa went beyond the blatant abuses of civil and political rights that characterized apartheid between 1960 and 1994; it also permeated most aspects of political, social, economic, cultural and linguistic life. Apartheid, in other words, was a full assault on the fundamental rights now enshrined in South Africa’s Constitution, and the country’s children were on the front line of these abusive policies and practices. For the most part, the Commission did little probing into these practices. As a result, the architecture of apartheid and its social, economic and political consequences were not adequately addressed.

Children and young people were directly engaged in the resistance and struggle against the apartheid government, and in many instances played a catalytic and leading role in these struggles. They were drawn, for instance, into 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 young people participated in the activities of antiapartheid structures, including the more radical and confrontational actions. For some, this included direct involvement in self-defense units (SDUs)3 and other local community structures.


3 SDUs were established in many communities across the country, primarily by ANC structures, in the wake of the internecine violence that engulfed South Africa during the negotiation period. Established under the rubric of a defensive mandate, several SDU structures did play an overtly violent role and were responsible for a number of violations both against perceived enemies, but also within and among their own “support bases.”
Young people often played a frontline role in protest and defensive actions and also were active in ensuring compliance with boycotts and other political directives. Their engagement calls for a deeper appreciation of the role of children and young people in political activity and the likelihood of their involvement as supporters, witnesses and perpetrators of violations.

Such activities made children and young people a primary target of the apartheid government and its security forces in efforts to maintain white minority rule. As a result, they suffered the consequences of the increasingly militarized and repressive policies employed by the National Party government to maintain its dominance. It is unclear how many children under the age of eighteen were affected, but it is known that between 1984 and 1986 alone, three hundred children were killed by the police, one thousand wounded, eleven thousand detained without trial, eighteen thousand arrested on charges arising out of protest and 173,000 held awaiting trial in police cells. Children constituted between 25 percent and 46 percent of detainees at any given time during this period.

Children were also indirectly affected as a consequence of actions taken by the State to maintain apartheid. This had acute repercussions not only within the country’s borders but also across the southern Africa region, where South Africa’s destabilization program contributed to devastating loss of life and economic destruction.

These experiences and their consequences were not examined in detail by South Africa’s TRC, and it gave limited attention to the participation and protection of children in its processes. The Commission’s policy was not to take testimony from children under the age of eighteen, reflecting advice given by child specialists. However, the Commission did convene special hearings that

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With an initial mandate of two and one-half years from December 1995 when the Commissioners were appointed, the TRC submitted a “Final Report” (which was in fact an “interim report”) in November 1998. The Amnesty Committee continued to hear matters until early 2002, and the TRC handed over the codicil to the final report, which provided details on the amnesty process, to President Thabo Mbeki in March 2003.
publicly examined the experience of children and young people. Children did not testify at these hearings, but their involvement set new international precedents in efforts by truth commissions to address issues surrounding children. The research briefs developed for the hearings on human rights violations across the country include regular references to children, as does the TRC’s final report, which has a chapter on the special children’s hearings. The Commission also developed recommendations specific to children and their needs.

In retrospect, it could be argued that the TRC should have given greater consideration to ensuring a more dedicated focus on the experiences and impacts of the multiple levels of violations against children, who were both direct and indirect victims of apartheid. This could have been done more systematically, which would have required identifying this objective and related processes during the planning stages of the Commission’s work. However, the model adopted by the South African TRC drew heavily on experiences from Latin American commissions, where the overwhelming focus was on violations of civil and political rights, with a limited focus on children. The South African TRC therefore deserves credit for efforts that were made to give attention to children’s issues.

The South African TRC retains a unique presence in the 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 power 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 learned, both positive and negative. As scholarship in the transitional justice field has continued to grow, it has been accompanied by a growing body of analysis about the South African process. Nevertheless, at the time,

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South Africa’s process proved to be a remarkable step forward in terms of state-sponsored initiatives to promote accountability and truth recovery.

**THE TRUTH AND RECONCILIATION COMMISSION AND CHILDREN**

**Mandate and Context**

The TRC was mandated to uncover as much as possible about the conflict in South Africa between 1960 and 1994, through the lens of gross violations of human rights.\(^6\) Its working structure was based on three committees: the Amnesty Committee, the Reparation and Rehabilitation Committee and the Human Rights Violation Committee. In its first two years of operation, the public face of the Commission was the Human Rights Violation Committee. During this time, the Commission’s Amnesty Committee received and began processing over seven thousand amnesty applications and instituted a hearing process that continued until 2002. Meanwhile, the Reparation and Rehabilitation Committee was responsible for developing policy recommendations on reparation and related concerns as they arose.

Using statement-taking, research, investigations and testimonial and inquisitorial hearings, the Commission’s task was 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

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\(^6\) TRC Final Report, Volume One, Chapter Four, paras. 33-36.
to prepare a comprehensive report about the Commission’s activities and findings.\(^7\)

The National Unity and Reconciliation Act was passed under the interim 1993 Constitution, which makes specific commitments regarding the rights of children.\(^8\) The TRC’s governing legislation, however, made no reference to children, women or gender as a focus of its mandate or in terms of methodology. Yet this silence did not preclude a focus on children as a subject, especially with respect to assessing the causes and effects of the violence and violations. Given the scale and complexity of the conflict and its multiple fault lines, it was evident that the Commission could not practically deal with all relevant issues. The TRC, which operated from 1995 to 2002, maintained its focus on taking statements related to the perpetration of gross violations of human rights and giving people an opportunity to testify in public hearings. The public hearings were convened by the Human Rights Violation Committee across the country between April 1996 and June 1997. In order to ensure that different sectors, institutions and themes received attention, the emphasis of the Human Rights Violation Committee shifted in 1996 to specific institutions and special hearings, which then included, among others, a particular focus on children and youth.

There is a growing body of literature on the significance of the TRC’s limited mandate, given the violence and damage caused by structural aspects of apartheid governance.\(^9\) This has implications for how South Africa assesses some of its current challenges,

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\(^7\) Promotion of National Unity and Reconciliation Act, No. 34 of 1995, Chapter 2, Section 3(2)(a-d).


especially as they relate to issues of violence and exclusion and notions of accountability, responsibility and identity. Although the Commission attempted to ground the analysis of its “blood crime” focus (e.g., torture, assassination) in the broader context of apartheid policies, it did not mount a full investigation of apartheid and its broader institutional basis. Neither did it excavate the broad social and economic consequences of these policies, either for children specifically or for the general population.

This narrow definition of human rights violations effectively marginalized the forms of violation that most seriously affected a wider cross section of citizens, particularly children. Indeed, the thematic hearings on children and youth focused on issues of death, torture, disappearance and severe ill-treatment. It is critical, however, to appreciate these abuses within the broader context of apartheid’s victimization of children, which was much more pervasive and devastating in its everyday impact at family and community levels, as well as socially and economically.

An absence of engagement with structural, institutional and social aspects of violation and remedy 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 level of violence in South Africa and the problems associated with addressing it. It is also an area of study requiring significantly more empirical research.10

Responding to advice from many children’s rights activists and professionals, the Commission decided not to take statements from children (anyone under the age of eighteen), which in turn meant that no children’s testimonies would be available for the public

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hearing process.\textsuperscript{11} This automatically removed any immediate need to give special attention to the difficulties associated with securing children’s testimony. Under the circumstances, this may have been unavoidable, but to a certain extent it marginalized the direct participation of children and thereby children’s voices.

Many of the violations perpetrated during the TRC focus period took place at a time when the victims/survivors were children, but the opportunity to testify before the Commission arose when they were adults. The bulk of violations reported to the Commission covered the most violent period of the conflict, 1990 to 1994. In 1996, when the Commission began its hearings, testimonies from this period included potential deponents who were still minors, yet could have testified about incidents in the previous six years. Many children who were direct and indirect victims of violence during this period were also barred from submitting statements.

The largest category of victims reported to the Commission were ages thirteen to twenty-four, and those ages thirteen to eighteen suffered as much as those ages nineteen to twenty-four.\textsuperscript{12} It is not clear how many nineteen to twenty-four-year-olds actually testified, as numerous violations against them were reported by other family members, especially female relatives. Indeed, many of that age group who were affected chose not to testify for reasons that have yet to be confirmed. A number of young activists chose not to engage with the Commission because they felt their participation would facilitate impunity for state perpetrators and would serve to equate their struggle for justice with the repressive actions of the security forces.\textsuperscript{13}

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\textsuperscript{11} Interview with Yasmin Sooka, former TRC Commissioner, 15 January 2009.

\textsuperscript{12} TRC Final Report, Volume Four, Chapter Nine, para. 47.

\textsuperscript{13} Source: author conversations. In many respects this “boycott” reflects a failure of both the political leadership and the TRC to secure adequate political buy-in at a local level and to ensure that there was adequate information available through outreach and socialization processes to address such concerns. Having said that, members and supporters of the liberation movements were numerically the largest groupings to engage both the Human Rights Violation and Amnesty Committees.}
Methodology

Despite numerous academic texts on the work of the South African TRC, virtually no attention has been given to how the Commission addressed the issue of children’s participation in its processes. This appears to reflect the dearth of available information and the limited actions taken by the TRC with regard to children. As such, this chapter focuses on a detailed review of the Commission’s seven-volume report as it addresses the involvement of children and youth, as well as public testimonies available on the TRC website.

INTERNATIONAL STANDARDS

South Africa’s Bill of Rights (1996) contains specific provisions protecting the rights of children. Unprecedented at the time, it followed the government’s ratification of the Convention on the Rights of the Child (CRC). Also in 1996, South Africa became a party to the African Charter on the Rights and Welfare of the Child (ACRWC), which, like the CRC, recognizes the child as a subject of civil, political, economic, social and cultural rights.

The TRC’s focus on gross violations of human rights emphasized “bodily integrity rights.” These include the right to life; to be free from torture; to be free from cruel, inhuman or degrading treatment or punishment; and to freedom and security of person, including freedom from abduction and arbitrary and prolonged detention.\textsuperscript{14} Although neither the TRC’s governing legislation nor its final report (and subsequent codicil) specifically mention the CRC or the ACRWC, there is an implicit endorsement of the international position that children and young people\textsuperscript{15} under age

\textsuperscript{14} TRC Final Report, Volume One, Chapter Four, para. 56.

\textsuperscript{15} The category “young people” is defined as ages fifteen to twenty-four, while “youth” includes individuals into their thirties. Although the TRC referred to its hearings as “children and youth” hearings, technically they referred to children and young people.
eighteen are entitled to special protection in their engagement with government and society.  

The CRC and ACRWC incorporate fundamental principles for working with children. These are the following:

- In all actions concerning children, the best interests 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;
- Children should never be subjected to discrimination of any kind.

The absence of a discussion on how the TRC would address the issue of children’s participation and related protection considerations understandably raises questions about the extent to which the Commission was able to adhere to these principles in its processes. This has yet to be fully evaluated, although it is evident that the Commission sought expert advice that informed its response to issues that concerned children. While more attention could have been given to children in the working methodologies, thereby “mainstreaming” the principles raised above from the start, the convening of special hearings for children was groundbreaking at that time.

A debate arose during preparation of the special hearings on children and young people as to whether or not children under the age of eighteen should appear and testify. The TRC had already taken the unprecedented step of holding many of its other hearings in public, but conventional wisdom among the experts consulted by the Commission 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

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16 TRC Final Report, Volume Five, Chapter Six, para. 159.
discuss this and related issues. It sought the opinions of international organizations such as UNICEF and over thirty South African non-governmental organizations (NGOs) working with children and young people.

Relying on the advice of NGOs working with children and child welfare professionals who argued that this was in the best interests of the child, the Commission made a decision that persons below age eighteen would not testify. The Commission accepted the recommendation that these professionals should testify on behalf of children. The Commission did, however, make extensive efforts to involve children directly in the hearings and in data collection.17

The TRC relied heavily on human rights and legal standards to support and legitimize 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.”18 Additional detail was provided on applying international law to findings made with respect to holding the State and the ANC accountable, as well as on command responsibility and complicity.19

THE INVOLVEMENT OF CHILDREN IN TRC PROCEEDINGS

Despite the lack of direct participation by children in the TRC’s hearings on human rights violations, the Commission soon realized that the experiences of children and young people necessitated specific attention, given the number of cases in which children were involved and/or affected and what was revealed in statements from

17 TRC Final Report, Volume Four, Chapter Nine, para. 7.
18 TRC Final Report, Volume Six, Section Five, Chapter One.
19 TRC Final Report, Volume Six, Section Five, Chapters Two and Three.
relatives, in particular from the mothers of affected children. As a result, the Commission held “children and youth” hearings.

**Special Hearings on Children and Youth**

Limited public information or documentation is available about the background and genesis of the children and youth hearings convened by each of the Commission’s four regional offices. The preparatory work for these hearings was driven by the Commission’s Reparations Committee and was not mainstreamed into the primary work of the Commission.\(^{20}\)

The Commission’s Human Rights Violation Committee convened six special hearings on the experience of children and young people; these took place in Bloemfontein, Cape Town, Durban, East London, Johannesburg and Pietersburg in May and June 1997. Children did not testify at the hearings, consistent with the earlier decision. At the time there was no precedent for facilitating children’s direct testimony and no policy or procedures established to protect children in such proceedings.

The hearings were well attended, although concerns were raised in the Durban process, for example, about the absence of adults as witnesses. In his opening remarks at that hearing, Professor Smangele Mangwaza, a member of the Reparations and Rehabilitation Committee, said, “The big question which I would like to ask today is where are the adults today? We know we have

\(^{20}\) Very little secondary research has been written on the subject of children and the TRC, and during the course of research for this chapter, no specific reports focusing on children and the South African TRC were identified. This situation is further exacerbated by restricted access to TRC archives, which remain largely unprocessed and inaccessible, although some documentation has become available through the utilization of South Africa’s Promotion of Access to Information Act. See also, Kate Allen, ed., *Paper Wars: Access to Information in South Africa* (Johannesburg: Witwatersrand University Press, 2009). The TRC website (www.justice.gov.za/trc) provides transcripts from a number of HRV and Amnesty processes, although transcripts from the “Children and Youth” Hearings are only available for Johannesburg, Durban and Pietersburg (see section on “Special Hearings”). Only a handful of documents relating to children and the TRC are currently accessible on the *Traces of Truth* website (http://truth.wwl.wits.ac.za).
had previous hearings, and the adults have filled the hall. Why are the adults not here today? Is it because children are not important enough to them? That’s a big question which I am asking today.”21

Most of those who testified were youth, aged eighteen or older. A number of children attended and participated in cultural and dramatic arts presentations that were undertaken in parallel with the testimonial process. Participants were invited to tell their stories of involvement in the liberation struggle and about things that had happened to them and their families.

According to the National Child Rights Committee (NCRC), a South African NGO, 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 toward 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.”22

The hearings attempted to examine how children had been affected and to recognize the trauma they had experienced and the broader challenge of tackling this legacy. As Professor Mangwaza stated at the Durban hearing:

> Sometimes we fail to notice trauma in our own children. At other times we don’t even believe that children can grieve and mourn if they lose their parents and care-givers…. They might not even have skills to communicate their trauma. How many times have we seen sad eyes locked in frozen expressions, but being unable to express themselves? Children do suffer in silence.

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22 Taken from the National Child Rights Committee’s contribution to “Initial Reports of States Parties due in 1997: South Africa,” 22 May 1999. CRC/C/51/Add.2. (State Party Report), para. 492.
We, as adults, sometimes keep a conspiracy of silence around the suffering of children because it’s too painful for us to deal with it, or simply because we don’t have skills. But if we, as adults, cannot face the suffering of children, how are we going to help them to heal and forgive?...Yet despite all that pain and suffering our children here are very resilient and strong. They represent South Africa’s most critical national asset, therefore today we want to share their invaluable experiences, and we would like to hear their voices.23

For many, the situation worsened during the negotiations period between 1990 and 1994, as internecine fighting turned some communities into virtual war zones, with particular consequences for children. This was set out in a submission by a former SDU member from the township of Katlehong in the violence-wracked East Rand area of the Witwatersrand:

Whether you were involved in defence or not, the violence affected you. It was not unknown for children attending nursery schools or creches to find a body near their jungle gym or swings. Hostel inmates and SDUs took potshots at each other across school yards. Children were not spared the horror. Schooling in the area came to a complete standstill.... It may be argued in conclusion that far from being a bunch of undisciplined comrades or the lost generation, SDUs were in many ways the backbone of defence in Katorus. If it were not for them, many of us would not be sitting here today. It is clear even from this brief submission

23 Comments from Mr. Smangele Mangwaza, a member of the Reparations and Rehabilitation Committee at the opening of the Children and Youth Hearings convened at Durban on 14 May 1997, available at www.justice.gov.ca/trc/special/children/youthdbn.htm (accessed on 6 January 2010).
that youth involved in SDU activities have suffered a loss that can never be replaced, their childhood.\textsuperscript{24}

In addition, the TRC identified the impact of exile on children and youth as a concrete issue requiring further attention.\textsuperscript{25} Some testified about specific experiences of abuse in African National Congress (ANC) camps.\textsuperscript{26} The Commission wanted to document children’s experiences and explore the effects of exposure to abuse. This entailed recognition of the “structural violence” that characterized apartheid, the inequalities and poverty that compounded the situation, and the experience of those caught up in the vortex of repression and resistance.\textsuperscript{27} Indeed, apartheid policies exacerbated unstable and violent conditions in many parts of the country. The Commission found that children and young people were exposed to three kinds of violence: state oppression, counter-violence and community violence.\textsuperscript{28}

The TRC itself was concerned that its public-hearing processes focused too narrowly on the consequences of human rights violations, not allowing for a more rounded assessment of how children and young people had engaged with and responded to violence. This meant that children and young people’s positive experiences of survival and resistance were not explored, neither was their involvement as perpetrators of violence and the complex relationship between victimhood and perpetration. Although a


\textsuperscript{25} TRC Final Report, Volume Four, Chapter Nine, para. 78.

\textsuperscript{26} See, for example, the testimony of Anthon Thomazile Ntoni at the hearings in Athlone, Cape Town, on 22 May 1997, available at www.justice.gov.za/trc/special/children/ntoni.htm (accessed on 6 January 2010).

\textsuperscript{27} TRC Final Report, Volume Four, Chapter Nine, para. 11.

\textsuperscript{28} Ibid., para. 18.
certain amount of documentation of youth involvement in violence was theoretically available from state sources such as the security forces, the Commission did not explore this archival material. In addition, human rights NGOs tended to focus on children and young people as victims of state repression, rather than on their involvement as bystanders and as perpetrators. As such, the TRC’s hearings tended to focus on certain aspects of children and young people’s exposure to violence. Yet the majority of people who came to the hearings spoke more broadly about experiences of hardship, pain and suffering, while also providing testimony about the bravery and enthusiasm of young people.

The Commission provided an opportunity for people to release some of the hurt they had been carrying silently for years. While many of the testimonies and statements referred only to the generally negative consequences of repression in the period under review, there was also recognition of the largely positive role that children and young people played in the country’s liberation.29

**State Oppression**

Children and young people were inevitably both pushed and pulled toward engagement with the growing resistance movement. This often took place under the rubric of youth and student structures, such as the South African Students’ Organisation and the Congress of South African Students. In some cases, this led to involvement with more militant groups and direct participation in violent acts, although the bulk of student activity was nonviolent in nature.

In response to this “threat,” the security police established specific sections to investigate and collect intelligence on these formations. As repression intensified, children and young people “became the primary targets of detention, torture, bannings, assassination and harassment.”30 Contemporaneous data collection by NGOs such as the Black Sash and the Detainee Parent Support

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29  TRC Final Report, Volume Four, Chapter Nine, para. 87.

30  Ibid., para. 16.
Committee gave basic paralegal assistance to the under-resourced legal infrastructure assisting those detained and charged. It was financed predominantly from outside the country. Such interventions helped to temper and expose some of the worst excesses of the security establishment and provided empirical data for international organizations that were taking an increasing interest in the effects on children. They also provided statistics about the numbers affected. According to the Human Rights Commission, an independent human rights NGO, approximately fifty thousand children were charged and taken to court between 1960 and 1989. Thousands more were subjected to the increasingly draconian detention laws.

“Thousands of children, some as young as seven years old, were arrested and detained in terms of South Africa’s sweeping security and criminal legislation,” the report said. “Sometimes, entire schools were arrested en masse.” All available figures indicate that the largest number of children and young people were detained between 1985 and 1989, during the two states of emergency. Of eighty thousand detainees, forty-eight thousand were under the age of twenty-five.

In detention, children and young people were invariably subjected to abusive treatment, including torture. Of the cases reported to the TRC, mostly young men were affected. This largely corroborated allegations leveled at the apartheid government in

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34 Ibid., para. 55.

September 1987 during an international conference convened in Harare, titled “Children, Repression and the Law in Apartheid South Africa.” The seminal conference demonstrated the brutality of apartheid through the experiences of South African children. It also provided an opportunity for the anti-apartheid movement and its primary political arm, the African National Congress (ANC), to profile the impact of Pretoria’s policies across the region. As ANC President Oliver Tambo noted:

> 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.36

Children and young people 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.37

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37 TRC Final Report, Volume Four, Chapter Nine, para. 60.
Counter-Violence

The escalating conflict and deteriorating conditions in South Africa were also reflected in the evolving militarization of both black and white youth, despite their vastly different experiences. Many thousands of black youth left the country, especially in the wake of the 1976 Soweto school uprisings and the insurgencies of the mid-1980s. While this obviously included some under the age of eighteen, most were older and therefore could not be classified as children; technically they fell in the category of young people (under age twenty-four).

Most young people, however, remained in South Africa, and a number became engaged in organized resistance. Some joined the fight through nascent MK units,\(^\text{38}\) where they received clandestine training. Command and control over such units was limited, which resulted in a number of incidents that fell outside the operational jurisdiction of the ANC.\(^\text{39}\) Several events recorded by the Commission also revealed infiltration by security forces and “false flag” operations\(^\text{40}\) that resulted in the death and maiming of young men who thought they were being recruited into liberation movement structures but were in fact being “recruited” by security force agents.\(^\text{41}\)

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38 MK is the abbreviation of Umkhonto we Sizwe (The Spear of the Nation), the military wing of the ANC.


40 These terror operations were conducted by the security forces and were intended to give the appearance of having been carried out by “terrorist” elements from the armed formations of the liberation movements. The extent of these operations remains unknown.

41 This included, for example, the murders of the “KwaNdebele 9” and the “Niedverdient 10” who were young men between fourteen and nineteen years old who were killed in joint military/security police operations in 1986. See TRC Final Report Volume Two, Chapter Three, paras. 411–416.
In the late 1980s and particularly the early 1990s, increasing numbers of youth were recruited into self-defense and self-protection\textsuperscript{42} structures, especially in KwaZulu-Natal and in the province now known as Gauteng. Some of them became actively involved in violent conflict with security forces and opposing “political” forces. Some details of these experiences were provided at amnesty hearings of former members of SDUs.

The TRC’s special hearings for children and youth did not examine in great detail the involvement of children in militarized structures linked to the liberation movements. It could be argued that significant opportunities were missed to develop an understanding of children and youth as agents and perpetrators. This aspect is crucial in terms of developing recommendations to rehabilitate and reintegrate those affected back into communities and in establishing a more nuanced understanding of the violence and contributing factors.

Young white people were also affected, as the government’s “Total Strategy”\textsuperscript{43} required an increasingly militarized response to political, economic and social realities. The TRC conducted special hearings on compulsory military service that touched on experiences of young white males who were drafted, some as young as seventeen, but the hearings did not distinguish between those over or under the age of eighteen.

\textbf{Violence in Communities}

While the children and youth special hearings did not explore violence within and between communities in depth, the TRC documented the conflict between the African National Congress, the United Democratic Front and the Inkatha Freedom Party (IFP). The TRC struggled to develop a comprehensive overview of the

\textsuperscript{42} Self Protection Units (SPUs) were established by the Zulu-dominated Inkatha movement (later the Inkatha Freedom Party), as a counterforce to ANC-aligned SDUs in the early 1990s.

\textsuperscript{43} The “Total Strategy” was the government’s policy response in the late 1970s to what it described as a “Total Onslaught” from communist and revolutionary forces against it.
temporal and spatial manifestations of these conflicts and to come to terms with their core dynamics. In addition, the Commission addressed the role of vigilante groups, which acted as surrogates for the government security forces and worked to counter radical community elements, especially youth. “Many vigilante attacks were rooted in intergenerational conflicts,” the report noted. “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 mobilized around slogans such as ‘discipline the children’ and frequently described themselves as ‘fathers.’”

In addition, the Commission conducted a thorough investigation into the activities of the Mandela United Football Club, which operated from the Mandela family home in the late 1980s and involved mainly young people and certainly some children. During the mid- to late 1980s, a number of young people associated with Winnie Madikizela-Mandela’s household were implicated as perpetrators of violent crimes, under the guise of “discipline.” Many young people were also victims of these actions, including the fourteen-year-old activist Stompie Seipei, who was murdered in a vicious assault.

The genesis and evolution of most inter- and intra-community violence, as well as their importance for children and youth, were largely absent from TRC inquiry and analysis, and they remain a significant component of the Commission’s unfinished business. Indeed, it can be argued that such limitations have hampered understanding of the multidimensional nature of violence and its relationship to the alienation that continues to affect many black youth in South Africa. This profound drawback has been compounded by representing violence and conflict as political in the pre-1994 era and as criminal in the post-1994 era. This masks aspects of what actually transpired in terms of the politicization of crime and the criminalization of politics.

44 TRC Final Report, Volume Four, Chapter Nine, paras. 30 and 31.

45 TRC Final Report, Volume Two, Chapter Six (f) at 570.
Self-Defense Units

Detail about the activities of the SDUs came from several sources. A number of incidents were included 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.46

The bulk of this information, however, was provided in amnesty applications and hearings. Most of these involved SDU structures in the township conurbation of Katorus (Katlehong, Tokoza and Vosloorus), which became an epicenter of post-1990 violence. Many of the SDU members voluntarily applied for amnesty, while some who came forward 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.”47

Most of the SDU amnesty cases related to the violence of the early 1990s, when such units proliferated. However, the Commission received some information from the 1980s period during the Cape Town children and youth hearings. The Bonteheuwal Military Wing (BMW),48 formed in 1985, was an earlier example of a coordinated armed response, involving primarily youth aged fourteen to eighteen. Its goal was 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 the United Democratic Front.49 After forging links with MK, it was brutally crushed by


47 TRC Final Report, Volume Six, Section One, Chapter Three, para. 14.

48 TRC Final Report, Volume Four, Chapter Nine, Appendix on the BMW in the Chapter on Children and Youth.

49 The United Democratic Front was launched in 1983 and at its peak had over six hundred
security force clampdowns. Several former members testified about their treatment in detention, and families testified about the murder of combatant relatives. Less attention was given to BMW members' 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 of the other hearings. It also allowed for testimonies of non-governmental workers who had been involved in monitoring the violence, as well as the ANC, which had also made specific representations.

Many of the SDU amnesty applications came from persons seeking early release from incarceration, while others were persuaded to engage in the process by community activists, especially from the East Rand township of Tokoza. In its final report, the Amnesty Committee noted that a number of applications were refused, and the cases of applicants who claimed they had been falsely convicted were theoretically returned to the courts. The irony of releasing those claiming guilt while keeping in prison those who claimed innocence was not lost on the Committee.

Although all the applicants were adults when they applied for amnesty, many had been children or young people at the time of the incidents, yet the Committee's report is silent on whether any effort was made to accommodate that fact. As in other amnesty hearings, testimonies and questioning focused on establishing whether the

affiliate organizations. It was widely regarded as the internal front of the ANC.


51 Although the Amnesty Committee felt that SDU applications did not reflect the “full scope of SDU activity,” the support of local political leadership in the township of Tokoza resulted in approximately two hundred SDU members from this community applying for amnesty. According to the Committee, ”Most had never been charged and were motivated by an appeal to their sense of political duty and the national imperative for reconciliation” (TRC Report, Volume Six, Section Three, Chapter Two, para. 21).
application fulfilled the official criteria. These were applied somewhat unevenly, and the Amnesty Committee did not base its decisions on precedent or international legal guidelines, despite its quasi-judicial modus operandi.

Indeed, Amnesty Committee members had not been selected based on their particular skills, experience or knowledge of international law and transitional justice. Consequently, they did not reflect on many issues, such as the gendered dimensions of the conflict; the involvement of children, young people and youth; or developments in international law pertaining to children. In spite of this, and often because SDU applicants did not receive legal advice on crafting their applications, the amnesty applications and testimonies revealed some of the richest content informing the understanding of violence and related underlying struggles from the 1990s period.

Yet the somewhat artificial dichotomy between crime and violence imposed on the process also deterred some people from coming forward. It is important to remember that most amnesty applications and testimonies were essentially contrived to fit amnesty criteria. As such, they are likely to have had a politicized veneer and a selective reflection on the incidents and contexts under scrutiny. Information generated through the TRC processes should therefore not automatically be accepted as capturing the full picture of what has transpired around specific violations.

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52 TRC Final Report, Volume Six, Appendix 6, Chapter Three, paras. 26-41.

STRATEGIES FOR CHILDREN’S PARTICIPATION

Apart from the six special hearings on children, no specific strategies were developed to support children’s participation, yet children’s experiences were recorded in various ways. Indeed, background documents prepared by the TRC’s research unit for community hearings invariably referred to both specific and more general issues that had affected children.54 The impact of violations on children was also mentioned in most public hearings55 as well as specialized hearings (such as those of faith communities, prisons, businesses and women). Many parents testified on behalf of their children. In fact, many women testified not about violations they had experienced, but rather about those committed against others, notably their fathers, sons and brothers.56

Children and Youth Hearings

Unlike other specialized hearings, the children and youth hearings were the specific responsibility of the Reparation and Rehabilitation Committee. Relevant commissioners, committee members and staff participated in planning, preparing and conducting them. According to the TRC final report, several NGOs were also involved in the hearing preparatory processes,57 although it provides no detail.58

Internal TRC documents secured by the South African History Archive show that preparations for children and youth hearings


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 in the Janet Cherry Collection on the Traces of Truth Website, available at http://truth.wwl.wits.ac.za.

56 TRC Final Report, Volume Four, Chapter Nine, para. 48.

57 TRC Final Report, Volume One, Chapter Eleven, para. 24.

58 TRC Final Report, Volume Four, Chapter Nine, para. 2.
began in 1996. National consultative workshops, convened in September 1996 and February 1997, subsequently fed into the work of an internal TRC task team established to facilitate the process. The September 1996 workshop focused on the physical, psychological and social aspects that affected children in the South African conflict. Child rights activist Graça Machel, author of the study *The Impact of Armed Conflict on Children*, addressed this workshop and described the challenges in process and content faced by the Reparation and Rehabilitation Committee. These included the provision of counseling and psychosocial and educational interventions, inclusive approaches for engagement around children’s issues and children’s participation in processes affecting them.59

According to the report of the children’s hearings task team, it was agreed that the 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 both “indirect” and “direct” violations. The team also agreed that the hearings should reflect experiences from young adults who were children at the time they experienced the violations, as this would assist in identifying relevant coping strategies.60

The format of the regional special hearings varied, although distinct efforts were made to engage children from surrounding communities. The report noted that throughout the country, schoolchildren attended the hearings and listened to the evidence. At the hearing in KwaZulu-Natal/Free State, students from a number of schools presented a play, and other schools performed songs. A dramatic presentation of the Soweto uprising was a highlight of the hearing hosted by the Johannesburg office, moving members of the audience to tears. In the Eastern Cape, musical presentations by school choirs assisted in the reconciliation process;


in Cape Town, three high school students read a submission by two professors on the impact of apartheid on children.61 During the two days before the hearings in KwaZulu-Natal, children who had been affected by violence had the opportunity to express themselves through art and drama workshops. Their stories were subsequently presented at the hearing by facilitators, and some recordings of the children’s voices were played.62 The KwaZulu-Natal office also convened a special hearing on children’s experiences the following month in the Free State.63 In East London youth groups and surrounding schools gave submissions at the hearings.64

Conversely, very few child victims testified at the Johannesburg hearing, which consisted mainly of submissions from organizations 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 made to assist these victims.65 The special hearing process provided opportunities to explore a range of contextual factors, allowing participants to reflect on and analyze the root causes of apartheid and its effects on children. A number of formal submissions were also made to these special hearings. The 1998 final report contained a partial list of written submissions, and transcripts of oral testimonies are available on the TRC website.66

**Other Truth and Reconciliation Commission Processes**

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61 Ibid., para. 9.

62 TRC Final Report, Volume One, Chapter Twelve, Durban Office Report para. 36(n).

63 Ibid., para. 36(q).

64 TRC Final Report, Volume One, Chapter Twelve, East London Office Report, para. 36(p).

65 TRC Final Report, Volume One, Chapter Twelve, Johannesburg Office Report, para. 44(s).

The Reparation and Rehabilitation Committee was not specifically mandated to address the needs of children and young people affected by the conflicts of the past. However, the committee chair, Commissioner Hlengiwe Mkhize, who had worked with children affected by violence, was instrumental in promoting this work. The focus on children continued through the Committee’s outreach and networking activities, psychosocial support programs and workshops and policy development. Once again, no detail of this work as it relates specifically to children is provided in the final report, and the relevant archive is not publicly available. It is important to note that the Committee conducted surveys highlighting the plight of children and young people, which in turn influenced the discussion on reparations.

A number of NGOs provided psychological services for victims who testified before the Commission, according to the National Child Rights Committee, which participated in the consultations. Religious leaders also reached out to those unable to participate in the hearings, although details on such support remain largely anecdotal. It is evident, however, that the referral system for psychological services was largely ad hoc, resulting in fragmented service provision, despite assistance to regional offices by churches.

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67 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 that 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 to prevent the commission of human rights violations. (TRC Final Report, Volume One, Chapter Ten, para. 1.)

68 Interview with Yasmin Sooka, former TRC Commissioner, 15 January 2009. This related to recommendations that were made regarding urgent interim recommendations (TRC Final Report, Volume Five, Chapter Five, para. 56) and generic recommendations relating to various aspects of “community rehabilitation.”

NGOs and community-based groups. Efforts were also made to secure political support to enhance state services (health care, education, etc.) and access to them, which helped to guide the development of more detailed recommendations about service provision.\(^70\) Any assessment of what was achieved must be understood in the context of existing service provision and the challenges of rectifying the distortions of the apartheid era.

Regrettably, no assessments of the process were conducted with people who made statements to the TRC, although deponents frequently referred to psychological impacts in their submissions. Individuals who testified at public hearings were often asked about these issues and their needs, but this information was not passed to other sections of the Commission in a coordinated manner. A subsequent attempt to evaluate psychosocial and socioeconomic needs was crudely attempted as part of the Urgent Interim Reparation process.\(^71\) A considerable amount of detail was gathered from these individuals during this process,\(^72\) but the information was never used to assess individual reparation needs. Instead, the Government of South Africa responded to the Commission’s recommendation with a one-time payment that did not differentiate between specific needs.

The research department of the Human Rights Violations Committee was asked to examine the impact of gross violations of human rights on people’s lives. It investigated impacts in four areas, one of which was children and youth. However, the TRC report includes little analysis of its methods or lessons learned, which in turn brings into question the credibility of its findings and recommendations. There is recognition that children and youth

\(^{70}\) TRC Final Report, Volume One, Chapter Ten, paras. 11-15.

\(^{71}\) In an effort to determine urgent reparations needs, the Commission developed a protocol that was mailed to each of the twenty-two thousand people who testified to the Commission. Ideally, this information should have been gleaned at the time of the deponents’ interviews, but the Commission only later realized the importance of securing this data to facilitate urgent interventions.

\(^{72}\) Based on author’s discussion with the former Secretary of the Reparation and Rehabilitation Committee, 20 April 2009.
suffered disproportionately, but the broader implications of these findings for contemporary issues are not explored in the report, and consequently they still require attention.

**Final Report**

The TRC delivered a five-volume (interim) final report in November 1998. Although some detail was provided on principles adopted and methods employed, the bulk of the report was an overview of the information uncovered by the Commission about violations and their impact. The chapters addressing the hearings on children and youth\(^73\) and on women\(^74\) and the consequences of gross violations of human rights, provided considerable detail on the patterns and trends in psychological effects and physical consequences and how they have affected families and communities.\(^75\)

The chapter dedicated to youth and children demonstrates that male children and young people were the most affected group in terms of deaths, abductions, torture, detention and other forms of ill-treatment. Particular attention was given to the physiological and psychological consequences of these violations and the practical effects of disrupted education, dislocation, displacement and exile. Only passing mention is made of the specific experience of girls and young women. The issue of children and young people as perpetrators was not addressed. 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), released in March 2003, detailed the amnesty process. It included considerable anecdotal evidence locating young people and children at the receiving end of a range of heinous violations. The codicil included specific recommendations regarding reparations and drew on comparable

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\(^{73}\) TRC Final Report, Volume Four, Chapter Nine.

\(^{74}\) TRC Final Report, Volume Four, Chapter Ten.

\(^{75}\) Ibid., para. 5.
international experiences, including recommendations for affected children contained in reports from Argentina and Chile.  

REMAINING CHALLENGES

TRC Findings

There is no doubt that the absence of a specific reference to children in the TRC’s mandate led the Commission to adopt an ad hoc approach to dealing with the experiences of children. This approach, coupled with the later decision to exclude direct testimony by children, compromised the potential of children’s participation in the process and led the TRC to overlook a host of sensitivities and potential complexities. 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 they did not pursue the opportunity to systematically collect information about this aspect of the conflict, nor was this information specifically requested from older youth who testified.

Nevertheless, the Commission received a considerable amount of information about violations against children and subsequently made a series of specific findings regarding the situation of children and youth. While the State was singled out for particular criticism, all the major protagonists received a share of the blame. Specific findings relating to children and young people included the following:

- The State – in the form of the Government of South Africa, the security forces and the civil services – was the primary

76 TRC Final Report, Volume Six, Section Two, Chapter Three, paras. 4(d)(I & ii), 9(a), (c) and (d).

77 The following findings are derived from the “Findings and Conclusions” chapter of the TRC Final Report, Volume Five, Chapter Six.

- The policy of apartheid resulted in the delivery of inferior and 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 government ban on student and youth organizations denied young people an avenue for discussion and protest, and resulted in the criminalizing of legitimate political activity, thus encouraging youth to turn to violent forms of protest. The State is further accountable for the political repression that forced young people to go into exile, which distorted the normal socialization of youth and family relationships.

- Identifying and targeting schools as centers of resistance, the state occupied schools and intimidated and arrested students and teachers. This created a climate that led to unnecessary violence. As a result, education was severely disrupted. Many children were unable to complete their schooling or advance to tertiary education.

- Black children and youth were demonized 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. This facilitated and legitimized the use of violence and force against them. The Commission found that the security forces unnecessarily resorted to lethal force 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 was particularly singled out and condemned.
• The State was responsible for detaining children without trial and torturing them, including through solitary confinement. Such detention included the abduction of youth and their forcible removal to places where they were illegally detained and tortured. The state was responsible for severe ill-treatment of children in custody through harassment and deliberate withholding of medical attention, food and water.

• Through its security forces, the State exploited and manipulated divisions in society and repressed children and youth by identifying youth leaders, isolating them and, through violence or financial inducement, pressuring them to act as informants or vigilantes.

• In some cases during the 1980s, the security forces infiltrated youth and student structures, posed as members of liberation movements, recruited young people for military training and then killed them.\(^78\)

• The State was responsible for militarizing young white males through conscription.

• The mass and liberation movements\(^79\) mobilized 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 were responsible for recruiting youth into the SDUs and self-protection units in the 1990s and training them to kill, thus dehumanizing and desensitizing them.

• The war between the ANC and the IFP displaced large numbers of youth, leaving them homeless. In this respect,

\(^78\) TRC Final Report, Volume Five, Chapter Six, para. 160.

\(^79\) The “mass movements” were essentially internal structures that operated within the restrictive conditions in South Africa and the homelands, and were linked to but distinct from the liberation movements such as the ANC and the Pan Africanist Congress, which were the only officially recognized liberation movements at that time.
the State and both parties are responsible for committing gross violations of human rights.

- After 1994, the failure by the ANC and the IFP to reintegrate youth so they could become valued members of society and develop a sense of self-esteem led to their becoming criminalized and created the potential for further human rights violations.

None of the key protagonists have embraced the TRC’s findings or accepted specific responsibility for their policies or actions as they affected children and youth. Indeed, the major players have denied culpability. This presents a major challenge for developing a national discourse and action plans to address the many issues needing responses. Both the government and the ruling party have, in most instances, palpably avoided further engagement on issues relating to the past conflicts.

**TRC Recommendations**

The TRC’s findings led it to adopt recommendations, including those for a reparation and rehabilitation policy.\(^8^0\) The policy was rooted in several key principles. It was to be development-centered, culturally appropriate, simple, efficient and community-based, and it was to promote healing and reconciliation. It stated 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 dependants of victims who would qualify for reparation. Although the policy was not adopted, aspects of it were implemented.

In response to concerns raised about militarized youth, recommendations were included to focus on youth in a systematic demilitarization program. The final report said that secondary and tertiary educational institutions and sporting bodies should be

\(^{80}\) TRC Final Report, Volume Five, Chapter Five.
involved in implementing this program, which was to combine social, therapeutic and political processes and interventions.81 Other recommendations included the following:

- Prioritizing the establishment of community colleges and youth centers to facilitate the reintegration of affected youth into society.

- Establishing accelerated adult basic education and training programs to meet the needs of semi-literate youth and adults who lost educational opportunities due to human rights abuses.82

- Rebuilding demolished schools and introducing remedial and emotional support in mainstream education, as well as developing the capacity to cater to mature students.83

- Developing a Peace Corps to help communities in need but also to develop the skills of less-privileged youth. Such a body could also be used to expose more privileged citizens to the needs and living conditions of the majority of South Africans.84

The report contained other recommendations relating to children, including proposals to support the families of the disappeared and affected children.85

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81 Ibid., para. 97.

82 Ibid., paras. 108-109.

83 Ibid., paras. 110-112.

84 TRC Final Report, Volume Five, Chapter Eight, para. 35.

85 TRC Final Report, Volume Six, Section Four, Chapter 1, para. 120.
In terms of reconciliation and unity, the Commission highlighted the importance of sensitivity to groups that had been particularly disadvantaged in the past, specifically women and children. Not surprisingly, the report underscored the importance of giving priority to the needs of children and young people. Recommendations also called for incorporating human rights curricula in formal education, including a focus on the rights of the child. The Commission advised combining the work of the youth and gender commissions with the South African Human Rights Commission to improve efficiency, coordination and cost-effectiveness.

Responses to the TRC Recommendations

No detailed evaluation has been made of what state and civil society actors have done in response to the TRC’s recommendations. Anecdotal evidence suggests that many have been largely ignored. As with numerous aspects of its reparation response, the government has chosen to merge the implementation of the Commission’s recommendations with its development agenda, incorporating specific needs into the country’s broader service-delivery program.

Although integrating reparation and development goals does not exclude giving priority to specific groups, in practice this has not occurred with respect to victims and survivors recognized by the TRC. Consequently, no efforts have been tailored to the socioeconomic or psychosocial needs of individuals whose cases were addressed in the reparation and rehabilitation policy. This has particular ramifications for children and young people who were caught up in the militarization of the 1980s and 1990s.

Elsewhere, the links between TRC recommendations and existing government programs and processes emanated from the

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86  TRC Final Report, Volume Five, Chapter Eight (see Introduction, para. 3).

87  TRC Final Report, Volume Five, Chapter Nine, paras. 114-120.

88  Ibid.
TRC itself. Following the children and youth special hearings, for example, it was agreed that the National Programme of Action for Children (developed to fulfill the government’s commitments emanating from the Convention on the Rights of the Child), “provides an appropriate vehicle for the institutional reparations”⁸⁹ relating to their needs, according to the report.

**Challenges in the TRC Process**

Other challenges relating to children arose from the TRC process itself. They include the following:

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

- The somewhat disjointed approach to handling issues relating to children and youth in the various TRC processes did not facilitate systematic attention to more practical needs, such as dedicated research and investigation, access to the TRC, counseling, protection and other special needs.

- Many potential deponents did not submit statements or testify. Some activists refused to engage with the TRC, although many communities simply had no opportunity to participate.

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The Commission recognized that its focus on gross violations of human rights resulted in a concentration on the most egregious violations and largely obscured the broader experiences of children living under apartheid. Partially in response, the TRC report recognized that the hardships experienced under apartheid also generated positive qualities and leadership; it noted that “children 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, mobilization and strategizing, as well as the ability to draw strength from friends and comrades in times of hardship.”

This aspect of children’s and young people’s experience was not explored in any detail during the hearings.

In terms of psychosocial considerations, the TRC raised concerns about the difficulty of adequately gauging 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. “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 report noted. The National Unity and Reconciliation 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 urgent cases. This ad hoc response never developed into a comprehensive service, or the possibility of one, and the Commission did not explore options for interventions.

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90 TRC Final Report, Volume Four, Chapter Nine, para. 86.

91 TRC Final Report, Volume One, Chapter Eleven, para. 19.
either in terms of immediate referrals or longer-term recommendations.

- No quantification has been made of the abnormalities of living under apartheid or the consequences for children in terms of violence, poverty, inequalities of opportunity, disruptions to education, dislocation or displacement – or of the resulting consequences or the actions needed in response. The statement-taking protocols did not adequately ensure that these aspects were captured in testimonies. These shortcomings highlight the importance of ensuring the involvement of child rights specialists during the conceptual, design and implementation stages of the various Commission processes.

- The TRC received little testimony relating to sexual abuse and only a very limited amount of information on the sexual abuse of minors.⁹² Sexual abuse was specifically examined in the special hearing on the experiences of women, although the silence that continues to surround this issue reflects deep-seated and continuing problems. It also reflects the limited points of access in the Commission for women and girls who might be inclined to communicate their experiences.

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⁹² See, for example, TRC Report, Volume Four, Chapter 10, para. 54.
CONCLUSIONS

Although the TRC’s statement-taking process endeavored to elicit statements from a wide temporal and spatial base, the process did not proactively engage communities in an effort to learn about particular experiences, patterns or trends. Little investment was made to enhance the statement-taking 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 impart details of the abuse they had experienced and witnessed.

Psychosocial backing is needed to support interventions designed to probe experiences about violations of human rights. In South Africa, it was not provided. The absence of provision for a “start-up” period in the TRC’s founding legislation fundamentally undermined opportunities in this regard. As a result, the TRC was forced to simultaneously develop and implement its plan as well as carry out its investigative work. In this context, it is hardly surprising that special-interest areas did not receive adequate attention during this all-important preparatory phase. Subsequent truth and reconciliation commissions in other countries have had limited start-up operational periods, and it can be argued that these remain largely insufficient and do not reflect conditions on the ground. Such inadequacies are likely to hamper efforts to mainstream child and youth considerations during the planning process.

Evidence before the TRC confirms that children and young people were at the heart of the struggles, resistance and repression relating to apartheid in South Africa. There are, however, three key elements to the critique of South Africa’s TRC process in its dealings with children. First is the absence of a reference to children in the mandate. Second is the narrow construction and interpretation of the mandate, which was limited to gross violations of human rights. This approach precluded a broader examination of

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children’s experiences of the conflict related to the structural aspects of apartheid and its devastating social and economic consequences, as well as some of the less direct dimensions of victimization. Third is that the process issues relating to the Commission’s work, including its findings and recommendations as set out above, would have required much more attention to planning as well as more resources and time.

Consequently, the focus on children and young people was ad hoc; they were not an explicit target group. Remedying this fact has implications covering a range of issues, from the content of statement protocols to the need for a dedicated research focus, Commission staffing, investigative capacity, construction of the database, protection and counseling issues, networking and alliances. There are a number of avenues for improving how commissions address the experiences of children.

The TRC had the resource potential to ensure a more methodical analysis of how South Africa’s conflict affected children and how those consequences still manifest themselves. This could well have included an option for children to give statements and provide testimony. Because it did not, the Commission lost an opportunity to engage with the youngest participants in the conflict. Nevertheless, the Commission gathered 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 analyzed.

However, there appears to be an important gap between the TRC’s processes regarding children and its findings and recommendations. For example, a closer link could have been established between the findings and the efforts to further the objectives of the Convention on the Rights of the Child. In this regard, more research is needed to assess how the Commission’s recommendations have been addressed, taking into account developments in policymaking, service delivery and educational curriculum.

Such a focus is beyond the scope of this chapter. But it is important to point out that the politics of engagement with TRC-related issues in the aftermath of the Commission’s work have been
fundamentally undermined by a lack of will to engage on the part of
government, political parties and significant sectors of civil society.
This is not unique to South Africa, but it highlights the importance
of employing strategies crafted for particular circumstances in order
to implement effective political, economic and social support that
can promote children’s best interests in transitional justice endeavors.