

**RECORDS, THE TRUTH COMMISSION, AND NATIONAL RECONCILIATION:
ACCOUNTABILITY IN POST-APARTHEID SOUTH AFRICA**

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Submitted to the

Graduate School of Information Sciences in partial fulfillment

of the requirements for the degree of

Doctor of Philosophy

University of Pittsburgh

2008

UNIVERSITY OF PITTSBURGH
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University of Pittsburgh, 2008

Abstract

The research on “Records, The Truth Commission, and National Reconciliation: Accountability in Post Apartheid South Africa” was prompted by the South African Truth and Reconciliation Commission. The South African Truth and Reconciliation Commission (SA TRC) was initiated by President Nelson Mandela’s post-apartheid government. The aim of the commission was to collect as much information as possible about apartheid transgressions in order to use it for national reconciliation. In order to carry out its mandate the commission established three committees, namely, the Human Rights Violations Committee, the Amnesty Committee and the Reparation and Rehabilitation Committee.

In line with its mandate the South African TRC collected millions of records and consigned them to the National Archives for maintenance. The transfer of all truth commission records to the National Archives in Pretoria presented this researcher with an opportunity to investigate the two research questions of this study, namely, “How has the National Archives of South Africa managed the records of its truth commissions,” and “What problems and challenges have the South African National Archives experienced in preserving and making its TRC records in all media accessible to the public?”

Using a historical case study method to answer both research questions this study found out that the South African National Archives has had little problems in managing the paper and audiovisual records of the truth commission. On the contrary, the South African National

Archives has experienced major problems managing its truth commission's electronic records. This brings us to the second research question dealing with problems and challenges faced by the National Archives in preserving and making accessible the SA TRC records. This research found that the National Archives of South Africa is not able to provide full access to the TRC records basically because of six problems discussed in detail in this dissertation. The problems of access to TRC records have long term repercussions for accountability in South Africa. However, the true contribution of TRC records to accountability can only happen once the records have been processed and made available to the people.

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ACKNOWLEDGMENTS

This dissertation is a collective product of the efforts of many people. My greatest gratitude goes to Dr Richard Cox, my principal advisor and academic mentor. I would also like to thank my committee members, Dr Toni Carbo, Dr David Wallace, and Dr Ellen Detlefsen for their invaluable comments in building this dissertation to where it is today. In addition, I would also like to thank the following people for assisting my research, Dr Graham Dominy, and his deputy, Mandy Gilder, Gerrit Wagener, Natalie Skomolo, Zahira Adams, Piers Pigou, Sello Hatang, Verne Harris, Kate Allan and Sam Jacob. Finally, I am grateful to my mother, Keabonye, to my late grand mother, and brother, Gaolathe and Joe, and to my siblings, Vincent, Phetogo, Pinga and Kabo. Lastly, this research will not have been possible to finish without Leonard Huggings and his family. To them I am also most grateful.

PREFACE

This dissertation is written with passion, by a victim of the apartheid regime in Southern Africa. The 1970's and 80's were a bad time for growing up in this part of the world. This was the period when the White minority regime exported indiscriminate violence to every corner of the region in the name of fighting freedom fighters. For me, the Soweto Uprisings started it all. The uprisings happened on June 16, 1976 in a Black township called Soweto in the outskirts of Johannesburg. I was ten years old then and our lives were never the same again. Mass protests, mostly engineered by students, erupted in Soweto due to the introduction of Afrikaans, rather than English, as a medium of instruction in Black schools. Police opened fire on marching students, killing about 566 of them in the process.

The world community reacted with economic and cultural sanctions against the apartheid regime. Many Black and White political activists left South Africa to prepare themselves for armed resistance against the regime. The apartheid government, on the other hand, responded with stronger military aggression. This aggression was demonstrated through cross border raids into neighboring countries. In the night of June 1985 the South African Defense Special Force Unit raided Gaborone, the capital city of Botswana. Many unsuspecting refugees and innocent Batswana were killed in that raid. I was in high school then and lucky to survive this state-sponsored incursion. This incident, and many others that were to follow it, greatly traumatized me and left a lasting impression in my mind. However, despite my fear I knew that, like every

tyrannical regime that has come before it, apartheid would some day fall. This fall, which I waited for all my life, happened in 1994. I was twenty eight years old then.

Many of us who grew up in Southern Africa and were victims of apartheid waited to see justice done at the onset of majority rule in South Africa. It is, therefore, not surprising that we were disappointed when, instead of trials, the new government of South Africa decided to embark on a process of amnesty through its truth commission. Initially, many of us who grew up under apartheid did not agree with the idea of a truth commission. However, fourteen years down the line the wisdom of Nelson Mandela and his non adversarial approach to the problems of South Africa are starting to show. Even though there still remains a lot to be done South Africa has done extremely well in the area of race relations and political and fiscal accountability. Even though a variety of reasons might help to explain this state of affair some people have attributed it the TRC. My retrospective appreciation for the SA TRC has driven me to research on the records of its process and proceedings. This investigation, however challenging, has in turn provided me with a unique space for my own personal healing.

1.0 INTRODUCTION

The South African Truth and Reconciliation Commission (SA TRC) was established by an act of parliament in 1995.¹ It was the twenty-first² in a series of truth commissions that had characterized nations transitioning from repression to democratic rule. Its actual work started in 1996 with Archbishop Desmond Tutu as the chair.³ The SA TRC⁴ had five main objectives intended to promote national unity and reconciliation.

The first objective was to establish as complete a picture as possible on the causes, nature, and extent of gross human rights violations committed from March 1960 to May 1994. The second main objective of the SA TRC⁵ was to facilitate the granting of amnesty to persons who made full disclosure of acts associated with politically motivated crimes. The third objective of the SA TRC was to establish the fate and whereabouts of victims of apartheid. The fourth objective was to compensate victims. The final objective was the compilation of a report

¹Johnny De Lange, "The Historical Context, Legal Origins and Philosophical Foundation of the South African Truth and Reconciliation Commission," in *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, eds. Charles Villa-Vincencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000), 14.

²Deborah Posel and Graeme Simpson, "The Power of Truth: The South African Truth and Reconciliation Commission in Context," in *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, eds. Deborah Posel and Graeme Simpson (Johannesburg: Witwatersrand University Press, 2002), 2.

³Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2001), 41.

⁴Truth and Reconciliation Commission is usually abbreviated as TRC and South Africa is abbreviated as SA. So, the South African Truth and Reconciliation Commission will be abbreviated as SA TRC throughout this dissertation.

⁵TRC as explained in the above footnote to denote Truth and Reconciliation Commission.

providing as comprehensive an account as possible of the activities and findings of the commission to prevent future violations of human rights.⁶

The question of how to deal with the past and how to hold dictators accountable has not been an easy one for the emerging democracies of Latin America and Africa. Several difficult options presented themselves. The first option was to grant blanket amnesties to former human rights perpetrators, leave the past behind, and concentrate on building a better future. The second option was to hold human rights violators accountable through the criminal justice system. The third option was to initiate an investigatory body in the form of a truth commission whose records would then be used to set the historical record straight as well as for the reparation of deserving apartheid victims. Each of these options had tough problems.

The first option – letting perpetrators go free – was not viable in South Africa due to overwhelming local and international objection. For centuries, racial segregation had subjected the majority of Africans to ill treatment, second only to slavery. The second option might not have been a problem in Europe, Canada, or the United States but was definitely a problem in Africa. In western countries, prosecution of human rights violators would have been a normal process. In South Africa and Latin America, though, this simple convention would not apply. Examples from Argentina and Chile demonstrated that some of the new governments were in place through the patronage of the military junta that still wielded immense power beyond their tenure of office. In the end, South Africa settled for a truth commission whose emphasis was not on prosecution but rather on producing a clear record of apartheid and human injustice.

⁶*Truth and Reconciliation Commission of South Africa Report, Vol 1* (Cape Town: CTP Book Printers, 1998), 55.

Therefore, from 1996 until its closure of business in 1998, the SA TRC, as per its mandate, collected millions of records in paper, electronic, audio, and audio-visual formats. These records included vital testimonies of victims and perpetrators of human rights violations, the names and persons of those who applied for amnesty and who made full disclosure of their involvement in all politically motivated crimes, and amnesty decisions and pending cases of perpetrators who were economical with the truth and who could face possible imprisonment. The amnesty offered by the SA TRC was not absolute but conditional so the records of applicants who were unsuccessful offered vital evidence against the perpetrators. Apartheid scattered and dislocated whole families across the globe and included the extra-judicial assassination of freedom fighters.

Therefore, the SA TRC records contain information relating to the whereabouts of victims or their remains, cross-border raids in neighboring countries, and great insights into shocking programs like the one initiated to sterilize Black females, to mention but a few. The SA TRC also interrogated civil society, churches, banks, mining giants like De Beers, and the Anglo American Corporation which had a monopoly over the gold and diamonds fields of South Africa.

At the end of this exercise, legendary in human terms as well as in its records accumulation, the commissioners requested that the National Archives of South Africa take charge of its records. In “Archiving Commission Material and Public Access,”⁷ the commissioners stated that all records be transferred to the National Archives as soon as the codicil to the final report was made public.⁸ As a result of these recommendations, all the SA TRC records were centralized to the Documentation Center in Cape Town and transferred to the National Archives in Pretoria. The TRC commissioners were well aware of the fact that the

⁷Ibid., 343.

⁸Ibid., 343.

custody of their records at the National Archives would involve money; therefore, an appeal was made to the government to provide financial assistance to the National Archives in order to enable it to undertake this assignment.

Besides records that were already within the province of the truth commission offices, the commission was also quite aware that it was not the only body generating truth commission records. A lot of churches and non-governmental organizations were also involved in documenting human injustice in South Africa. To get hold of these records, the commissioners requested that the government assist the National Archives to target any of these organizations with a view to fill the gaps in the South African social memory.⁹ At the onset of democracy in 1994, the majority of Africans in South Africa were illiterate and their experience of apartheid mostly oral. Given this reality, the National Archives was asked to aggressively promote oral history projects according to section 3[d] of the Archives Act.¹⁰ At the time of writing this dissertation the National Archives did not have the manpower to implement this recommendation.

During its tenure of office the South Africa TRC ran a website¹¹ which posted all its proceedings online. Launched in 1996, the website contained all the transcripts of the Human Rights Violations Committee (HRVC), amnesty hearings, amnesty decision transcripts, press releases, and news reports from the South African Press Agency (SAPA).¹² Given the website's strategic importance, the commissioners felt that it was crucial for the National Archives to inherit it in order to continue to make existing materials available to the public. Further, the

⁹Ibid., 346.

¹⁰Ibid., 346.

¹¹ <http://www.truth.org.za> 05/03/08.

¹²*Truth and Reconciliation Commission of South Africa Report, Vol. 6* (Cape Town: CTP Book Printers, 1998), 748.

commission tasked the National Archives to expand the website in creative ways that could allow local and international access.

The SA TRC was conceived as a public event as the majority of its records were to be made accessible to the public with little or no hindrance at all. The commissioners were adamant that all its records were to be open to the public as soon as the archives could make that possible. Access restrictions were only to be limited to records that violated individual privacy and those whose disclosure ran the risk of endangering the lives of informants or whistleblowers.¹³ In cases where personal privacy and security were under threat, the National Archives was required to consult with the Department of Justice to determine the best way forward. In the case of any other records categories, a policy of unrestricted public access was to be applied. This then meant that the National Archives had to ensure that all information already in the public domain had to be made available to the public as soon as it was practically possible to do so. Success on the part of the archives to make SA TRC records accessible alone constituted accountability because knowledge of history may be punitive to perpetrators and therapeutic to victims. Truth, particularly one which brings closure to traumatic events, is very healing.

It was in this context, the context of preserving truth, that the commissioners impressed upon the National Archives the need to ensure that the website and the electronic database were to be preserved. It is not possible to describe all the records that were posted on the website but they included transcripts of hearings, reasons for amnesty decisions, public statements issued by

¹³*Truth and Reconciliation of South Africa Report, Vol 1., 344.*

the commission, and the commission's final reports. Besides the website the commission also recorded all the perpetrators and victims in an electronic Oracle database called Infocomm.¹⁴

The Infocomm database registered names of victims, the violations they suffered, details of the alleged perpetrators, human rights violations statements, and amnesty applications as they were lodged with the commission.¹⁵ Also, the database linked the findings of the Human Rights Violations Committee (HRVC) with the decisions from the Amnesty Committee to provide lists of victims to the Reparation and Rehabilitation Committee (RRC) under the President's Fund.¹⁶

The commission recommended that the National Archives of South Africa take responsibility for ensuring that the database forms the cornerstone of an electronic repository of historical materials concerning the work of the commission. For this to happen, care had to be taken to ensure that the database constantly responds to changing technological developments to better support audio-visual and other graphic materials.

In addition, it was imperative for the National Archives to ensure that the database is in a format that allows for distribution to schools, other educational institutions, and the general public by means of CD-ROM and that it uses language that is accessible to the majority of South Africans.¹⁷ Also, the commission recommended that the National Archives convert the current database format to a technology best suited for internet-based, read-only access, using open access software whenever possible. The archives were also asked to post the database on the web in a user-friendly format for further research and analysis.¹⁸

¹⁴Infocomm was a huge human rights database built by Patrick Ball of the American Association for the Advancement of Science. Infocomm's greatest strength lied in using statistics to document human rights abuses. It was used widely in Latin America.

¹⁵*Truth and Reconciliation Commission of South Africa Report, Vol 6., 729.*

¹⁶*Ibid.*, 748.

¹⁷*Ibid.*, 729.

¹⁸*Ibid.*, 730.

The question of why preserve and make truth commission records at all is meticulously addressed by Trudy Peterson in *Final Acts: A Guide to Preserving the Records of Truth Commissions*.¹⁹ Peterson explains that "records can speak across decades, providing evidence of the transactions of the commissions and information about the people, places, and phenomena that the commission investigated. But they must survive to speak, and that survival will depend on professional management of the records."²⁰

Peterson goes on to say that this is an important concept, as truth commissions may contend that their final reports are a sufficient record of proceedings. Yet, in the case of the SA TRC, the final report does not, for example, contain the findings of investigations into all cases reported to it. For victims to ascertain the outcome of investigations into their particular case, they would have to access their records through the case files at the National Archives. Without careful preservation this wealth of information will be lost.²¹

Previous observations have shown that where human rights violations have taken place and, in all other cases where the rendering of an account has been demanded, records have been an invaluable part of that process. On countless occasions the availability of records has often reinforced prosecution and accountability. For example, the records of Nazi Germany were used to try World War 2 war criminals. On the contrary, the absence of records has often undermined efforts towards accountability in the sense that crucial evidence needed to proceed with prosecution would be lacking and South Africa offers a good example.

¹⁹Trudy Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Baltimore: John Hopkins's University Press, 2005).

²⁰Ibid., 3.

²¹Ruendre Govinder, A Review of Trudy Huskamp Peterson's *Final Acts: A Guide to Preserving the Records of Truth Commission* (Baltimore: Johns Hopkins University Press, 2005) Published by H-SAfrica (January: 2006). At http://www.h-net.org/reviews/showrev.cgi?path=165371143228832_27/03/2006.

The definition of accountability has been marred by ambiguities. Different organizations have defined accountability differently depending on their mandates. Chapter 2 of this dissertation deals at length with this problem. However, the definition used in this thesis is a straightforward one suggesting the principle that explains our obligation to others. Individuals, organizations, and businesses are mandated to undertake certain duties and are required from time to time to explain them to others.

As mentioned before, SA TRC and the Archives Act of 1996 gave the National Archives of South Africa responsibility over the records. Ever since then, no known researcher has ever bothered to find out how that responsibility has been carried out. This dissertation attempts to find out how the National Archives accounts for that obligation through the management of its truth commission records and in the process hope to fill that void.

1.1 BACKGROUND AND SIGNIFICANCE OF THE STUDY

1.1.1 The South African Truth and Reconciliation Commission

The SA TRC was inaugurated in 1996 with Archbishop Desmond Tutu as the chair. The historical foundation of the SA TRC was basically rooted in three factors: the international context of truth commissions, South Africa's historical context, and the findings of previous, smaller commissions.

Returning to the first factor, South Africa was not the first country in the world to initiate a truth commission. The countries of Argentina, Chile, Guatemala, and El Salvador had already taken the lead. This means that South Africa had the advantage of learning from other truth

commissions that had preceded its own. Other lesser known commissions in Africa and Asia also offered some valuable lessons. Like other democracies in transition, South Africa found itself confronted by similar problems that Latin American countries had to deal with. Learning how to resolve these problems from more experienced countries seemed the most obvious thing to do.

Secondly, the SA TRC was shaped by the country's own unique historical conditions. The idea of a truth commission was mentioned as early as 1992 during the negotiations of the new constitution between Nelson Mandela's government-in-waiting and President De Clerk's sitting government. The most contentious issue during the negotiations toward an interim constitution was whether an amnesty would be granted to wrongdoers, as the military insisted. In the final hour of negotiations the parties agreed to an amendment to the constitution that stated that "amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of conflict of the past."²² Only later was this amnesty linked to a truth-seeking process.

Thirdly, Hayner tells us that in 1992 the African National Congress (ANC) president, Nelson Mandela, initiated a commission to look into allegations of human rights violations in the ANC²³ detention camps located in Angola, Zambia, and Tanzania. After seven months of work, the commission's report was released to the public and the press. Criticism of this report led to another inquiry by three independent commissioners from the United States, Zimbabwe and South Africa.²⁴ In August 1993, the commissioners cited and made public severe human rights abuses in ANC training camps. After taking collective responsibility on behalf of his movement Nelson Mandela went ahead and won "the country's first democratic presidential elections and

²² Hayner, *Unspeakable Truths.*, 41.

²³ ANC stands for The African National Congress. President Nelson Mandela's ruling movement in South Africa today. This abbreviation will be used throughout this dissertation.

²⁴ Hayner, *Unspeakable Truths.*, 63.

proceeded to put his government's call for a national truth commission into place."²⁵ This call was answered in 1995 when Bishop Tutu was elected to be the chairperson of this commission.

Questions may be raised as to why this study was based on the records of the SA TRC rather than on any of the twenty-one commissions held so far around the world. South Africa's TRC was distinct and served as a model in several respects. Its choice of commissioners was unlike any other. The SA TRC officials were selected in public interviews. This method was strikingly different from other countries where such bodies were established through presidential decrees. The habit of using "the people" to appoint the commissioners gave this body a broad political and public backing. Furthermore, Hayner notes that a "few truth commissions in the past have been created through national legislation, as in South Africa."²⁶

The most distinct difference between the SA TRC and other commissions was that it was the first to be given the power to grant amnesty to individual perpetrators. No other state had combined the quasi-judicial power with the investigative task of a truth seeking body. Linda Van De Vijver remarked that South Africa's amnesty process "placed the onus on perpetrators to apply for amnesty, and demanded the full disclosure of all relevant facts before it could consider granting amnesty to applicants. In this regard it is unique, and differs from the blanket amnesties that were granted in, for example, Latin America."²⁷ The Latin American truth commissions frustrated individual identification of perpetrators of violence, although this may now be changing with new trials. On the contrary, the SA TRC used the amnesty process to uncover details of past crimes and thus made it probably the first country in the world to hear detailed testimony about crimes directly from the perpetrators themselves. The perpetrators' accounts,

²⁵ Ibid., 64.

²⁶ Ibid., 39.

²⁷ Linda Van De Vijver, "The Amnesty Process," in *After the TRC: Reflection on Truth and Reconciliation in South Africa*, eds. Wilmot James and Linda Van De Vijver (Athens: Ohio University Press, 2001), 130.

together with victims' accounts, non-governmental organizations (NGOs),²⁸ schools, hospitals, security forces, and the civil service, form a record whose management by the National Archives forms the basis of this dissertation. The provision for the protection of perpetrators, once amnesty had been granted, was broad and unconditional. This had the effect of encouraging many perpetrators to come forward and reveal their stories.

Accordingly, the SA TRC had extraordinary subpoena, search, and seizure powers. None of the Latin American commissions had the powers to compel witnesses to come forward with evidence. The subpoena powers of the SA TRC led to more thorough internal investigations and direct questioning of witnesses than had been seen in previous commissions. The very public process of the SA TRC made it extraordinary. Unlike many other commissions which held their proceedings behind closed doors, such as those in Latin America, the SA TRC excelled in engaging the public to confront its ugly past. Both victims and perpetrators came forward in public to tell their stories.

The witness protection program that South Africa created was the first of its kind in Africa. Fearful witnesses, who would otherwise have shied away, took advantage of this provision to disclose much needed information. The South African hearings also included aspects of inquiry not seen anywhere else, such as the sectoral and institution-focused hearings on churches, the medical establishment, the press, the business sector, and other areas.

The SA TRC operated in a very transparent fashion. Many international NGOs participated and monitored the work of this commission without any hindrance. Few recorded commissions had included such massive participation. Even though many truth commissions sought national reconciliation as their goal, most had simply implied it. The SA TRC did not just

²⁸The abbreviation NGO's will be used throughout to refer to Non-Governmental Organizations

presume that reconciliation would come naturally. Instead it aggressively framed its work around this goal.

The proceedings of the SA TRC constituted a form of “live archives” in the sense that both local and international television crews covered its work around the clock, much to the excitement of most university professors who had already initiated the debate in various seminars held around the country about the need to establish a TRC archive. The specific idea of a center of memory to commemorate the TRC was a major innovation of South Africa. However, ever since that recommendation, no known researcher so far has investigated how the National Archives has gone about preserving and making accessible these records let alone the records of any other truth commission ever held.

It is assumed, often without any concrete research, that unlike many African and Latin American states that undertook truth commissions just for political expediency, South Africa had the willpower to archive their findings. However, will power and making the records accessible are not the same things. What is beyond dispute is that at the end of its work the SA TRC’s recommendation to have the records deposited to the archives won the day.²⁹ What is less clear, and what hopefully will be addressed by this dissertation, is whether the records of the SA TRC are being accessed or enjoyed by the people of South Africa.

There have been countless cases in the world where records have been critical to the rendering of an account. The critical role of records in the prosecution of human rights violators during the Nuremberg trials is a case in point. In this special instance, records generated by the Nazis were used as evidence to prove that the persecution of Jews, Gypsies, and homosexuals

²⁹*Truth and Reconciliation Commission of South Africa Report, Vol 6., 729.*

was not accidental but followed a state-sanctioned policy of racial cleansing and genocide. These records included the names and numbers of most of those murdered, raped, and tortured.³⁰

Hayner informs us that, in Germany, a truth commission, relying largely on the declassified records of the former East German regime, unearthed harrowing details of human rights abuses by the Socialist Unity Party.³¹ In South Africa, despite massive records destruction, the Investigative Unit of the commission still managed to acquire massive records from the police and the intelligence community to hold human rights violators accountable. However, the management of any records cannot take place without political will and financial backing. At the political level and compared to other commissions worldwide, a healthy budget allocation, together with a tremendous political will, made the SA TRC comparatively better than other lesser known commissions in Africa and Latin America.

1.2 THE PURPOSE OF THE STUDY AND RESEARCH QUESTIONS

1.2.1 The Research Questions

- 1 How has the South African National Archives managed the records of its truth commission?
- 2 What problems and challenges have the South African National Archives experienced in preserving and making SA TRC records in all media accessible to the public?

³⁰Ibid., 156.

³¹Hayner, *Unspeakable Truths*, 61-62.

1.2.2 Organization of the Dissertation

This dissertation is organized in a manner that tries to address the above research questions. Chapter 2 starts with a discussion of the concept of accountability as understood from a political, administrative, financial, and legal point of view. In this section an attempt is made to place this dissertation within the broader debate on records, accountability, and truth commissions.

A combination of research methods were used in this study to collect the data, namely, interviews with former commissioners, staff of the National Archives, staff of the South African History Archive (SAHA), and staff of the Department of Justice. Also used were primary archival documents in the form of court documents, annual reports, and policy documents. Secondary sources in the form of books and research articles written by people who had interest in the TRC, such as the *Center for the Study of Violence and Reconciliation*, were also used. Data collection instruments in the form of semi-structured and close-ended questionnaires were applied to answer the research questions. SPSS was used to analyze quantitative data. Qualitative data was categorized and then coded to answer the research questions.

Data collected through the above research methods was used to answer the research questions namely,

- 1 How has the South African National Archives managed the records of its truth commission?
- 2 What problems and challenges have the South African National Archives experienced in preserving and making SA TRC records in all media accessible to the public?

Chapter 4 gives the reader a contextual narrative of the TRC provenance. Chapters 5 and 6 address the two research questions. Chapter 7 is an analysis of the intersection between records, truth commissions and accountability and Chapter 8 concludes the dissertation with

recommendations and lessons learned including some thoughts on records, nation building and national reconciliation.

1.3 LIMITATIONS OF THE STUDY

There are basically two major limitations present in this study. The first is researcher bias. As a victim of the aggressive apartheid system in Southern Africa, my closeness to the events could have influenced my assessment of the National Archives and Records Services of South Africa, especially since NASA³² was predominantly White, served White researchers, and celebrated Afrikaner history. The second is that the majority of interviews and records reviews were conducted mostly on the staff of the National Archives (NASA), the Department of Justice (DOJ) and the South African History Archive (SAHA).³³ More could have been done to balance these interviews with people who actually worked for the SA TRC. Of the twenty interviews conducted only five people had worked for the SA TRC. However, time constraints and the fact that it was harder to secure appointments with former commissioners than the readily available staff of the above institutions made it easier to concentrate on archivists than on former commissioners.

Also, because this study was really about how the National Archives managed SA TRC records, the best people to address the technical knowledge of archival work were the archivists and records managers themselves. The above limitations were not detrimental to the study due to

³²Visit the National Archives of South Africa. Available at <http://www.national.archives.gov.za> 06/20/06.

³³SAHA is the South African History Archive.

triangulation. Moreover, these limitations, together with future research stemming from the results of this study can be addressed in subsequent investigations.

2.0 LITERATURE REVIEW

2.1 THE CONCEPT OF ACCOUNTABILITY

Accountability has become the defining word of modern times. Democratic governments and all watchdog organizations use it as the cornerstone of their daily business. Yet, despite being a “buzz-word,” accountability is controversial. Ratner and Abrams have asserted that accountability has varying forms³⁴ and means different things to different people. Kearns states that “the accountability environment is a constellation of forces, legal, political, socio-cultural, and economic that place pressure on all organizations and the people who work in them to engage in certain activities and refrain from engaging in others.”³⁵

In *The Politics of Accountability in the Modern State*,³⁶ Flinders further says progress in the definition of accountability has been undermined by a lack of definitional clarity.³⁷ In *Rethinking Democratic Accountability*,³⁸ Behn goes on to suggest that accountability “has become a cliché and, like all clichés, is a substitute for thinking. Indeed, using a phrase suggests

³⁴Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International Law* (Oxford: Oxford University Press, 2001), 155-156.

³⁵Kevin Kearns, *Managing Accountability: Preserving the Public Trust in Public and Non-profit Organizations* (San Francisco : Jossey- Bass Publishers, 1996), 29.

³⁶Matthew Flinders, *The Politics of Accountability in the Modern State* (Aldershot: Ashgate Publishing Company, 2001).

³⁷Ibid., 11.

³⁸Robert Behn, *Rethinking Democratic Accountability* (Washington, D.C: Brookings Institution Press, 2001).

that no real thinking is going on. We hide our inability to create a clear understanding of accountability (both among citizens and within our own mind) behind a well known phrase that is guaranteed to start a lot of heads nodding.”³⁹ Behn further states that at any given time there are always many forms of accountability competing with one another.⁴⁰ Flinders agrees that accountability is a multilayered concept which can be formal or informal, can operate in a range of directions and can be conveyed through a number of codes of accountability.⁴¹ Sheldon has even gone so far as to adopt the extreme view that accountability is an illusive goal.⁴² The definition of accountability is as varied, as wide, and as value-laden as the organizations that propound it. No dissertation will ever fully exhaust all the meanings of accountability. And because of this, this literature review will confine itself to the definition of accountability as championed by organizations that have made it their chief mandate. These international organizations include Transparency International and the World Bank. Views from scholars of transitional justice, archivists, and records managers will also inform this dissertation’s perspective. The different views of these fields will not be fully exhaustive because it is impossible to cover all the meanings of accountability within a single dissertation.

The existing literature defines accountability as a concept in ethics with several meanings.⁴³ In its broadest usage, accountability related to governance would seem to refer to a wide spectrum of public expectations dealing with organizational performance, responsiveness,

³⁹Behn, *Rethinking Democratic Accountability*, 1.

⁴⁰Ibid., 1.

⁴¹Flinders, *The Politics of Accountability in the Modern State*, 1.

⁴²Debra Sheldon, *Achieving Accountability in Business and Government: Managing Efficiency, Effectiveness, and Economy* (Westport: Quorum Books, 1996), 27.

⁴³See the online definition of accountability from the Wikipedia dictionary at <http://en.wikipedia.org/wiki/Accountability> 10/30/2008.

and even morality of government.⁴⁴ In its other usages “accountability involves answering to a higher authority in the bureaucratic or inter-organizational chain of command.”⁴⁵ Kearns has stated that the range of people to whom an account must be rendered includes not just superiors in the chain of command but also the general public, the news media, peer agencies, donors, and many other stakeholders.⁴⁶

In *The Politics of Accountability in the Modern State* Flinders, Rombek, and Dubnick inform us that “accountability is a process where a person or groups of people are required to present an account of their activities and the way in which they have or have not discharged their duties.”⁴⁷ Flinders further presses this point home by saying that accountability is “the condition of having to answer to an individual or body for one’s actions.”⁴⁸ Rombek and Dubnick go on to tell us that accountability is a relationship “in which an individual or agency is held to answer for performance that involves some delegation of authority to act.”⁴⁹ This definition is similar to the one offered by the International Organization for Standardization on records and information. ISO 15489 defines accountability as “the principle that individuals, organizations, and the community are responsible for their actions and may be required to explain them to others.”⁵⁰

The literature on accountability and enforcement of international human rights statutes has been dominated by two major arguments on the legitimacy of truth commissions as

⁴⁴Ibid.

⁴⁵Ibid.

⁴⁶Kearns, *Managing Accountability*, 9.

⁴⁷Flinders, *The Politics of Accountability*, 11.

⁴⁸Ibid., 13.

⁴⁹Behn, *Rethinking Democratic Accountability*, 4.

⁵⁰ISO 15489 Information and Documentation: Records Management: Part 1: General: ISO 15489-1:2001 (E), 3.2.

instruments of accountability in the post-apartheid era. In “Justice and Amnesty,”⁵¹ Slye says that “accountability describes a wide variety of mechanisms for identifying individual and group responsibility. To hold someone to account is to identify an individual’s responsibility for an act, and to impose some cost or benefit upon that individual as a sign of approval or disapproval.”⁵² Writing from the point of view of international law, Ratner and Abrams inform us that under the criminal justice systems accountability means developing legal mechanisms that hold individuals or groups of people responsible for gross violations of human rights.⁵³ These mechanisms include international tribunals, national judicial systems, and investigatory commissions.⁵⁴ International legal experts assert that the best way to hold human rights violators accountable is by way of criminal trials. The view is that states are obliged, under international law, to institute criminal proceedings against everyone involved in crimes against humanity.

In “Settling Accounts: The Duty to Prosecute Human Rights of a Prior Regime,”⁵⁵ Orentlicher insists that international criminal law requires states to criminalize, prosecute, and punish individuals associated with crimes against humanity⁵⁶ and not to hold truth commissions. For instance, Article 6 (c) of the Nuremberg Charter defines crime against humanity as “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in

⁵¹Ronald Slye, “Justice and Amnesty,” in *Looking Back Reaching Forward: Reflections on Truth and Reconciliation Commission of South Africa* eds. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000), 178.

⁵²*Ibid.*, 178.

⁵³Ratner et al, *Accountability for Human Rights Atrocities* (Oxford: Oxford University Press, 2001), 151.

⁵⁴*Ibid.*, 151.

⁵⁵Diane Orentlicher, “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime,” *100 Yale L. J.* 2537. Available at HeinOnline 100 Yale L. J. 2552 (1990-1991).

⁵⁶*Ibid.*, 2552-2555.

execution of or in connection with any crime within the jurisdiction of the tribunal, whether or not in violation of the domestic law of the country where perpetrated.”⁵⁷

The literature on those who argue for trials and not for truth commissions assert that because apartheid was declared a crime against humanity its legal consequences transcended the province of municipal law.⁵⁸ In “Accountability for Past Abuses”⁵⁹ Mendez says a state is obliged to “(1) investigate, prosecute and punish perpetrators; (2) to disclose to the victims, their families, and society all that can be reliably established about those events; (3) to offer the victims adequate reparations; and (4) to separate known perpetrators from law-enforcement bodies and other positions of authority.”⁶⁰ In “Settling Accounts,”⁶¹ Orentlicher says that the state cannot evade its “duty to punish atrocious crimes merely to appease disaffected military forces or to promote national reconciliation.”⁶² She further argues that the fact that a democratically elected government succeeds a repressive regime does not excuse that state from its international obligations because it is a well-established principle of international law that a change in government does not relieve a state of its duties under international law.⁶³

The mere fact that prosecutions will shake a fragile democracy for fear of a military takeover is not a sufficient excuse for government’s failure to discharge its legal obligations.⁶⁴ In the end, Orentlicher says prosecution of former members of a repressive regime is not a matter of choice even in the most extreme cases of military intimidation. If a state failed

⁵⁷Ibid., 2587.

⁵⁸Ibid., 2556.

⁵⁹Juan Mendez, “Accountability for Past Abuses,” Working Paper No. 233. The Helen Institute for International Studies (University of Notre Dame: September 1996), 5.

⁶⁰Ibid., 5.

⁶¹Orentlicher, “Settling Accounts,” 2595.

⁶²Ibid.

⁶³Ibid., 2595.

⁶⁴Ibid., 2595.

because of military intimidation or any other political consideration, it “would be in breach of its international obligations.”⁶⁵ Whatever mitigating factors there could be, transitional governments cannot be excused from their international obligations because “if transitional governments were excused from their international duties when military obstruction accounts for their noncompliance, international law would effectively reward the military’s behavior. Also, a formal recognition that the civilian government is in effect, rendered powerless by the armed forces would undercut the legitimacy of the elected government when its authority is already imperiled.”⁶⁶ In *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States*,⁶⁷ Moghalu says accountability means “legal responsibility and punishment for criminal illegal acts or omissions. It does not mean truth telling.”⁶⁸ From this definition one can deduce that only prosecutions constitute accountability.

Defendants of trials cite many international conventions spelling out a duty to prosecute. For example, *The Convention Against Torture* places chief responsibility for punishing such violations on the state in which the crime occurred.⁶⁹ The Genocide Convention obliges states to prosecute those people involved in acts of genocide. Article IV of the genocide convention says that “persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those contracting

⁶⁵Ibid., 2610.

⁶⁶Ibid., 2611.

⁶⁷Kingsley Moghalu, “Reconciling Fractured Societies: An African Perspective on the Role of Judicial Prosecutions,” in *From Sovereign Impunity to International Accountability* eds. Ramesh Thakur and Peter Malcontent (New York: United Nations University Press, 2004), 198.

⁶⁸Ibid.

⁶⁹Orentlicher, “Settling Accounts,” 2563.

parties which shall have accepted its jurisdiction.”⁷⁰ The emphasis on prosecutions underscores most United Nations Human Rights Conventions. This fact is especially true for laws relating to genocide, extra judicial executions, torture, disappearances, and persecutions. In short, crimes against humanity give rise to an obligation to punish.

Moghalu further enumerates four advantages of trials over any other form of accountability. First, trials have a strong psychological effect on individuals and societies because “when justice is done, and seen to be done, it provides a catharsis for those physically or psychologically scarred by violations of international humanitarian law. Deep seated resentments- key obstacles to reconciliation- are removed and people on different sides of the divide can feel that a clean slate has been provided for coexistence.”⁷¹ Second, criminal scholars believe that prosecution is an effective deterrent to violations of an international order. Orentlicher believes that “a failure to punish any of the past violations would thwart the deterrence objective underlying the general duty to punish. If a government established complete impunity for atrocious crimes committed on a sweeping scale, its action would...have the effect of tolerating or condoning past violations and thereby encouraging similar ones. This result is plainly incompatible with states convention-based duty to undertake affirmative measures to prevent violations of physical integrity.”⁷² Third, trials are important to guard against lawlessness. A common characteristic of all dictatorships the world over is a condition of lawlessness. Trials apportion specific blame to specific individuals and in this way eliminate the notion of collective guilt. Those who have not participated in a criminal activity are spared the

⁷⁰Ibid., 2564.

⁷¹Moghalu, “Reconciling Fractured Societies,” 216.

⁷²Orentlicher, “Settling Accounts,” 2601.

burden of guilt over crimes that they never committed.⁷³ Fourth, criminal trials, just like truth commissions, command an immense potential to establish a truthful record of events with legally and historically binding consequences. The trial of the former prime minister of Rwanda, Jean Kambanda, at the International Criminal Tribunal for Rwanda in May 1998 is a case in point.⁷⁴ In this trial Kambanda signed a plea agreement with the prosecutor in which he acknowledged responsibility for the crimes alleged in the indictment.⁷⁵ Many legal analysts rightly believe that prosecutions strengthen fragile democracies because the rule of law is indispensable to democracy itself and legal safeguards against impunity are essential to the full exercise of political rights.

2.1.1 Summary

Accountability is a concept in ethics with different meanings ranging from public expectations, the morality of government, and answering to a higher authority. Under international law accountability means holding individuals responsible for their transgressions through the criminal justice system. Therefore, under international law, prosecutions constitute accountability. This definition is very different from truth commissions where the proper custody, preservation, and access to TRC records constitute accountability. Accountability in this dissertation will be judged by the way the National Archives of South Africa applied itself to the management of its truth commission records.

⁷³Moghalu, "Reconciling Fractured Societies," 216.

⁷⁴Jean Kambanda was an extreme Hutu who, together with other extremists elements master-minded the murdering of more than 500, 000 Tutsis and moderate Hutus. The International Criminal Tribunal for Rwanda (ICTR) sentenced him to life imprisonment for his participation in the genocide.

⁷⁵Moghalu, *Op Cit.*, 213.

2.2 ACCOUNTABILITY AND TRUTH COMMISSIONS

A counter-argument to prosecutions is a view advanced by political scientists, theologians, historians, and transitional justice scholars. These people recognize the application of international law to transitional democracies but argue that certain constraining circumstances make truth commissions the best possible accountability available. This means that while prosecutions are concerned with the merits of criminal justice, truth commissions concern themselves mostly with the benefits of restorative justice. Truth commission advocates argue that the limits of prosecutions make them a less favored method of accountability.

Orentlicher, a champion of the prosecution of human rights criminals, concedes that while it is agreed that nations should prosecute human rights violators, international law is vague on how precisely to do that.⁷⁶ The many interpretations that accompany international conventions offer little relief. The right to prosecute often runs into conflict with the principle of sovereign autonomy. Under this principle, states are required to fiddle less in the internal affairs of other states. The principle of sovereign immunity has been used successfully by states like China, North Korea, Iraq, Iran, and Zimbabwe to frustrate human rights protocols.

When debating the effectiveness of prosecutions, many human rights scholars cite the Nuremberg trials as a successful example of the effectiveness of prosecution. In “From the Nuremberg Charter to the Rome Statute: A Historical Analysis of the Limits of International Criminal Accountability,”⁷⁷ Biddiss reminds us that, while Nuremberg had some measure of

⁷⁶Orentlicher, “Settling Accounts,” 2551.

⁷⁷Michael Biddiss, “From the Nuremberg Charter to the Rome Statute: A Historical Analysis of the Limits of International Criminal Accountability,” in *From Sovereign Impunity to International Accountability* eds. Ramesh Thakur and Peter Malcontent (New York: United Nations University Press, 2004).

short-term success, the Nuremberg and Tokyo tribunals were also the last international tribunals to adjudicate alleged offenses connected with human rights violations.⁷⁸ It took the international community almost 50 years to institute the International Tribunal on Rwanda and another tribunal on Yugoslavia. One could still argue that if it was not for their shocking gravity, the Rwanda and Yugoslavia tribunals would never have taken place. A general review of the literature on human rights suggests that collective human effort is triggered only when the darkest side of the human character is brought to the fore or when the aggrieved parties have the resources to institute justice. What is often overlooked is that the success of Nuremberg depended to a large extent on the combined material and human capital of the richest nations in the world. Enforcement of international law takes place either only when the most resourced countries are directly affected or, as with Rwanda, when inaction in the face of human tragedy reaches disgusting proportions. Until Rwanda and Yugoslavia, the post-Nuremberg era had been characterized by a reluctance to prosecute due to a fear of exacerbating international tensions.

There is a perception, right or wrong, that international tribunals can also be unfair. Even though Nuremberg was a springboard for individual criminal accountability, Ratner and Abrams question the justice it dispensed.⁷⁹ The duo has stated that the Nuremberg tribunal had four judges, each appointed by the major allied powers.⁸⁰ The rules applied were based on the Anglo-American adversarial system. The tribunal only tried the vanquished. Also, the tribunal charter prohibited the defendants from challenging the tribunal's jurisdiction. Furthermore, the selection of defendants was more determined by political than evidentiary considerations. Therefore, Ratner and Abrams conclude that, "while contributing substantially to the doctrinal and

⁷⁸Ibid., 49.

⁷⁹Ratner et al, *Accountability for Human Rights Atrocities*, 188-190.

⁸⁰Ibid.

procedural development of international criminal law, and subjecting Nazi crimes to some degree of exposure and justice, these trialscould not achieve substantial closure for the societies involved.”⁸¹ The problem of court perception has not ended with Nuremberg. In Rwanda, Moghalu states in *From Sovereign Impunity to International Accountability*⁸² that the international court is already fighting the perception that it is favoring the minority Tutsi ethnic group. The Yugoslav court has also had to fight the perception that its work is biased against the Serbs.⁸³

It is against this background that proponents of truth commissions argue that they provide the best practical means of addressing constraints peculiar to transitional societies.⁸⁴ Minow says that while truth commissions can try thousands of people, trials truncate accountability because they can try only a selected number of people. She says, “selective prosecutions jeopardize the ideals of accountability and the hopes for deterrence.”⁸⁵ Moghalu says that, in any case, the judiciary often breaks down under the weight of cases.⁸⁶ In most of these societies human rights violations take place preciously because of a weak law enforcement system.

In Rwanda, 120, 000 people are awaiting trial for their participation in the genocide and, at the current rate of case disposition, it is estimated that it will take 200 years to complete these trials.⁸⁷ While criminal trials are still going on, the Rwandans have resorted to an alternative system of justice very similar to truth commissions. Starting in 2002, the Rwandis have

⁸¹Ibid., 188-190.

⁸²Moghalu, “Reconciling Fractured Societies,” 218.

⁸³Ibid.

⁸⁴Orentlicher, “Settling Accounts,” 2596.

⁸⁵Martha Minow, “The Hope for Healing: What Can Truth Commissions Do?” In *Truth V. Justice* eds. Robert Rotberg and Dennis Thompson (New Jersey: Princeton University Press, 2000), 238.

⁸⁶Moghalu, “Reconciling Fractured Societies,” 203.

⁸⁷Ibid., 203.

established 11,000 local courts called *gacaca*.⁸⁸ Under this system individuals of high moral standing are publicly elected to judge perpetrators of genocide.⁸⁹ The *gacaca* is a rudimentary system of judicial administration; however, its emphasis on truth telling in exchange for reduced penalties is a testimony to the usefulness of truth commissions as viable forms of accountability. The lack of evidence in criminal trials is another problem. A lawyer famous for defending opponents of apartheid, Dumisa Ntsebeza, writes in *Truth V. Justice*⁹⁰ that, even if offenses have been committed, the lack of evidence undermines their utility. Those who argue for prosecutions assume that “there has always been evidence available for successful prosecution. The reality, of course, is that no such evidence has been available. Nor was there a willingness on the part of the apartheid establishment to do anything with available evidence. Either evidence was destroyed, or the state machinery covered up all the traces.”⁹¹

The issue of the destruction of evidence prior to democratic rule in South Africa has been explored at length by Harris. Harris states in *Archives and the Public Good*⁹² that the “state generated huge information resources, which it secretly guarded from public view. It routinely destroyed public records in order to keep certain processes secret.”⁹³ Harris further says that from 1960-1990 the security establishments, namely, the National Security Management System, the National Intelligence Service, the Security Police, and the South African Defense Force – habitually destroyed records in accordance with their internal retention and disposal

⁸⁸Gacaca are local courts based on the traditional system of justice.

⁸⁹Moghalu, *Op Cit.*, 204.

⁹⁰Dumisa Ntsebeza, “The Uses of Truth Commissions: Lessons for the World,” In *Truth V. Justice* eds. Robert Rotberg and Dennis Thompson (New Jersey: Princeton University Press:, 2000).

⁹¹*Ibid.*, 161.

⁹²Verne Harris, “They Should Have Destroyed More: The Destruction of Public Records by the South African State in the Final Years of Apartheid, 1990-1994,” in *Archives and the Public Good: Accountability and Records in Modern Society* eds. Richard Cox and David Wallace (Westport: Quorum Books, 2002), 205.

⁹³*Ibid.*, 205.

arrangements.⁹⁴ Harris goes on to say that, from 1990 onwards, apprehension about certain public records being used against the government and its operatives by a future democratic dispensation mutated into “a pre-election purge”⁹⁵ of records. Once again, the National Intelligence Service was the first state agency to act in that direction. New guidelines regarding both paper and electronic records were issued in October 1991 and revisited in February 1992.⁹⁶ From 1993-1994, the National Intelligence Service alone destroyed approximately forty-four tons of paper and microfilm records, utilizing the Pretoria Iscor furnace and another facility outside Johannesburg, leaving behind very little paper, microfilm or electronic systems.⁹⁷ This state of affairs forced Mandela to admit that criminal prosecutions would have achieved little effect because “you can’t act against someone unless there is clear evidence.... There is very little evidence to convict the [top leaders] who actually authorized actions.”⁹⁸ In “Combating Myth and Building Reality”⁹⁹ Scott has stated that the prosecution of offenders would not have worked in South Africa; out of every hundred cases, ninety-eight of them would have been impossible to prove in an adversarial system because the necessary evidence to convict or win simply does not exist.¹⁰⁰

⁹⁴Ibid., 211.

⁹⁵A pre-election purge was how Verne Harris described the wholesale destruction of records in South Africa prior to the 1994 election. A civil service loyal to the apartheid government ensured that this purge continued well after the elections.

⁹⁶Harris, “They Should Have Destroyed More,” 213.

⁹⁷Ibid., 213.

⁹⁸Collen Scott, “Combating Myth and Building Reality,” in *Looking Back Reaching Forward: Reflections on Truth and Reconciliation Commission of South Africa* eds. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000), 111. See also “Mandela Acknowledges Apartheid Criminals May go Unpunished.” *South African Press Association and Associated Press* (South Africa), June 17, 1998.

⁹⁹Ibid.

¹⁰⁰Ibid., 110.

In the “The Uses of Truth Commissions,”¹⁰¹ Ntsebeza states that even the availability of evidence does not necessarily lead to conviction or to truth.¹⁰² The trial of General Magnus Malan is a good example. In this trial, former defense minister Magnus Malan, two other Generals in the South African Defense Force, Jan Geldenhuys and Kat Liebenberg, nine military Intelligence Officers, and six SADF trained Inkatha Freedom Party supporters faced charges of murder, attempted murder, and conspiracy to commit murder, all arising out of a night attack on the home of a United Democratic Front activist, Victor Ntuli.¹⁰³ Ntsebeza is of the view that the fact that all the accused were acquitted at various stages of the trial is a clear demonstration:

of the failure of the criminal justice either to expose the truth or to achieve its stated objective, namely retributive justice. Even though the court found that the massacre was carried out by Inkatha Freedom Party supporters paid by the South African Defense Force, (a) it could not be proved that the six Inkatha supporters before the court were in fact the perpetrators; (b) state witnesses were unreliable; (c) many of the statements had been tampered with; and (d) “Project Marion” documents could not be given innocent interpretation. The case fell on its face because it depended on a causal link being established between the training of Inkatha supporters in Namibia’s Caprivi Strip and the killing of UDF supporters in KwaMakhutha. That causal link could have been established only if the trainees had been called but the state prosecution did not call this evidence.¹⁰⁴

Upon their acquittal, the SA TRC held a special hearing of the trainees in which they told commissioners that they had been recruited by the army to kill opponents of apartheid.¹⁰⁵ Ntsebeza states that the trial’s outcome demonstrated that “the TRC offered a better prospect of establishing truth about the past than a criminal trial.”¹⁰⁶ Steiner, Professor of Law at Harvard Law School, concludes by saying that truth commissions offer “reconciliation among different groups as the polity seeks partial closure of its past in order to move beyond it, vindication of

¹⁰¹Ntsebeza, “The Uses of Truth Commissions,” 162.

¹⁰²Ibid., 162.

¹⁰³Ibid., 168.

¹⁰⁴Ibid., 162-163.

¹⁰⁵Ibid., 162-163.

¹⁰⁶Ibid., 163.

victims as their stories are officially and publicly heard and recorded, the satisfaction of a larger sense of justice through official acknowledgement and condemnation of what occurred, forgiveness by victims of the perpetrators of crimes who have confessed to their actions, creation of a moral framework for a different kind of society.”¹⁰⁷ Taken together these aspirations offer far more superior results than what criminal trials can ever hope to achieve, especially in societies which cannot gamble with the risk of another cycle of violence.

2.2.1 Summary

The weakness of the judiciary in states emerging from conflict and the high scale of evidence needed for conviction make truth commissions a more practical form of accountability for past transgressions. The SA TRC was adamant that the record of its proceedings should be stored at the National Archives in order to hold perpetrators accountable.

2.3 POLITICAL ACCOUNTABILITY

Kpunder, of the World Bank group, has defined accountability as the obligation of anyone handling resources, public office, power of decision, or who is in any position of trust, to report on the way their obligation has been exercised.¹⁰⁸ Kpunder says accountability can be looked at

¹⁰⁷Henry Steiner, in *Truth Commissions: A Comparative Assessment* (Cambridge: Harvard Law School Human Rights Program, 1997), 11.

¹⁰⁸Sahr Kpunder, “Records and Accountability,” Proceedings of the June 6 Workshop on Current Records Management, Poverty Reduction, and Corruption Control. (Washington: The World Bank, 2000) Also, at

from political, financial, and administrative points of view.¹⁰⁹ In representative democracies, accountability is an important factor in securing good governance.

Political accountability is described as the obligation of elected public officials to show accountability to the electorate, to the constitution, to the electoral commission, and to the political organization which the organization represents.¹¹⁰ Kpunder's definition is partially helpful because he uses the word accountability to define itself. He is rescued by Slye who remarks that "the theory of democratic accountability is based on the belief that subjecting elected officials to periodic elections hold them accountable for their policies and official acts."¹¹¹ Accountability constrains the extent to which elected representatives and other office-holders can willfully deviate from their responsibilities, thus reducing corruption. The goal of accountability is often in tension with the goal of leadership. Political accountability is meant to curb corruption and the abuse of power through tightly controlled rules and regulations. This is because, left to their own devices, top executives, top civil servants, and elected officials can use their power to reward themselves and their families. Therefore, the definition of accountability in government has remained relatively constant over time and limits bureaucratic indiscretion through strictly drawn rules and regulations.

A major global player in the definition of political, fiscal, legal, and corporate accountability has been Transparency International (TI). Created by a group of 10 people drawn

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/30/2007.

¹⁰⁹Ibid.

¹¹⁰Ibid.

¹¹¹Slye, "Justice and Amnesty," 178.

from 5 countries in May 1993¹¹², TI has a world vision in which government, politics, business, civil society, and the daily lives of people are free of corruption.¹¹³

From its first day of operation TI's definition of accountability has been guided by its core values of transparency, integrity, solidarity, courage, and justice¹¹⁴ It is not surprising, therefore, to notice that the definition of accountability as offered by TI is closely associated with the need for transparency, institutional, and personal integrity, resolve, and equity. Transparency International says that its notion of accountability is a strategy that emphasizes the national mechanism rather than sporadic and isolated individual responses. A national systematic response to corruption, rather than individual responses, is the most effective solution to the problem of abuse of office. Transparency International believes that government should create structures of accountability which should prevent corruption and, if they fail to do so, should at least be in a position to react punitively against allegations of corruption.¹¹⁵ In its submission entitled "Government Anti-corruption Strategies" TI states "where corruption is widespread, tackling it in isolation is likely to be ineffective. Sustainable anti-corruption efforts depend on a variety of institutions performing their part and on appropriate degrees of horizontal accountability and independence. Successful anti-corruption strategies must therefore be holistic, including as many institutions and levels concerned as possible and practically feasible."¹¹⁶ Overall, TI's strategy of accountability is an approach called the National Integrity System.¹¹⁷ This system represents the sum total of the institutions and practices within a given country that addresses aspects of maintaining the honesty and integrity of public and private institutions.

¹¹²Transparency International @ <http://www.transparency.org> 09/30/2008.

¹¹³Ibid.

¹¹⁴Op Cit.

¹¹⁵Transparency International's "National Integrity System," at <http://www.transparency.org> 10/19/2008.

¹¹⁶Ibid.

¹¹⁷Ibid.

From the executive, legislature, and judiciary to the private sector, the media, and civil society organizations, each pillar of the national integrity system and its relationship to other pillars is crucial to the equilibrium of the whole system. Though not a strategy in itself the national integrity system is a good example of a holistic approach to anti-corruption that can be used as a template when designing and implementing an anti-corruption strategy.¹¹⁸ According to TI, certain institutions are core to the functioning of an accountable nation.¹¹⁹ In order to minimize corruption these institutions should be targeted as they run across the political, administrative, judicial, and financial infrastructures of any country. In *Archives and the Public Good: Accountability and Records in Modern Society*¹²⁰ Cox and his co-editor, Wallace, are quick to caution that seeing accountability only through the political, legal, organizational or historical sense can be restricting because as a “family member explores the records of his ancestors, there is the sense that one generation holds another accountable to its legacy.”¹²¹

A political environment that promotes free and fair elections is crucial to accountability. A government’s legitimacy is based on the right of the governed to determine the governors. Lack of legitimacy on the part of the government provides a climate conducive to corruption and lack of accountability. Transparency International says that the electoral process should be seen to be fair and transparent enough to instill faith in the mechanisms used to legitimize the power of the rulers.¹²² An elected parliament can be a weapon against corruption as it has the legitimacy to hold the executive accountable. On the contrary, a corrupt political elite, often sustained by political financing and obscure practices in both public appointments and decision

¹¹⁸Ibid.

¹¹⁹Ibid.

¹²⁰Richard Cox and David Wallace, *Archives and the Public Good: Accountability and Records in Modern Society* (Westport: Quorum Books, 2002), 3.

¹²¹Ibid., 3.

¹²²“National Integrity System,” at <http://www.transparency.org> 10/19/2008.

making processes, can be a major hindrance to corruption campaigns.¹²³ TI believes, that as the head of the government, the executive branch has a central role in building a country's accountability systems.¹²⁴ The executive can provide a corrupt-free model of leadership that can inspire whole generations. On the other hand, an unchecked executive whose relationships with the public and private bodies is suspect, can be a recipe for corruption.

Transparency International underscores the fact that the principle of the separation of powers is a critical antidote against corruption.¹²⁵ An independent, impartial, and informed judiciary commands a central place in the realization of a just, honest, open, and accountable government. However, judicial power and indirect control should be protected from those who would want to abuse the system for personal ends. Individual members of the judiciary must be held accountable in ways that do not compromise the institution's independent decision making processes. TI says that judicial power is never an absolute right and should be placed under the checks and balances of other accountability instruments in order to ensure that it is not manipulated by rulers to serve their own selfish interests.¹²⁶ This means that vigilance should always be exercised to ensure that judicial autonomy does not develop into a potent tool of corruption by the powerful members of society.

In many countries, an ombudsman complements the judiciary and is an integral part of accountability. Independent of the executive offices, the ombudsman investigates misadministration without the expenses and delays of court proceedings. In Botswana, for instance, the Ombudsman has even taken the Vice-President to task for using military aircraft for

¹²³Ibid.

¹²⁴Ibid.

¹²⁵Ibid.

¹²⁶Ibid.

party and personal purposes. In this way, the ombudsman helps fight corruption,¹²⁷ minimizes executive excess, and holds the executive accountable. In Africa, corruption happens more at the local government level than at the central government level, a condition which calls for a two pronged, top-down approach focusing on top politicians and a bottom-up approach focusing on local governments.

2.3.1 Summary

Political accountability attempts to limit elected officials propensity to the abuse of power by advancing national mechanisms that curb corruption. These mechanisms try to instill ethical conduct in private and public institutions. Ethics or codes of conduct for members of any organization are also one of the great pillars of accountability. A breach of ethics amounts to a breach of accountability and to an erosion of the public trust.

2.4 FINANCIAL ACCOUNTABILITY

According to the World Bank, financial accountability is described as “the obligation and /or responsibility of anyone handling resources to report honestly and comprehensively on the intended and actual use of the resources.”¹²⁸ Financial accountability is manifested through

¹²⁷Ibid.

¹²⁸Proceedings of the World Bank Video Conference Workshop on Current Records Management, Poverty Reduction and Corruption Control, June 6, 2000. The video conference was developed and presented in partnership with the World Bank Information Solutions Group, Information Management

accounting, external auditing for the expenditure of public funds, and through records management.¹²⁹

In *Achieving Accountability in Business and Government*,¹³⁰ Sheldon says that accountability is related to the provision of timely and accurate information from which the public is able to discern management effectiveness.¹³¹ Behn agrees that financial accounting focuses on recordkeeping and how money is spent.¹³² Sheldon goes on to inform us that, in financial accounting, individuals or departments are given responsibilities to perform certain functions and then are judged against their performances.¹³³ How do they do this? They do this through the provision of mechanisms to account for the money.¹³⁴ What are these mechanisms? These mechanisms are codified through rules, procedures, and standards.¹³⁵ What exactly do all these rules, procedures, and standards accomplish? They specify expectations of how public officials will handle money, for accountability cannot exist without expectations.¹³⁶ Anybody going to hold institutions or individuals accountable has to specify what those institutions or individuals need to do which they might not be doing. In the case of SA TRC records, the commissioners and the constitution of South Africa obliged the National Archives to manage the SA TRC records.

Unit; the World Bank Group Archives Partnership Program; The World Bank Institute Distance Learning Unit; and the International Records Management Trust. The conference formed part of the Information Solutions Group's Learning Program on Records and Archives. Also at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/30/2008.

¹²⁹Ibid.

¹³⁰Sheldon, *Achieving Accountability in Business and Government*, 5.

¹³¹Ibid., 5.

¹³²Behn, *Rethinking Democratic Accountability*, 7.

¹³³Ibid., 7.

¹³⁴Ibid..

¹³⁵Ibid.

¹³⁶Ibid.

Sheldon states that performance audits make businesses and the public accountable by ensuring that goods and services are obtained at the least cost (economy), using the most appropriate mix of scarce resources (efficiency), thereby fulfilling the objectives set by elected officials.¹³⁷ Efficiency, effectiveness, and economy are solutions to ethical lapses, intentional fraud, and greed that seem to consume corporate organizations like Enron.¹³⁸

In every country the Auditor-General is the most powerful financial watchdog of the state. As the tax payers' trustee, whose interests are always in conflict with those of the executive, it is essential that the Auditor-General is not appointed by the ruling party but directly by the legislature. Transparency International says that the key objective of the Auditor-General, or Supreme Audit Institutions (SAIs)¹³⁹, as is sometimes referred to in other countries, "is the provision of effective oversight of government spending and public finance management. Audits are thus a central feature of SAIs' work. Audits can contribute to improving government's performance not only by identifying faults but also by acting as a deterrent to the abuse of power through the provision of valuable information about government actions to the legislature."¹⁴⁰ The literature underlines three basic audits necessary for accountability. According to TI, financial audits are done to assess the accuracy and fairness of accounting procedures and statement.¹⁴¹ Compliance audits are targeted to minimize misuse of funds in order to ensure that once released government funds comply with federal accounting laws and regulations.

¹³⁷Ibid., 9.

¹³⁸Ibid., 1-5.

¹³⁹SAI stands for Supreme Audit Institutions.

¹⁴⁰"Supreme Audit Institutions," at <http://www.transparencyinternational.org> 10/20/2008.

¹⁴¹Ibid.

Performance audits, sometimes referred to as value-for money audits, focus on analyzing cost-effectiveness and operational efficiency in the use of government funds.¹⁴²

A standard procedure under the Westminster democracy is to refer the annual reports of the Auditor-General to other related oversight bodies, like the parliamentary Public Accounts Committees (PACs).¹⁴³ The parliamentary Public Accounts Committee, in turn, performs functions relevant to the fight against corruption by following the misuse of public finances and making recommendations for action to parliament. In this way, the PAC provides control and scrutiny of the actions of the Auditor-General. By conducting public hearings to verify the Auditor-General's reports and making the Auditor-General accountable for its content, the audit system itself becomes more transparent and the credibility of its findings improved. The PAC also plays a critical role in publicizing the results of the audits. By so doing, the PAC pushes the Auditor-General's report into the public domain. Once this happens, pressure is then exerted on the Auditor-General to follow up on any financial irregularities.

According to the World Bank, the private sector has an important role to play in the country's accountability infrastructure.¹⁴⁴ However, the need to out-compete other stakeholders often leads to corruption. Good corporate ethics dictates the exercise of integrity, both within the organization and to the societies that they operate in. Such ethics serve as a powerful anti-corruption mechanism. Corporate ethics can inhibit, disclose, and help to identify corrupt

¹⁴²Ibid.

¹⁴³ The Public Accounts Committee is usually non-partisan and made up of elected members of parliament. In Botswana the Public Accounts Committee is very powerful due to its non-partisan composition.

¹⁴⁴

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/20/2008.

practices and their perpetrators.¹⁴⁵ Poor, disconnected, and untimely accounting systems and disintegrated approaches to financial management virtually incite fraud, just as good financial management provides protection against corruption.¹⁴⁶

No department in any country is as prone to corruption as the public procurement branch. This is due to the simple reason that procurement handles large sums of money that lures the private sector into offering bribes in order to win lucrative tenders. It is important to promote an atmosphere where procurement is done in a transparent manner. Nepotism and conflict of interest can stand on the way of transparency and fairness in the award of tenders. Nepotism happens when merit is sacrificed in favor of blood relations or tribal affiliation. Conflict of interest arises when a person in a decision-making position is influenced by personal considerations in the execution of his or her job. An environment that promotes these qualities is counterproductive and can adversely undermine the functioning of a country. Legal and ethical codes of conduct, applicable to both the public and private sectors, can mitigate corruption and should be enforced aggressively to restrain such tendencies.

2.4.1 Summary

Financial accountability focuses on the proper use of public and private funds, or on what is sometimes referred to as fiscal discipline. It does this through codified rules, procedures, and standards. The proper keeping of records is critical to financial accountability. In the public sector, the Auditor-General holds all public institutions accountable for their use of public funds. An examination of how the National Archives managed SA TRC records is a form of audit.

¹⁴⁵“Supreme Audit Institutions, Op Cit.

¹⁴⁶Ibid.

2.5 ADMINISTRATIVE ACCOUNTABILITY

Administrative accountability is described as the obligation of persons holding positions of power to explain to those with particular interest why a particular decision has been made.¹⁴⁷

Administrative accountability is manifested by creating an enabling environment for the management and administration of public programs through the development of codes of conduct, complaints procedures, and performance indicators. Most governments have well laid-out rules meant to monitor the conduct of its civil service. The need by governments to sanction the conduct of its civil service through established public ethics is necessary for the well-being of the civil service. Public officers who demonstrate vulnerability to corruption through acts of personal mismanagement are prone to corruption and deserve special monitoring. The typical public servant is a bureaucrat who serves any government, be it Republicans or Democrats, with impartiality. However, this picture is not realistic. In the real world, civil servants are the link between the uneasy interest of the governed and the governors. Being at the center exposes civil servants to threats of politicization from the top and to unsolicited bribes from the bottom. A detached civil service that executes its functions in an unbiased manner can act as a strong wall against corruption.

Even though in recent times, NGOs have been placed under the radar screens due to their lack of financial accountability, on the whole civil society has been at the forefront of promoting public interest and the anti-corruption crusade. All efforts should be made to ensure that

¹⁴⁷Kpunder, "Records, Accountability and Anti-Corruption," at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/20/2008.

NGOs¹⁴⁸ operate in an environment free from government intimidation. Many countries now have independent anti-corruption agencies as conventional law enforcement agencies are either too widespread or are not well placed to detect and prosecute corruption. For example, Botswana has the Directorate of Crime and Economic Corruption (DCEC)¹⁴⁹ and many African countries have similar directorates. However, even though these ideas look good on paper, these directorates are often not as effective as they should be due to a lack of political will on the part of the African governments to stamp out corruption. Nation states are encouraged to forge links with international bodies devoted to corruption prevention and prosecution.

In “Records, Accountability and Anti-Corruption,”¹⁵⁰ Kpunder says that the Inter-American Convention against Corruption and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions are just a few of such organizations.¹⁵¹ Transparency International asserts that both local and international mechanisms should be exploited to the fullest to minimize the effects of corruption and derive maximum accountability benefits from such mechanisms.¹⁵² A free and independent media that empowers citizens with meaningful information to provoke public debate is necessary to hold leaders accountable. Transparency International believes that a free, independent, accountable, and ethical media

¹⁴⁸NGOs stands for Non Governmental Organizations. This abbreviation will be used throughout this dissertation.

¹⁴⁹The Directorate of Crime and Economic Corruption was started by the premier British crack squad, Scotland Yard to investigate cases of corruption in Botswana.

¹⁵⁰Kpunder, “Records and Accountability,” Proceedings of the June 6 Workshop on Current Records Management, Poverty Reduction, and Corruption Control. (Washington: The World Bank, 2000) Also, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/20/2008.

¹⁵¹Kpunder, Op Cit.

¹⁵²Transparency International’s National Integrity System at <http://www.transparencyinternational.org> 10/20/2008.

whose status is protected by law and that is not subject to political or opportunistic leadership can assume an important watchdog function¹⁵³ in the fight against corruption.

2.5.1 Summary

Administrative accountability recognizes that all members of public and private bodies need strong and explicit ethics to prevent bribery, conflict of interest, and other associated evils. The carrying out of one's task can only happen in a regulatory environment that is characterized by adherence to the highest level of personal and professional conduct. This is necessary if the integrity of the administrative body to its constituents is to be sustained.

2.6 RECORDS AND ACCOUNTABILITY

Even though archivists traditionally do not think this way, the relationship between records and accountability is an old one. In the first issue of the journal, *Archival Science*,¹⁵⁴ Thomassen reminds us that records serve as agents of accountability and evidence.¹⁵⁵ Thomassen further says,

trustworthy records contain reliable evidence of decisions taken, rights acquired and commitments made. Without records, no assessment can be made of whether individuals, private organizations and public organizations have actually carried out the actions and transactions that they had to execute, or whether they made these actions and transactions meet the criteria of efficiency, legitimacy or the

¹⁵³Ibid.

¹⁵⁴*Archival Science* 1, no 4 (2001).

¹⁵⁵Theo Thomassen, "A First Introduction to Archival Science," *Archival Science* 1, no 4 (2001): 375.

principles of good governance, and whether they have done things which they were supposed to do. Reliable records make people and organizations accountable, within their own organizations, to each other, to suppliers and customers and to society.¹⁵⁶

The importance of using records to hold rogue leaders to account is now gaining significant attention in archival discourse. Previously, archivists had preoccupied themselves with perfecting mechanisms of reliable and authentic records rather than directly addressing issues of human rights. However, the theory of archives reflects a deep awareness of human rights. The French Revolution is perhaps the earliest example of this awareness. On that historic occasion, the records of the states were declared national assets produced to protect the interest of the whole nation.

In “Should Creating Agencies Keep Records Indefinitely,”¹⁵⁷ Eastwood has remarked that the first “reason for establishing the first modern National Archives, the Archives de France, and the reason for thereafter establishing all the agencies given responsibility for the preservation of public records, at least in democratic states, has been to ensure citizens would have access to records of their rights. In time preservation of records in archival repositories has become one of the chief means by which citizens can learn how they are governed.”¹⁵⁸ In “An Accountability Framework for Archival Appraisal,”¹⁵⁹ Sunderman states that “central to any concept of archival accountability is our understanding of the records we seek to preserve”¹⁶⁰ In recent times archivists have spend more time writing on the role of records in supporting accountability than

¹⁵⁶Ibid., 376.

¹⁵⁷Terry Eastwood, “Should Creating Agencies Keep Records Indefinitely,” *Archives and Manuscripts* 24, no 2 (1996): 259-260.

¹⁵⁸Ibid., 259-260.

¹⁵⁹Jim Sunderman, “An Accountability Framework for Archival Appraisal,” *Esarbica Journal* 23 (2004): 68.

¹⁶⁰Ibid.

in trying to define the word itself. In “Records and Information: The Neglected Resource,”¹⁶¹ Mnjama says that records are a critical means by which organizations maintain accountability to the public.¹⁶² In “Record Keeping for Accountability,”¹⁶³ Wallace states that the notion of records and archives as a form of social glue can be viewed from many perspectives as cultural memory, evidence of a decision trail, trigger for deliberative action, and as a requirement to meet regulatory obligations.¹⁶⁴ He further states that even though what comes out of this understanding is the role of records and archives as vehicles of accountability, very rarely are archives treated as accountability objects necessitating concentrated attention.¹⁶⁵ This is because “the often determinative role that records and archives frequently play in the social construction of accountability are mostly muted within the larger narrative they participate in.... However, when explicitly surfaced, cornerstone dimensions of recordkeeping such as control, access, preservation, destruction, authenticity, and others demonstrate time and again that records and archives are not passive observers and recordings of human activity. Rather, they often constitute that activity and are frequently struggled over as objects of accountability and memory formation.”¹⁶⁶ From this perspective it would seem that records are an important cornerstone of accountability in relation to how they enable, enforce, limit, ignore, and deny accountability.¹⁶⁷ What is clear in Wallace’s observation is that accountability can be effectively served or deeply

¹⁶¹ Nathan Mnjama, “Record Keeping for Accountability,” *Esarbica Journal* 23 (2004): 44-59.

¹⁶² *Ibid.*

¹⁶³ David Wallace, “Record Keeping for Accountability,” *Esarbica Journal* 23 (2004): 23-30.

¹⁶⁴ *Ibid.*, 24.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

undermined by recordkeeping practices because the management of records and archives can compel, shape, distort, and recover social interactions and memory.¹⁶⁸

Over the past decade records have become critical sources of accountability in both small-scale and large-scale events and, in the process, have reshaped the world. On a smaller scale, records appear daily in the global press supporting lawsuits and investigations into fraud, theft, and corruption. The anti-corruption campaign, championed especially by the World Bank, International Monetary Fund, and Transparency International, all concur that proper management of records is key to accountability. Mnjama again says the “lack of records management is directly linked to the persistence of corruption and fraud. Experts in financial management control recognize and acknowledge the fact that well managed records systems are vital to the success of most anti-corruption strategies.

Records provide verifiable evidence to fraud that can lead investigators to the root of corruption.”¹⁶⁹ On a large scale, especially in Eastern Europe, records have been central to the understanding of repression and human rights violations in the former satellite states of Soviet Union.¹⁷⁰ On the contrary, in most countries that have held truth commissions, notably South Africa, Argentina, Chile, Brazil, El Salvador, and Guatemala, the absence of records needed by the commissioners have undermined efforts towards full accountability and conviction of former regime office holders. However, on the whole, TRC records are being used even today to hold rogue leaders accountable. Hayner has stated that a Spanish judge used archives from the Chilean truth commission to build a case against Pinochet.¹⁷¹ In Peru, truth commission records

¹⁶⁸Ibid., 25.

¹⁶⁹Mnjama, “Record Keeping for Accountability,” 46.

¹⁷⁰Ibid., 27.

¹⁷¹Priscilla Hayner. In *Transcript of the Yale/Artemis Project: Managers of Truth Commissioners Conference*, Yale University, February 22-24, 2006.

are now used for criminal prosecution by judicial authorities and also by lawyers representing both victims and perpetrators.¹⁷² In cases of displaced and disappeared persons, the International Red Cross has successfully used truth commission records to reunite families. Reporting on the El Salvadorian experience, Cassel has stated that in the case of political asylum seekers commission reports has helped officers determine the true status of the asylum seeker.¹⁷³ This is especially true in instances where many people migrate to Europe and the USA under the pretext of state persecution. Cassel has further stated that proper custody, preservation, and good retrieval tools can help follow up investigations not explored in the original SA TRC reports.¹⁷⁴

Currently, the SA TRC database is being used to compensate victims of apartheid and, without it, many people who were never abused by the system will claim compensation. Besides being used for present purposes truth commission records will help resolve human rights and accountability questions not anticipated by this generation. Of special importance is the role of state archives in helping to achieve these aims.

Mnjama has opined that “government records have a unique character that imposes special responsibilities on the agencies that preserve and manage them.”¹⁷⁵ This would mean that the National Archives’ responsibility regarding the management of truth commission records is a serious one. The value of state records is derived from the information they contain and the evidence they provide about the rights and the responsibilities of the government and the governed. It would seem from this observation that, in the case of SA TRC records, the government has a duty to ensure that the rights of victims of human injustice, as contained in the

¹⁷² Ibid.

¹⁷³ Douglass Cassel. In Transcript of the *Yale/Artemis Project: Managers of Truth Commissioners Conference*, Yale University, February 22-24, 2006.

¹⁷⁴ Ibid.

¹⁷⁵ Mnjama, “Record Keeping for Accountability,” 45.

records, are protected and preserved for present and future accountability needs. The literature on records and human rights in almost all countries that have had truth commissions basically indicts their state archives for complicity in failing to preserve records of human injustice for accountability.

A good example of this indictment is detailed in a “Monumental Blunder: The Destruction of Records on Nazi War Criminals in Canada.”¹⁷⁶ In this essay, Cook recounts how the National Archives of Canada got involved in the improper destruction of immigration records relating to Nazi war criminals.¹⁷⁷ The post-Cold War era once again re-ignited the hunt for former Nazis and their non-German collaborators who adopted pseudonyms to settle in neutral countries like Canada. The key to prosecuting these war criminals rested, among other things, in the use of immigration files of suspected Nazis. However, it was discovered that the efforts of the Royal Canadian Mounted Police¹⁷⁸ in the investigation were inadvertently hampered by the capricious destruction of immigration records by the National Archives through careless appraisal practices.¹⁷⁹ Such actions demonstrate the need to constantly re-evaluate internal mechanisms of accountability adopted by archival institutions to ensure that the archives gives a full account of its actions when called to the witness box. Cook remarks that “critical to accountability in any sphere of human activity is the existence of reliable records as evidence of human and organizational activity. And for the records to be credible, the records management and archival process themselves must be based on sound theoretical concepts of value, on logical strategies and methodologies to locate such values, and on consistent practice, verifiable

¹⁷⁶Terry Cook, “A Monumental Blunder: The Destruction of Records on Nazi War Criminals in Canada,” In *Archives and the Public Good: Accountability and Records in Modern Society* eds. Richard Cox and David Wallace (Westport: Quorum Books, 2002), 37-65.

¹⁷⁷Ibid.

¹⁷⁸Royal Canadian Mounted Police goes by the RCMP abbreviation.

¹⁷⁹Cook, Op Cit, 63-64.

implementation, and transparent documentation. Archivists and records managers must likewise be accountable for their actions.”¹⁸⁰

Notwithstanding, the literature has also recorded some good examples of best practice and good judgment on the part of state archival services. The Bundesarchiv or the Federal Archives of Germany and the National Archives and Records Administration (NARA) of the United States offer useful instructions. Both the Bundesarchiv and NARA have played critical roles in exposing former Nazi operations and members in the reparation of victims of Nazi Germany, and in national reconstruction and reconciliation. In “Prosecution Resistance and Compensation: The Case of German Archives,”¹⁸¹ Oldenhage explains that the daily work of the German archives has been influenced heavily by the urgent need to make the criminal heritage of the Nazi regime known, as well as Communist East Germany’s own share of human rights atrocities.¹⁸²

Up until 1990, a significant part of the Bundesarchiv work was documenting the relationship between the Nazi party and members of the civil and the military institutions.¹⁸³ The second responsibility of the Federal Archives was assisting the restitution and compensation of Jews whose money, gold, and property were looted during the war. The hunt to recover Nazi assets became an international search as several countries took part, either to atone for their complicity in the Holocaust or merely to be part of a global search for justice.

¹⁸⁰Ibid., 64.

¹⁸¹Klaus Oldenhage, “Prosecution and Resistance, Compensation and Reconciliation, Two Repressive Systems in one Country: The Case of German Archives,” Available at <http://www.ica.org/new/citra.php?pcitraprogramid=54&plangue=eng> 09/30/2008.

¹⁸²Ibid.

¹⁸³Ibid.

In 2001, the Bundesarchiv and the International Tracing Service set up a joint internet service in order to speed up the search for victims of Nazi forced labor.¹⁸⁴ About 20,000 workers have been documented through this process. Another project established by the Bundesarchiv in 2003 set up an electronic list of Jewish residents in Germany to be matched against a list of policy holders who up to now could not prove their claims.

The problems created by the Third Reich for Germany was exacerbated by a new wave of human right violations that besieged the German people under the United Socialist Party of Germany (SED). The Bundesarchiv once again found itself placed in a situation of having to process and make this material available to the public. Oldenhege states that

the investigations against Nazi criminals, the documentation of services rendered by public officers before 1945, the restitution of property and the recompense for victims prosecuted by the Nazis had to be taken up again after reunification for the population of the GDR, as well as for old cases which could now be documented by archives kept in the GDR. The problems for the second repressive system were similar...The archives of the parties and mass organizations, in particular of the so-called leading Communist party of the working class, the United Socialist Party of Germany (SED) are of the highest importance to document violations of human rights committed by government authorities instructed by the communist party.¹⁸⁵

The work of the German Federal Archives is especially instructive for it demonstrates how effective archives can be in making accessible knowledge about past abuses. Notwithstanding its many critics, the National Archives and Records Administration (NARA) of the United States should be commended for preserving essential evidence needed to recover Jewish assets. In “Turning History into Justice: The National Archives and Records Administration and

¹⁸⁴ For a comprehensive list visit the German archives at <http://www.icheic.org> for a comprehensive list 09/029/08.

¹⁸⁵ Oldenhege, “Prosecution and Resistance,” Available at <http://www.ica.org/new/citra.php?pcitraprogramid=54&plangue=eng> page 2 of 4. 09/29/08.

Holocaust-Era Assets, 1996-2001”¹⁸⁶ Bradsher recounts how NARA has been instrumental in the search for a full accounting of the role played during and after the war by the United States government as well as neutral countries in their dealing with Nazi looted assets.¹⁸⁷ Using very elaborate indexing and finding aids, NARA records embarrassed many nations, especially those that claimed innocence in the Holocaust, including the United States itself, by proving that even though Nazi Germany carried the principal responsibility for the genocide, other nations that publicly condemned it were accomplices too.¹⁸⁸ For example, Bradsher tells us that NARA records reveal that the United States was aware that the Holocaust was taking place in Europe and could have done more to minimize the death of Jews, that the allies powerlessly attempted to prevent the theft, that the Vatican was involved in the Holocaust era assets as well and, finally, that Swiss banks profited unfairly from many dormant accounts of Jews, and only under international pressure did they concede to compensation.¹⁸⁹

Bradsher says that the involvement of NARA in Holocaust era assets “has demonstrated the importance of NARA and archives not only to this country but to peoples, governments, and organizations in other countries.”¹⁹⁰ The work of NARA in this specific instance demonstrates one of the chief missions of state archives, to assist and be part of accountability efforts. NARA has been able to bring forth information which immensely contributed to the pursuit of truth and justice for many Jewish families through detailed indexes and finding aids which facilitated access to Holocaust information.

¹⁸⁶Greg Bradsher, “Turning History Into Justice: The National Archives and Records Administration and Holocaust-Era Assets, 1996-2001,” in *Archives and the Public Good: Accountability and Records in Modern Society* eds. Richard Cox and David Wallace (Westport: Quorum Books, 2002), 177-203.

¹⁸⁷Ibid., 178.

¹⁸⁸Ibid., 177-179.

¹⁸⁹Ibid., 179-200.

¹⁹⁰Ibid., 177.

The literature on records and accountability in Africa is still developing due to several factors. In “The Nature of Documentary Materials in Africa and the Challenges to Preserving Them,”¹⁹¹ Motsi says that Africa has some of the most extreme climatic conditions very destructive to organic matter.¹⁹² Extreme heat, dry hot winds, high humidity, pests, and mould test the resolution of African archival institutions and governments in relation to their core business of preserving and making records accessible. How well or how poorly the National Archives of South Africa performs these tasks with the SA TRC records remains the main occupation of this dissertation.

The challenges regarding the management of audio-visual and electronic records have not been any different from those experienced anywhere in the world. However, in Africa such challenges are exacerbated by poor economies. In situations where governments have to make hard choices between buying food and preserving records, they would choose the former. The political situation of Africa is another big impediment. Common sense dictates that preservation and access are not compatible with political chaos and instability.

2.6.1 Summary

Even though records have always played an important part in holding people accountable, only recently are they beginning to be seen within the archival profession as artifacts of accountability. This is ironic given the fact that serious corruption and murder cases have been

¹⁹¹Alexio Motsi, “The Nature of Documentary Materials in Africa and the Challenges to Preserving Them,” *Esarbica Journal* 23 (2004): 82-89.

¹⁹²*Ibid.*, 82.

dropped due to missing docket. However, regardless of how one decides to look at it, accountability simply cannot take place without records. Good record-keeping habits support accountability while poor record-keeping habits undermine accountability. A study of the management of SA TRC records by the National Archives of South Africa is important because the findings of this study will determine whether the National Archives is maintaining SA TRC records in a manner which will aid the accountability of apartheid human rights excesses.

2.7 ARCHIVING TRUTH COMMISSION RECORDS IN GENERAL

Despite more than twenty-three truth commissions held so far world wide, very little is known about the management of truth commission records by either state-sanctioned archives or by private archives. The literature on the archival management of SA TRC records is very poor and still developing. Only recently has the issue of records of human injustice received serious attention. While it is acknowledged that all truth commissions leave behind substantial evidence of accountability, no consensus has emerged on best practices for their archiving and no specific policies exist for access to these materials.

At a professional level, discussions on records and human rights are increasingly assuming center stage. A 1999 conference in Zanzibar organized by the Eastern and Southern Africa Regional Branch of the International Council on Archives (ESARBICA)¹⁹³ had the theme “Archives and the Protection of People’s Rights.”¹⁹⁴ Four years later, the 37th International

¹⁹³ESARBICA for the East and Southern African Branch of the International Council on Archives.

¹⁹⁴Bi-annual Conference of the Eastern and Southern African Regional Branch of the International Council on Archives, Zanzibar, Tanzania, July 1999.

Conference of the Round Table on Archives (CITRA 2003) held in Cape Town, South Africa, further underscored the theme, “Archives and Human Rights.”¹⁹⁵ In February 2006, Yale organized the first specific meeting dedicated to the worldwide investigation of issues around the management of truth commission records.¹⁹⁶ The diversity of opinion from former commissioners, archivists, and scholars reflects an ad hoc approach to the management of truth commission records the world over.

Peterson’s guide to managing truth commission records is so far the most authoritative text on the subject of dealing with truth commission records. In *Final Acts: A Guide to Preserving the Records of Truth Commissions*¹⁹⁷ Peterson addresses the legal, political, and archival questions surrounding the management of truth commission records.¹⁹⁸ Peterson observes that, legally, most framers of the truth commission acts do not include the preservation of truth commission records. For instance, the legislation which initiated the SA TRC, the Promotion of National Unity and Reconciliation Act of 1995, makes no mention whatsoever of the SA TRC records or how they will need to be managed. This problem is not helped by the fact that it is often unclear if the National Archives statutes cover SA TRC records. Only in Zimbabwe and Korea were there no arguments about deposit of truth commission records to the National Archives.¹⁹⁹ In all other truth commissions, a legal conflict arose because the archives’ law differed with the legal instruments creating the commission. In Peru, the commission’s statutes specified that the records were to go to the Ombudsman’s office while the archives law bestowed custody on the National Archives. In South Africa, the Department of Justice claims to

¹⁹⁵International Round Table of the Council on Archives, Cape Town, South Africa, October 2003.

¹⁹⁶“Meeting on Archiving Truth Commission Records,” Yale University, Yale, February 22-24, 2006.

¹⁹⁷Trudy Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Baltimore: John Hopkins Press, 2005).

¹⁹⁸*Ibid.*, 17.

¹⁹⁹*Ibid.*

own the records while the National Archives believes that as public records SA TRC records belong to them. Peterson also observes that many archival laws do not cover the records of the legislature or the records of the executive, the two entities that usually establish the majority of truth commissions.²⁰⁰ Furthermore, many countries exempt from the archives' law all security-related agencies. The irony is that the security establishments are often the worst perpetrators of human rights abuses.

Theoretically, one would expect countries that have had truth commissions and also governed by Freedom of Information Laws to have put such legislation to positive advantage in terms of access to commission records. However, that is not necessarily the case. Peterson contends that only in South Africa has the Promotion of Access to Information Act (PAIA)²⁰¹ been used to secure SA TRC records. In almost all other countries that have had both a truth commission and access legislation, the latter has had no bearing on access especially as these records fall under the exemption category.²⁰² Even in the case of South Africa, Sello Hatang, former Director of the South African History Archive (SAHA)²⁰³ refutes Peterson's assertion. Hatang contends in "Freedom of Information: Problems, Prospects and Lessons: The South African Experience,"²⁰⁴ that, as an NGO tasked with testing the South African Promotion of Access to Information Act (PAIA), SAHA found out that PAIA is not an effective instrument of accessing truth commission records.²⁰⁵ Hatang posits that the experience of South Africa shows

²⁰⁰Ibid., 16.

²⁰¹PAIA stands for Promotion of Access to Information Act.

²⁰²Ibid., 18.

²⁰³The South African History Archives will be abbreviated as SAHA throughout this dissertation. SAHA is available at <http://www.wits.ac.za/SAHA> 09/29/08.

²⁰⁴Sello Hatang, "Freedom of Information: Problems, Prospects and Lessons: The South Africa Experience," *Esarbica Journal* 24 (2005): 69-74.

²⁰⁵Ibid., 69-74.

that poor record keeping in most South African institutions has frustrated attempts to use PAIA to access commission records.²⁰⁶

Another legal instrument determining the context of access to truth commission records are data protection or privacy laws. Peterson says, of all the countries that have had truth commissions, Chile, Germany, and Korea have specific privacy laws and Peru and South Africa are both drafting such laws.²⁰⁷ However, even though useful, privacy laws can be used to frustrate access to commission records. Governments pretend to grant access through freedom of information laws, only to deny access with exemptions and privacy laws.

The question of intellectual property rights is also an issue. If the commission was created by the executive, the question remains of whether the records belong to the chief executive merely because the commission was initiated by the executive. If the commission was created by parliament do those records belong to the legislature? If the commission was created by the United Nations, do those records belong to the UN or to the country that created them? All these questions need to be addressed through subsequent research.

Peterson goes on to discuss the relationship between the political context of a country undergoing a truth commission and access to its records.²⁰⁸ Obviously the political environment makes a big difference. TRC records in Panama and Haiti are unavailable to the public; the physical location of the Bolivian and Zimbabwe truth commission records are in question due to the fact that the countries are politically unstable and can return to a state of violence at any given time. In contrast, the physical location of the South African truth commission records and

²⁰⁶Ibid.

²⁰⁷Peterson, *Final Acts*, 18-19.

²⁰⁸Ibid., 31.

issues of access is debated openly because there is no fear that apartheid will ever return to South Africa again.

A key political issue is the trust the public has on the custodian of the records. Transparency International's annual corruption index ranking has demonstrated that most countries that have had truth commissions have a low level of public trust²⁰⁹ even after the initial changes in government have been made. This means that the place of deposit for truth commission records might not instill faith and trust in the general population. Peterson posits that archives are by their very nature political, for they hold the records of the regime and the party.²¹⁰ During repression, archives are particularly subservient to the dominant political power because the records of regime and party are prime pieces of evidence about the nature and activities of the ruling elite. Peterson says

the issue here is the politics of placement and the fear that even a trustworthy custodian may be subjected to irresistible pressures by an administratively superior body. National Archives have traditionally reported to one of the three bodies: (1) the central organs of the state (i.e., the president or other head of state, the prime minister, the cabinet or council of ministers, or the secretary general); (2) the ministry of education or culture or equivalent; (3) the home or interior ministry including the ministry of justice. According to a 1993 worldwide survey by the International Council on Archives in developing countries 29 percent of the National Archives reported to the central authority, 48 percent reported to education/culture and 15 percent reported to the ministries of interior/justice...In only two countries are truth commission records known to be in or destined for the National Archives: South Africa, where the National Archives reports to the Ministry of Arts, Culture, Science and Technology and Korea where the archives reports to the ministry of government and Home Affairs.²¹¹

Peterson explores whether it is advisable, in the light of the possible mistrust, for state archives to place the commission records in a private or semi private institution, such as a university or a

²⁰⁹Ibid., 30.

²¹⁰Ibid.

²¹¹Ibid., 31.

foundation. However, Peterson identifies two major problems with this move. First, because TRC records belong to the government, the government must be responsible for their preservation and maintenance.²¹² Second, as records of a public function, they must be administered in accordance with the access rules of the public authorities. Satisfying these two conditions requires public control of the records. Although it can be argued that it is also possible to assert public control over records in private institutions, such control creates additional difficulty in handling these sensitive records.²¹³

Lastly, Peterson explores the archival context of truth commission records. She says the nature of TRC records include paper, photographs, audiotapes, videotapes, databases, X-rays, and even artifacts from decomposed human exhumations.²¹⁴ Peterson focuses on key issues like the existing capacity of the National Archives to manage the various kinds of TRC records produced by a country. She contends that, traditionally, archivists have held paper records but seem ill prepared to handle audio-visual materials. Peterson maintains that it is imperative that the custodian be in a position to preserve all truth commission records regardless of their medium.²¹⁵ As modern commissions rely increasingly on electronic systems, the ability of the ultimate custodian to command knowledge of the preservation of electronic information becomes crucial.²¹⁶ If the commission had a website, the next custodian is forced to maintain it. Peterson says that much debate has gone into the question of preserving websites especially in the light of the fact that most items on the website live only for fifty five months.²¹⁷ Therefore,

²¹²Ibid., 31-40.

²¹³Ibid., 40.

²¹⁴Ibid.

²¹⁵Ibid., 40-46.

²¹⁶Ibid., 46.

²¹⁷Ibid., 44.

the question is whether the archives will be required to maintain a copy of the website as an archival item. Much recent debate has gone into the general question of maintaining websites. Assuming that everything that is posted on the website by the commission is a copy of a document found in the commission's records (i.e., that the items on the site are all duplicate copies), then the preservation of the website is a matter of simply saving the look and format of the site, giving researchers an understanding of what was provided by the site and how. Various strategies are available for preserving this information. All of them, however, require the continuing migration of the site's information to new software.²¹⁸

Another issue explored by Peterson is the security of truth commission records.²¹⁹ All truth commission records have to be secure to prevent records pilferage and mutilation. Most commissions work in physically secure locations. Similarly, most archives also observe some minimum level of security. However, rented space is often a big problem. In Peru, for instance, the commission records suffered because the government, even with financial assistance from the Belgians, was only able to lease space for six months, a time period so ridiculously short that it frustrated any attempts at providing physical security.²²⁰ Besides security, Peterson says the custodian of the records has to provide reading rooms equipped with facilities required to access records of all types, including computers for accessing databases, players for listening to sound recordings, and stations for watching videotapes.²²¹

Even though seminal in terms of addressing truth commission records, Peterson's book has invited lots of criticism, especially within the borders of South Africa. In a "Review of Trudy Huskamp Peterson's Final Acts: A Guide to Preserving the Records of Truth Commissions,"²²² Govinder asserts that Peterson's guide makes for compelling reading and is an essential text for

²¹⁸Ibid., 44.

²¹⁹Ibid., 48.

²²⁰Ibid.

²²¹Ibid., 49.

²²²Ruendree Govinder, "Review of Trudy Huskamp Peterson's Final Acts: A Guide to Preserving the Records of Truth Commissions."

anyone working at, or initiating a truth commission.²²³ In Govinder's view, Peterson's guide provides a list and a discussion of questions that a commission should consider when creating a comprehensive preservation plan.²²⁴ These include questions regarding laws that may affect the commission documents, relevant political factors, considerations for physical preservation, and access to materials generated by truth commissions. For example, at page 9 of her book Peterson says "Does the country have a freedom of information act?" Or, at page 11 she asks "Has the institution where the commission is considering placing the records been implicated in past abuses? Has it been reformed?"²²⁵ Govinder says Peterson's recommendation that "ideally, these questions will be addressed at least six months before the commission's termination date to allow a seamless transfer of the records from the commission going out of existence to the institution that will take custody is a problematic recommendation to adopt because truth commissions seldom complete their work in the original allocated time period."²²⁶

For many years, the life of the SA TRC was extended by a few months at a time. It was impossible, in that case, to estimate when "six months before the commission's termination date" would have been. Moreover, six months before the end of the commission is almost too late. The survival of a record needs to be attended to from the moment the record is created, not merely from the time it is handed over to a repository. Ideally, these questions need to be addressed at the initiation of the commission, and reviewed throughout the life of the commission.²²⁷

Govinder says, despite Peterson's claim that she advised the South African TRC on the disposition of its records in 1998, she is surprised by Peterson's claim because as the person

²²³Ibid.

²²⁴Ibid.

²²⁵Ibid.

²²⁶Ibid.

²²⁷Ibid.

responsible for the electronic records Peterson never interviewed her. Therefore, in her view, the fundamental shortcoming of this guide is its failure to address the practical problems of implementing a preservation plan on the ground level of the commission.²²⁸ The view that Peterson based her guide on theory than on what was actually happening on the ground has also been raised by Verne Harris and will be discussed in detail later on in this chapter.

Govinder says her experiences have shown that, however essential the answering of Peterson's theoretical questions may be, unless they are translated practically into a policy that the commission staff understands and complies with on a daily basis, any real preservation efforts will be fruitless.²²⁹ She says from the very moment any record is received or created the skills and needs of the staff handling these records have to be addressed, and it is essential to bear in mind that these people are not archivists. According to Govinder, fundamental skills such as computer literacy, meaningful labeling and filing of records, keeping detailed metadata, and using specified criteria to assess what records can be destroyed are imperative factors in the long-term survival of records, not to mention simply explaining the importance of preservation to the staff.²³⁰ To illustrate her point Govinder recalls discovering that several of her junior clerical staff were filing documents in the "recycle bin" of their computers in an effort to save precious hard-drive space. Such actions were a result of poor planning, a lack of resources, and inadequately trained staff who sometimes made questionable preservation decisions.²³¹

Govinder believes that Peterson fails to place her observations within the context of the limited resources of the commission.²³² She says preservation efforts can often fall by the

²²⁸Ibid.

²²⁹Ibid.

²³⁰Ibid.

²³¹Ibid.

²³²Ibid.

wayside when pragmatic choices need to be made between prioritizing the immediate needs of fulfilling the commission's chief mandate against the preservation of the commission's records.²³³ These choices are often left in the hands of management and staff with limited resources or skills to deal with decisions of this magnitude, and it is therefore essential that a preservation plan contains guidelines to help make these difficult choices. For example, Govinder says the tape drive that the SA TRC used to backup electronic data was found to be defective, and a wealth of data was in danger of being lost on deteriorating magnetic tapes as they had not been held in appropriate climate-controlled environments.²³⁴

Despite the urgency of that situation the SA TRC, IT²³⁵ specialist says she spent a year appealing to the SA TRC management for a CD-writer before she was allowed to purchase one.²³⁶ She says one can only speculate about how much more data would have been lost had they waited any longer. She makes the point that SA TRC records are often handled and managed by human staffers who do not hold any professional qualifications in records and therefore often fail to understand the value of preservation. She says regardless of whether an effective plan is set up at the start of a truth commission or if plans are developed during and after the commission has concluded its work, the plans are irrelevant without the will and the resources for implementation on a daily basis.²³⁷ What emerges from the Peterson/Govinder debate on truth commission records and accountability are insights informed by different practices. One informed by actual work on the SA TRC, the other informed by more than three decades of archival work in the United States of America.

²³³Ibid.

²³⁴Ibid.

²³⁵IT for Information Technology.

²³⁶Govinder, "Review of Trudy Huskamp Peterson's Final Acts."

²³⁷Ibid.

Notwithstanding Govinder's criticism, Peterson's research is a seminal work on the preservation of truth commission records. The detailed discussion of each question that follows the introduction includes insightful examples of the experiences of truth commissions internationally. Her section on country reports and summaries of the record management procedures at twenty government truth commissions as well as contact information for the current repository in each case are admirable. However, the efforts of one person could not do justice to a topic that involves so many countries. The best this guide has done is to provide a general overview of the management of truth commission records. We need more focused case studies into the records of each truth commission. The fact of the matter is that it is humanly and academically impossible to do justice to twenty-three truth commissions within the timeframe that it took her to produce her book. Peterson's guide is therefore incomplete and needs more focused subsequent research on the records of each country.

Another review of Peterson's *Final Acts: A Guide to Preserving the Records of Truth Commissions* has been done by Harris.²³⁸ Harris especially feels qualified to comment on Peterson's book, because, besides working closely with South Africa's TRC from 1996 to 2001, he has also been engaged as a record-making consultant for commissions in Sierra Leone, East Timor and the Democratic Republic of Congo.²³⁹ Having confessed his biases, Harris goes on to compliment Peterson for a book that promises to fill up a literature void currently characterized by "fragmentary papers, articles, essays, media coverage"²⁴⁰ and the self reflection of commissioners. In another positive note, the last in his critique, Harris kindly acknowledges that

²³⁸Verne Harris, "Review of Trudy Huskamp Peterson's *Final Acts: A Guide to Preserving the Records of Truth Commissions*." *Archives and Manuscripts* 33, no 2 (2005): 181-185.

²³⁹*Ibid.*, 182.

²⁴⁰*Ibid.*, 181.

the book will promote awareness of record-making in relation to truth commissions and become a resource to those who find themselves picking up the pieces after these commissions.²⁴¹

However, Harris says Peterson fails dismally to answer the key question of “record-making by and around truth commission,”²⁴² that she has set for herself. He takes issue with the fact that Peterson draws tight parameters for her inquiry, excluding commissions set up by non governmental organizations merely because they and their records do not fall under the legal control of government.²⁴³ Peterson also excludes the management of records while in active use by the commission and decides to concentrate on what Harris calls disposition.²⁴⁴ However, even on the issue of “disposition” Harris finds Peterson’s analysis flawed for three reasons. Firstly, unlike Peterson’s understanding of the term, disposition is rather, a continuous process that begins in the record-keeping machinery of the oppressive regimes, proceeds through active use by the commission and continues long after the commission has completed its work.²⁴⁵ Secondly, Harris says her “retreat into disposition”²⁴⁶ allows her to avoid asking the toughest and most interesting questions, like how best can a truth commission document the past and its own work; what are the toughest challenges to sound record-making which commission are likely to confront; and what is a truth commission in record-making terms?²⁴⁷ Thirdly, Harris believes that Peterson unintentionally reinforces the view that the archivist’s role is only limited to picking up the pieces once the players have walked off the field.²⁴⁸

²⁴¹Ibid., 183.

²⁴²Ibid., 181.

²⁴³Ibid.

²⁴⁴Ibid., 182.

²⁴⁵Ibid.

²⁴⁶Ibid.

²⁴⁷Ibid., 182.

²⁴⁸Ibid.

As if the above criticism is not enough, Harris further faults Peterson for a shoddy job in incorrectly analyzing some of the issues that she herself raises in the book. Harris substantiates this with examples. For instance, at page 77 of her book, Peterson confidently asserts that South Africa has a privacy act. In fact, South Africa does not have a privacy act despite many years of drafting. Still on page 77, Peterson correctly states that as the commission began to wind down in 1999, it transferred all but 34 boxes of its records to the National Archives. Harris says what is omitted here is the long and ugly battle over the records' final destination, the commission's database, held by the Department of Justice, and a substantial amount of the commissions' records, removed by the commissioners and staffers.²⁴⁹

Other weaknesses of the book identified by Harris include what he calls a tendency by Peterson to "privilege theory over praxis,"²⁵⁰ in a terrain that is fraught and messy.²⁵¹ For instance, Peterson's sound principle on ensuring that commission's staff members do not remove organizational records is premised on the theory of closing procedures rather than on actual practice. Harris says, unless guidelines are built into operating cultures of commissions early on, Peterson is fighting a losing battle.²⁵² Further, Harris says Peterson's categorization of commission records into administrative ones alluded to at page 5 of her book ignores a messiness in commission record-making culture.²⁵³ Harris argues that the degree to which administrative records are porous to non administrative functions needs to be accommodated.²⁵⁴

²⁴⁹Ibid., 184.

²⁵⁰Ibid., 182.

²⁵¹Ibid.

²⁵²Ibid., 183.

²⁵³Ibid.

²⁵⁴Ibid.

Lastly, Peterson neither accounts for, nor takes into account the enormous documentary residue that the commission work leaves in other offices of the state, the civil society and in the media. Harris concludes that “an extended enquiry into record-making by and around truth commissions, one which accommodates complexity, is accurate on detail, engages critical contexts, and gets its hands dirty,”²⁵⁵ is long overdue. A dissertation of this nature cannot unravel all the complexities, accurate details and critical contexts of the records of a truth seeking body, however, it can, like Peterson’s work, play its own little part in unlocking some of these myriad truth commission relationships.

Besides this dissertation, the Yale Artemis project is another good example of continuing research that is building on Peterson’s guide. In her submission to the Yale Artemis Project, Mersky reported that the Guatemalan records of human injustice have been basically generated by three centers. The first official center, called the Commission for Historical Clarification,²⁵⁶ gathered paper, electronic, photographic materials, and about 150 tapes from key witnesses.²⁵⁷ At the closure of this commission, all the records of the Guatemalan truth commission were shipped to the United Nations Secretary General who quarantined them to a secret warehouse in New Jersey.²⁵⁸ The Guatemalan commission was peculiar because its mandate was not how to promote access to its records but rather how best to prevent access.²⁵⁹ The language of the accord clearly stated that the proceedings will be confidential to ensure safety of the witnesses and informants. As a result, all its findings were off-limits. Attempts by the Guatemalan people

²⁵⁵ Ibid., 185

²⁵⁶The Commission for Historical Clarification was created by the Guatemalan peace accord between the guerillas and the government. It brought to an end the 30 year armed conflict between the insurgents and the government.

²⁵⁷*Transcript of the Yale/Artemis Project: Managers of Truth Commissioners Conference*, Yale University, February 22-24, 2006.

²⁵⁸Ibid.

²⁵⁹Ibid.

to get back their records from the UN Secretary General in order to hold perpetrators accountable have since proved futile.

Besides the commission for Historical Clarification, the REMHI Catholic church was also involved in a nationwide documentation of human injustice. Like the SA TRC, the REMHI Catholic project collected about 20,000 testimonies. Unlike the Historical Clarification commission's records, the REMHI records have been digitized and most of them are available for access.²⁶⁰ According to Mersky, a tremendous police archive of about 27 rooms spanning the twentieth century and full of many documents requested by the Commission for Historical Clarification was recently discovered and taken to the human rights Ombudsman's office.²⁶¹ This office is trying to get these documents repaired and put to use. At the moment it is unclear who should have custody of the documents. What comes out of the Guatemalan experience is that, except for the Catholic archives, the custody of its truth commission records is in foreign hands and, except for the REMHI records, access to the Guatemalan truth commission records remain out of reach.

In the case of the Sierra Leonean truth commission, Varney says that the work of that country's truth commission started well with the truth commission act recognizing the establishment of an archive.²⁶² As a result, 9,000 testimonies were collected, including videotapes from all the public hearings and stored at Fourah Bay College.²⁶³ In 2004 an unconfirmed rumor that the commissioners were about to steal the records and abscond with them for personal gain led the UN security officers to raid the commissioners' offices, mutilating

²⁶⁰Ibid.

²⁶¹Ibid.

²⁶² Ibid.

²⁶³Ibid.

and destroying most of the records.²⁶⁴ Since Sierra Leone is still politically unstable, much still needs to be done to make the archives accessible and preserved.

The records of Peru, El Salvador, East Timor and many other truth commissions, save for South Africa, have followed paths similar to the Guatemalan and Sierra Leonean experience. The Yale deliberations from the foot soldiers directly involved in the management of these records have demonstrated that even though the utility of TRC records is beyond reproach, there is wide difference regarding their custody, preservation and access. For instance, most Latin American TRC records are in the hands of the United Nations, a factor which violates the cardinal archival principle that truth commission records are a national patrimony and must reside in their country of origin.

Graham Dominy, the National Archivist of South Africa, also believes that the Latin American practice of repatriating records to the USA is wrong because truth commission records, by virtue of being public asserts, should be managed by the National Archives of the particular country involved.²⁶⁵ When a truth commission is set up by the government of the country its records must be seen as its product and should be surrendered to the National Archives for proper management.²⁶⁶ However, Dominy's comments are informed by archival theory and by his experiences in a stable post apartheid South Africa. Some countries have laws which require records of the state, or state archival fonds, to be kept only within the country of origin. In fact all countries recognize the principle that public archives, by their very nature, form part of the public property of any given state. In other words public archives are deemed inalienable. This means that the sovereignty of a state prevents their abandonment or transfer of

²⁶⁴Ibid.

²⁶⁵Ibid.

²⁶⁶Ibid.

ownership. Peterson again says “the principle of inalienability applies to the records of a government truth commission. It means that a state would be required to take specific legal action, probably through legislation, in order to deposit the commission’s records with a body outside the state, such as the United Nations. If the political climate in a country is volatile, the commission might recommend depositing the records outside for at least a period of time. The commission may, however, find it difficult to obtain legal authority to transfer the records, whether because of legislative lethargy, government resistance, or political consideration.”²⁶⁷ UNESCO has reinforced this practice by making it part of the criteria for adding records into its memory of the world list.²⁶⁸ What this means is that all records that reside outside the country of origin are excluded from the memory of the world list. There are situations, however, where the succeeding government is facing real threats of destabilization and has no choice but to opt for external deposit as happened with the records of Chile, Guatemala and El Salvador.

In the final analysis, though, what really determines the decision to select which repository should be responsible for the custody of truth commission records is the trust the public has in the integrity of the successor repository and the uses to which the records will be put.²⁶⁹ Such trust is usually placed in the National Archives. Peterson believes that, since the records will be used for possible future prosecution, the National Archives will usually have the resources to provide findings aids to enable use for legal and academic purposes.²⁷⁰ The assertion that state archives have the resources to provide finding aids has been tested in this dissertation and will appear under Chapter 5 & 6 dealing with findings of this research. The Latin American experience, with its powerful military juntas, drug traffickers, and untouchable

²⁶⁷Peterson, *Final Acts*, 23.

²⁶⁸*Ibid.*, 41.

²⁶⁹*Ibid.*, 6.

²⁷⁰*Ibid.*, 6.

mafias, capable of upsetting most transitional governments in the region, gave some countries little choice other than to opt for external deposit. For instance, the commission in Panama suffered a break-in after it completed its report, possibly by persons seeking to destroy the records.²⁷¹

Scholars of transitional justice believe that even though it was ideal to keep the El Salvadorian and Guatemalan records inside the country, the situation was too dangerous and too unsafe to do so. Besides violating the territorial integrity of a country, external deposit imposes additional access problems. Victims and their families have to spend large sums of money traveling to the surrogate country to access the records. Besides, such access involves the intervention of third parties making justice outside the reach of ordinary people who are usually the worst victims of a repressive regime.

While it is acknowledged that victims and their families typically should have access to the files of their own cases such access can prove troublesome. In East Germany, for example, some families that gained access to their files learned with shock that their spouses were on the government payroll to spy on them and as soon as that became known families and marriages broke up. Parents learned that their children were used against them and vice versa. Neighbors were, for the first time, learning the hard way through the state records that the nice Mr. Brown next door was in fact a government informer. These examples show that access to commission's records can contribute to retribution. Therefore, it is important that access be administered in a way that does not promote the escalation of a civil war. As if to anticipate the problems that some of us researching these questions had to go through, Peterson says that "it is relatively easy to agree that victims have special rights of access to commission records; it is more complicated

²⁷¹Ibid., 35.

to provide academic researchers and journalists with access to records.”²⁷² Personal experience of the author can confirm that the custodians of truth commission records are often very suspicious of researchers and their true intentions. As a result, they are often very reluctant to assist them.

The retention of any records is a major part of archival theory and applies to all records. The logic of a records retention schedule is that it is impossible to keep all records forever so a systematic way of destroying records to create space has to be found. This includes truth commission records as well. Most democratic countries have retention schedules detailing how long each record has to be retained. Normal practice in government is to authorize the destruction of routine administrative and housekeeping records after their legal, administrative, and fiscal uses have been satisfied. Accordingly, truth commission records should also be destroyed once they have fulfilled their legal, fiscal, and administrative uses.

With truth commissions, records present a special challenge. In most instances “the problem is that the climate of suspicion between a government and its civil society may be so intense that even routine destruction is unwise.”²⁷³ Ideally, the issue of whether truth commission records should be governed by a given country’s retention and disposition records should be a given because a retention schedule should indiscriminately apply to all government records regardless of where they come from. However, for truth commission records, it may be prudent for a government to announce openly that it intends to destroy specified commission records in order to get a feel of the public’s reaction. At the moment there is no clear position in the literature as to whether truth commission records are kept indefinitely or whether they should follow the already existing retention schedules available in most state archives.

²⁷²Ibid., 37-38.

²⁷³Ibid., 35.

There is an abundance of primary and secondary literature sources on truth commissions, especially on the SA TRC.²⁷⁴ An online dissertation search revealed that at least twenty-six doctoral dissertations have been produced on the SA TRC. Most of these dissertations are centered on the prosecution versus truth commission model. However, of the twenty-six dissertations, not one addresses the question of records and accountability.

A thorough literature review search revealed that, besides the February 2006 conference on truth commission records at Yale, Cox and Wallace's *Archives and the Public Good: Accountability and Records in Modern Society*²⁷⁵ and Peterson's *Final Acts: A Guide to Preserving the Records of Commissions*,²⁷⁶ there is little research work which directly or indirectly addressing this topic. Peterson devotes only three quarters of a page to a report on the SA TRC and devotes the same space to all other countries that have had truth commissions. This small but useful effort clearly buttresses Govinder's already stated view that it requires more than the ground already covered by Peterson if one is to really comprehend the complexity of SA TRC records. The contextual issues raised by Peterson are by their nature complex, intersecting in complex ways, and requiring concentrated studies. This dissertation attempts to move from Peterson's general guide to the specific through a case study of the records of the SA TRC. It is hoped that this study will be extended to other countries that have had truth commission and which are still struggling to locate how their records can be used to redress injustice.

²⁷⁴ For a comprehensive list of these sources visit <http://www.icheic.org> for a comprehensive list 04/28/08.

²⁷⁵ Numerously cited before in this dissertation

²⁷⁶ Numerously cited before in this thesis.

2.8 CONCLUSION

This chapter has explored five different meanings of accountability, namely, political, financial, administrative, and legal accountability. It also looked at the definition of accountability from the view of records managers. What comes out of this chapter is the understanding that accountability is multi-dimensional and that accountability really means different things to different people. In recent times international organizations like the Transparency International and the World Bank have also grappled with the definition of accountability and have in the process enhanced our understanding of the term.

The World Bank and TI describe political accountability as the obligation of elected officials to deliver to the electorates. TI believes that a political environment that promotes free and fair elections is central to accountability because the legitimacy of the governors depends on the right of the governed to freely elect them to office. A government that is freely chosen by the people can serve as a strong barrier against corruption. Also, a legislature that is directly elected by the people has the potential to limit executive excesses because it owes its allegiance to the people who elected it to office. TI emphasizes the fact that when strictly observed the principle of the separation of powers ensures that corruption is kept to a minimum. When the judiciary independently exercises oversight over the executive and legislature and vice versa, then some degree of accountability is achieved.

The next form of accountability discussed in this chapter is financial accountability. Financial accountability is similar to political accountability in the sense that they both strive to curb corruption. According to the definition borrowed from the World Bank, financial accountability refers to the mechanisms placed on those handling resources to manage them comprehensively by keeping all records relating to the use of public or corporate funds. At the

heart of financial accountability in the sphere of public bodies is the Auditor General. The Auditor General ensures that public funds are utilized prudently and appropriately through regular audits. These audits are then referred to non partisan bodies like the Public Accounts Committee for scrutiny and action. While the Auditor General holds public office bearers accountable it is important to mention the fact that he/she is also held accountable by neutral bodies like the Public Accounts Committee.

Administrative accountability emphasizes a detached bureaucracy which serves citizens without fear or favor. Government employees are governed by codes of ethics that attempt to limit their propensity to corruption. Many governments have internal anti-corruption bodies meant to oversee the conduct of civil servants in order to ensure that they operate above board. In most states civil servants undergo periodic training mostly meant to sharpen their sensitivity to corruption and maladministration. Those who stray away from the established political, financial and administrative norms of accountability are punished. The threat of punishment or rewards led us to the definition of accountability as seen by human rights lawyers.

International law defines accountability as the state-sanctioned duty to punish transgressors of human rights protocols. Under the law of Nations, states are required to take a proactive approach to prosecute individuals associated with crimes against humanity and not to hold truth commissions. In fact, all international penal codes spell out the duty to prosecute. From this, it would seem that truth commissions are not an effective instrument of accountability for crimes associated with violations of human dignity. A counter argument to this has been that indeed truth commissions are an effective instrument of accountability for fragile states emerging from long periods of war. In this kind of state, it is often too risky to try individuals accused of

human rights violations because of the power they still hold beyond their tenure of office. This then brings us to the issue of the accountability of the records of a truth commission body.

This study has realized that even though records have always been at the center of most debates dealing with accountability, be it political, fiscal, administrative or legal more still needs to be done to highlight their importance. For instance, the records of the Third Reich have played a major role in the prosecution of Nazi war criminals, in the compensation of victims of Nazi Germany and in helping to bring to justice human rights perpetrators who migrated to other countries after the fall of Germany. At the same time the absence of documented evidence has undermined efforts to punish perpetrators responsible for human rights abuses in Africa and in Latin America. The mere act of knowing the perpetrators without the production of verifiable documentary evidence has not been enough to bring them to justice. Fiscally, the World Bank has noticed that the fight against corruption will never be won without proper record-keeping systems in developing countries. The importance of truth commission records to hold rogue leaders to account was underscored when Spanish judges used them to arrest Augusto Pinochet in London for crimes against humanity. In South Africa the records of that country's TRC are still being used today to compensate victims of apartheid. This brings us to the issue of archiving truth commission records.

The archiving of truth commission records has not been consistent and coherent. This problem has been exacerbated by the fact that the legal instruments initiating most truth commissions have either been silent on what do to about their records or just contradicted the already existing archives acts. For instance, in Guatemala, Peru, El Salvador and Sierra Leone nobody really knows for sure if the TRC records belong to the UN or to countries that were at the center of these commissions. However, in the case of South Africa the situation was different

because the TRC act categorically stated that it was the responsibility of the National Archives to preserve and make accessible to the people the records of its truth commission. As a result of this subsequent chapters of this dissertation will try to explain how the National Archives of South Africa is managing its records and the problems that it is experiencing in making these records accessible to the public.

3.0 METHODOLOGY

3.1 INTRODUCTION

There is a requirement that obliges all doctoral dissertations undertaken by students of the University of Pittsburgh, to apply for approval from the University's Institutional Review Board (IRB). To get this approval, the researcher has to submit his/her research methodology outlining all instruments of data collection and analysis. One of the key things that the Institutional Review Board wants to satisfy itself with is whether the research method proposed by the researcher offers a sound, clear and ethical approach to the study. By commissioning this study the University's Institutional Review Board had actually satisfied itself about the appropriateness of the researcher's methodology for the study. In this historical case study research the investigator used interview data, data gathered from original TRC records in the custody of the national archives, TRC data from the South African History Archive (SAHA), and data from secondary sources to answer the two main research questions.

An historical case study offers a lot of advantages in that it combines the benefits of both the case study method and the historical research method to address the research questions. In this particular historical case study the researcher wanted to find out (i) how the National Archives has been managing the TRC records and (ii) what problems and challenges the archives experienced in managing these records. Commenting on the combined advantages of the two

methods Tywana Whorley reminds us that “the case study method complements the historical research method when used to analyze a single problem. The historical method supports the case study by allowing the subject of the case study to be evaluated over time, while the case study aids historical analysis by closely focusing attention upon a specific phenomenon. Combining the two methods allows the researcher to draw upon the strengths of each.”²⁷⁷

3.2 CASE STUDY RESEARCH

This study used qualitative methods to answer the research questions. Various sources, namely, open-ended interview questions, primary TRC records, secondary sources and close-ended questionnaires were used respectively in this historical case study research. Hammersley and Gomm have defined case study research as “research that investigates a few cases, often just one, in considerable depth.”²⁷⁸ The case can be anything. The case is the object of study. It is the unit of analysis about which we collect information, or wish to understand as a whole.²⁷⁹ In the words of Stake, “it can be whatever bounded system is of interest. An institution, a program, a responsibility, a collection or a population can be the case.”²⁸⁰

In qualitative studies, the aim of case study research is to describe a specific group in fine detail and to explain patterns that exist within that group. On this note, Stake reminds us that, in

²⁷⁷Tywanna Whorley, *The Tuskegee Syphilis Study: Access and Control Over Controversial Records*. A Dissertation Submitted in Partial Fulfillment of the Requirements For the Degree of Doctor of Philosophy. (University of Pittsburgh: 2006), 54-56.

²⁷⁸Martyn Hammersley and Roger Gomm, *Case Study Method* eds. Roger Gomm et al (London: Sage Publications Ltd, 2000), 3.

²⁷⁹Martyn Denscombe, *The Good Research Guide for Small Scale Social Research Projects* (Maidenhead: Open University Press, 2003), 220.

²⁸⁰Robert Stake, “The Case Study Method in Social Inquiry,” In *Case Study Method* eds. Roger Gomm, et al (London: Sage Publications Ltd, 2000), 23.

qualitative research, case studies can feature: descriptions that are complex, holistic, and involving a myriad of not highly isolated variables; data that are likely to be gathered at least partly by personal observation; and a writing style that is informal, perhaps narrative, possibly with verbatim quotation, illustration and even allusion and metaphor. Comparisons are implicit rather than explicit. Themes and hypothesis may be important, but they remain subordinate to the understanding of the case.²⁸¹ This description contrasts with experimental research where the researcher creates cases. Under qualitative research, though, cases occur out of naturally occurring social situations. In the former, cases are used as a basis for wider variable analysis or generalization while, in the latter, cases are used usually to capture the uniqueness of the study.

Contrary to surveys, for instance, the most defining characteristic of the case study approach is its intense focus on one instance of the object to be studied. Case studies concentrate on the particular in order to illuminate the general. The focus of case studies in one instance allows it to exploit phenomena in detail which might not be so apparent from the use of other mass-centered research studies. In this particular research, and typical of all attempts to understand a particular phenomenon in detail, concentrated attention was given to the management of SA TRC records by the National Archives.

In *The Good Research Guide for Small Scale Social Research Projects*²⁸² Descombe tells us that the case study method is also best when it comes to understanding interconnected social settings.²⁸³ Its approach tends to be holistic rather than dealing with isolated factors.²⁸⁴ In most case studies, various parts of the study need to be deconstructed in order to see how they fit into the whole. For example, a study of the management of SA TRC records is as much of a political

²⁸¹Ibid., 24.

²⁸²Denscombe, *The Good Research Guide*, 31.

²⁸³Ibid., 31.

²⁸⁴Ibid., 31.

process as it is a record-keeping process. As a political process, issues around the public disclosure of SA TRC records are perhaps the most delicate confronting modern-day South Africa. Access to SA TRC records is accompanied by ambivalence on the part of both Black and White South Africans. Post-apartheid South Africa seems to value the SA TRC records but does not seem ready to interrogate their contents. The dilemma surrounding access to SA TRC records can be compared to someone who is excited about receiving a sealed parcel but too jittery to open it due to the fear of getting tormented by its contents.

Unlike quantitative research, qualitative studies do not impose any controls on artificial variables to measure their outcomes. A major characteristic of qualitative studies is that the case is not formulated by the researcher. The case that formed the basis of this study existed prior to the research project and continued to exist once the researcher was over with his investigations. As the object of his study the researcher did not invent the SA TRC or its records. Upon completion of his study the researcher left the records where he found them. One of the greatest truisms of modern day social science research is its flexibility to accommodate multiple sources and multiple methods.

Denscombe says that the case study “allows the researcher to use a variety of sources, a variety of types of data and a variety of research methods as part of the investigation.”²⁸⁵ Like every research method, the case study approach also has its own limitations. Because case studies focus on the particular they can sometimes miss the bigger picture, overlooking in the process the fact that social reality is an interrelated whole. To a large extent, case studies are used for theory building and theory testing. For instance, if this researcher was to study how all the twenty-three truth commissions’ records have been managed so far, a pattern or theory of

²⁸⁵Ibid., 31.

records and truth commissions might emerge. If such a theory was already in existence such an extensive study would test its validity.

In *Case Study Method*²⁸⁶ Schofield informs us that there are preconceptions that the findings of case studies are not credible merely due to the fact that they cannot be generalizable.²⁸⁷ This criticism is misinformed as it misses the whole point of case studies. Sometimes the intention of case studies is not to generalize at all but to illuminate the uniqueness of a case. The term “generalization” is quite different in character from statistical inferences of quantitative research. Schofield asserts that there is now a “broad agreement that generalizability in the sense of producing laws that apply universally is not a useful standard or goal of qualitative research.”²⁸⁸ According to Schofield, generalization in qualitative research is now re-conceptualized to mean taking findings from one study and applying them to understand a similar situation.²⁸⁹ The process of making these inferences is called “naturalistic generalization.”²⁹⁰ Through this process individuals are able to compare and translate situations to form generalizations. Comparability means “the degree to which components of a study- including the units of analysis, concepts generated, population characteristics, and settings- are sufficiently well described and defined that other researchers can use the study as a basis for comparison. Translatability is similar but refers to a clear description of one’s theoretical stance and research techniques.”²⁹¹

²⁸⁶Janet Schofield, “Increasing the Generalizability of Qualitative Research,” In *Case Study Method* eds. Roger Gomm et al (London: Sage Publications, 2000).

²⁸⁷Ibid., 75.

²⁸⁸Ibid., 75.

²⁸⁹Ibid., 75.

²⁹⁰Ibid.

²⁹¹Ibid.

It is rightly argued that, in a case study, the presence of the researcher can affect the way the subjects of study behave, a phenomenon sometimes called the observer effect. The researcher was able to reduce this condition through triangulation. In *Research in the Social Sciences*²⁹² Collins and his colleagues at the University of Pretoria, South Africa, define triangulation as a concept that was borrowed from surveyors.²⁹³ Collins says when “surveying a piece of land, surveyors make use of various viewpoints or beacons from which to measure the same piece of land from various angles. In this way they can identify a true fixed point.”²⁹⁴ In social research terminology triangulation refers to the multiple uses of research methods in a given study. For this reason, Collins and his colleagues discourage us against reliance on a single method cautioning that its use is like a one dimensional snapshot of a very wide and deep social scene.”²⁹⁵ This study tried to curb the limits identified in the use of a single method by relying on interviews, direct observations, close and open-ended questionnaires, and archival documents to answer the research questions.

3.3 HISTORICAL METHOD

A good portion of this study was made possible through data acquired directly from SA TRC records at the National Archives of South Africa. The SA TRC is a phenomenon that has already happened, making the historical method a major tool in investigating the research question. The

²⁹²K.J Collins et al, *Research in the Social Sciences* (Pretoria: University of South Africa, 2000).

²⁹³Ibid., 92.

²⁹⁴Ibid.

²⁹⁵Ibid., 92.

historical method is unique in that it is the only research tool with a focus on events that have already taken place.

In *How to Design and Evaluate Research in Education*,²⁹⁶ Fraenkel and Wallen define historical research as “the systematic collection and evaluation of data to describe, explain, and thereby understand actions or events that occurred sometime in the past.”²⁹⁷ In *Educational Research: Competencies for Analysis and Application*,²⁹⁸ Gay extends this definition by suggesting that the historical method may also help to explain present events and anticipate future events.²⁹⁹ Scholars engage in historical research for a variety of reasons. Some want to see how things were done in the past in order to avoid past failures or use past success to their advantage. Others want to see how things were done in the past in order to see how they apply to the present. Many others use the past as the only reference point to predict the future. Some people just study the past because it is interesting. On this note Powell informs us in *Basic Research Methods for Librarians*³⁰⁰ that “historiography is concerned with interpreting the meaning of historical events. It is the process by which a researcher is able to reach a conclusion as to the probable truth of a past event by studying objects available for observation in the present.”³⁰¹ In this particular study, these objects were SA TRC documents.

Like all other researchers historians seek to discover, correct, clarify or expand the existing knowledge base. The steps involved in an historical study are as follows:

²⁹⁶Jack Fraenkel and Norman Wallen, *How to Design and Evaluate Research in Education* (Boston: McGraw Hill, 2000).

²⁹⁷Ibid., 573.

²⁹⁸L. R. Gay, *Educational Research: Competencies for Analysis and Application* (New York: Merrill, 1992).

²⁹⁹Ibid., 205.

³⁰⁰Ronald Powell, *Basic Research Methods for Librarians* (Norwood: Ablex Publishing Corporation, 1985).

³⁰¹Ibid., 137.

- Definition of the problem to be investigated;
- Formulation of a hypothesis or questions to be answered;
- Collection of data;
- Evaluating the information obtained from the data;
- Presenting the findings/ Confirmation or disconfirmation of the hypothesis.³⁰²

When it comes to historical sources, Gay says that just about everything written down in some form or other, and virtually every object imaginable, is a potential source of historical research.³⁰³ Documents, numerical records, oral statements, and relics³⁰⁴ all constitute primary historical sources. Documents refer to published or unpublished materials in the form of government records, annual reports, court records, diaries, and books, to name but a few. Census records, immigration, birth, and mortality statistics are examples of numerical records. In Africa especially, oral information, songs, legends, tales, myths, and oral interviews are used as sources. Relics would include such things as monuments, artworks, buildings, old typewriters, and many other museum pieces. One of the modern day moving examples of a historical relic is the approximately 500,000 human skulls kept in Rwanda after the 1994 genocide.

Even though there is a diversity of sources at their disposal, historians do not attach the same weight to them. Historical sources are either considered primary sources or secondary sources depending on their proximity to the event in question. Powell defines primary sources as data which is closest to the event of study.³⁰⁵ Historical research considers primary sources its raw material and thereby attaches a high probability of trustworthiness to them. Primary sources

³⁰²Gay, *Educational Research*, 206-07.

³⁰³Ibid., 575.

³⁰⁴Ibid.

³⁰⁵Powell, *Basic Research Methods for Librarians*, 139.

“include the testimony of witnesses, the written record of what the writer actually observed, or the first hand expression of his/her thoughts.”³⁰⁶ In the case of this research, the SA TRC accumulated different primary sources in various media. A particularly useful piece of primary data was court records resulting from SAHA’s legal battle with the National Archives over access to SA TRC records. Another useful piece of primary data was first-hand personal diaries of commissioners contributed to the National Archives upon completion of their assignment. To make research easier, all the testimonies of victims, perpetrators, and the opinions of the commissioners were published in six huge volumes. These volumes, plus standard policy documents, internal administrative files, minutes of meetings, and brochures were made available for use to the researcher by the National Archives.

It is impossible to study a topic that evaluates records without looking at the records themselves. Therefore, this study used the power of the observation method to physically review oral tapes of the TRC public hearings recorded in different languages. A copy of the electronic database also kept by the National Archives was also looked at. Work is now underway at the National Archives to translate the oral tapes recorded in local languages into English and to post them on the SA TRC website.³⁰⁷ In fact, even before the beginning of this study, the South African National Archives, through its own initiative, had long recognized the value of oral sources resulting in the development of the oral history program.³⁰⁸

In addition, this study also reviewed some audio-visual VHS and beta tapes shot live and on site during the SA TRC submissions. Post-apartheid South Africa has been at the forefront in recognizing the value of audio-visual records as sources of research. The Legal Deposit Act No.

³⁰⁶Ibid.

³⁰⁷Gerrit Wagener, interview by author, Pretoria, October 28, 2005.

³⁰⁸Visit the South African national oral history program at <http://www.national.archives.gov.za> 10/22/2008.

54 of 1997 designated the National Film, Video and Sound Archives³⁰⁹ specifically to manage audio-visual heritage of South Africa.

The most comprehensive electronic raw data reviewed for this research was the Infocomm database. Infocomm is a large-scale Oracle human rights database project created by Patrick Ball for the American Association of the Advancement of Science.³¹⁰ Even though the Infocomm database is still in the custody of the Department of Justice (DOJ), the National Archives has been given a copy for administrative purposes. It was used widely in South Africa as the primary record of the SA TRC. Its use had already been tested in Haiti and El Salvador as part of the new technology of human rights information management. In addition to the database, the researcher was shown hundreds of floppy disks collected from the various regional offices of the SA TRC. The physical inspection and location of these electronic records was necessary to give the researcher a chance to observe any sign of physical deterioration. It is interesting to note that in the new age of the memory stick storage devices the floppy disks have virtually disappeared. Most desktop and lab-top computers no longer have a provision for floppy disks.

This study relied on primary historical sources like, the TRC reports, for instance, to answer the research questions. A lot of advantages have been noted about the use of primary documentary sources in general. However, this research limited itself to three. First, the review of both the medium and content of primary data was unobtrusive. Interacting with records allowed the researcher to cross-examine the data in ways that were only known to the researcher. Documentary sources can be reliable and hard to corrupt because the National Archives staff could never exactly have predicted the way the researcher was going to interact with the data.

³⁰⁹Visit the National Film, Video and Sound Archives (NAFVSA) at <http://www.national.archives.gov.za> 10/22/2008.

³¹⁰Richard Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001), 38.

Second, documentary research consumes less time as opposed to securing interviews with subjects. Apartheid created a culture of silence in stark contrast to the American pop culture of talk shows and free speech. Many South Africans still shy away from interviews because of the belief that they will be used to disadvantage them at some point in their careers. Third, SA TRC records provided first-hand written sources of what actually happened under apartheid.

The further away from the event, the more the source becomes secondary data. In *How To Design and Evaluate Research in Education*,³¹¹ Fraenkel and his colleagues define secondary sources as documents written by people who were not direct witnesses to the event, but who obtained description of the event from someone else or from primary sources.³¹² Secondary sources therefore constitute second-hand information and scholarly research about the event. Many books have now been published on South Africa's TRC, across many disciplines. These different viewpoints have been useful in shaping some sections of this dissertation.

3.4 INTERVIEW METHOD

The University of Pittsburgh's Institutional Review Board (IRB) has well laid-down policies and procedures of how to conduct ethical research on human subjects. All questions relating to this study were submitted to IRB for review before the study commenced. Approval is given only upon assurance that the research will not in any way inflict harm on the subjects and that it will only be conducted with the consent of the interviewees. Also, it is required that the interviewees be told that nothing obliges them to answer any questions if they do not want to. All scientific

³¹¹Fraenkel et al, *How To Design and Evaluate Research in Education*, 576.

³¹²Ibid.

research ethics were read to the interviewees and they voluntarily consented to them. Using both open-ended and close-ended questions this study interviewed twenty people from key South African institutions that are directly involved with the management of TRC records, namely, the National Archives itself, the Department of Justice, the South African History Archive (SAHA), the Nelson Mandela Foundation, the new TRC Unit located at the Department of Justice, the South African Human Rights Commission and a former official of Michigan State University (MSU). A list of all the people interviewed is provided at Appendix A. Below is a list of open-ended questions used in this study:

1. Which legal instruments guided the acquisition of TRC records by the National Archives?
2. What types and quantities of TRC records did the National Archives acquire?
3. Is the National Archives able to manage all TRC records in all media?
4. Comment on the preservation of paper, oral, audio-visual and electronic records at the National Archives?
5. What kind of security measures is the National Archives providing to TRC records?
6. Are TRC records readily made available to researchers?
7. In your view what problems impede access to TRC records?
8. Is the staff of the National Archives adequately trained in records and archives management?
9. Are there any out-reach programs targeted towards the promotion of TRC records?
10. Has the government equipped the National Archives with the resources it requires to manage TRC records?

The advantages of interviews as research tools have been enumerated in various studies before. As already stated above this study interviewed twenty people carefully selected from key South African institutions directly involved in the management of its truth commission records. The details regarding the date and place of the interview is provided at Appendix A. All the interviews were recorded with the permission of the interviewees. They were then transcribed and coded to answer the research questions. First, interviews provided face-to-face interaction, a factor missing in document analysis. Second, most of the people interviewed were carefully selected based on their knowledge of the SA TRC and its records. For example, Verne Harris had worked for years as Deputy Archivist of South Africa. He devised the File Classification System of the TRC. Upon leaving the National Archives, Harris became the Director for SAHA, a position he used to test the effectiveness of the then newly created *Promotion of Access to Information Act* (PAIA) in accessing SA TRC records. Harris is now working for the Nelson Mandela Foundation. Sello Hatang is another National Archives ex-employee who was seconded on many occasions to work on SA TRC records. He was instrumental in the transfer of SA TRC records from Cape Town to Pretoria. Hatang now works for the South African Human Rights Commission (SAHRC). Gerrit Wagener and John Bacon were also chosen on the basis of their knowledge of SA TRC records. The two were heavily involved in the preparatory work that led to the transportation of records from Cape Town to Pretoria. Today Bacon is in charge of SA TRC records at the Department of Justice and Wagener is the SA TRC records archivist at the National Archives. Natalie Adams and Zahira Skomolo were recruited by the National Archives precisely because they had worked in the Documentation office of the SA TRC central office in Cape Town. Piers Pigou worked as an investigator in the Johannesburg office of the TRC. Ruendree Govinder was the SA TRC webmaster and its electronic records management

specialist. Upon completion of her assignment with the TRC Govinder went to the United States to work for Michigan State University.

A third advantage of interviews is that, unlike documents, they provided the researcher with the benefit of playing the interview tapes as frequently and as many times as needed to remove any pockets of ambiguities. The weaknesses of the interview method were countered through triangulation.

3.5 DATA COLLECTION

Data for this dissertation was collected using various instruments. Creswell got it right by stating that a case study involves the widest array of data collection as the researcher attempts to build an in-depth picture of the case.³¹³ Sets of both structured and unstructured questions were used in this research. Any form of observation has to have a goal in order to be effective. The focus of the researcher's observations was on key archival issues that addressed the nexus between the National Archives and the management of SA TRC records. A major advantage of the open-ended questions is the flexibility they offer to the respondent in addressing the research questions. Close-ended questions enabled the data to be analyzed statistically. A sample of the close-ended questionnaire used is attached as Appendix D of this dissertation. Appendix E is a graphical representation of the close-ended questionnaire on SPSS.

³¹³John Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Traditions* (Thousand Oaks: Sage Publications, 1998).

3.6 DATA ANALYSIS

In *Making Sense of Qualitative Data*,³¹⁴ Coffey and Atkinson inform us that the definition of data analysis in qualitative research is complex and contested.³¹⁵ For some researchers, data analysis refers primarily to the task of coding, indexing, sorting, and manipulating the data.³¹⁶ For others, data analysis is linked to data reduction, data display, and conclusion drawing and verification.³¹⁷ Yet for others analysis is the act of breaking, classifying, and interpreting patterns of data into a meaningful narrative.

In *Research in the Social Science*,³¹⁸ Collins and colleagues inform us that, unlike quantitative data, qualitative data analysis has no uniformly fixed guidelines.³¹⁹ For instance, in qualitative studies, data analysis can begin as early as data collection with researchers alternating among interviews, observation, and documents in a cyclical process of collecting data, analyzing the data, collecting additional data, analyzing those data, and so on throughout the research project.³²⁰ This is called interim analysis. However, this does not mean that the analysis and interpretation of qualitative data is disorderly and capricious. On the contrary, “the process of data analysis involves making sense out of text and image data. It involves preparing the data for analysis, conducting different analyses, moving deeper and deeper into understanding the data, representing the data, and making an interpretation of the larger meaning of the data.”³²¹

³¹⁴Amanda Coffey and Paul Atkinson, *Making Sense of Qualitative Data* (London: Sage Publications, 1996).

³¹⁵*Ibid.*, 6.

³¹⁶*Ibid.*

³¹⁷*Ibid.*, 7.

³¹⁸Collins et al, *Research in the Social Sciences*, 244.

³¹⁹*Ibid.*

³²⁰*Ibid.*, 425.

³²¹Creswell, *Research Design*, 190.

In *Research Design*,³²² Creswell tells us that the key characteristic of data analysis is that it is a cyclical and a reflective activity.³²³ In the words of Coffey and Atkinson, “the analytic process should be comprehensive and systematic but not rigid; data are segmented and divided into meaningful units but connection to the whole is maintained and data are organized according to a system derived from the data themselves.”³²⁴ Henning adds that data analysis requires analytical craftsmanship and the ability to capture understanding of the data in writing.³²⁵ She further argues that analysis is the heartbeat of research because here the analyst’s quality of thinking will be evident.³²⁶ In the case of historical data, analysis was made easier by the fact that no effort was spent in determining the authenticity and accuracy of data (internal and external criticism) because of the nature and circumstances which brought the records under the custody of the National Archives. So, in essence, the analysis of historical data became a straightforward exercise of identifying documents which critically addressed the research questions.

Henning once again reminds us that “when used as a method along with other methods, documents are collected as entities of data and then follow the same route through analysis and interpretation.”³²⁷ For open-ended interview data, the process of data analysis was a cyclical one. In qualitative studies data transcription and data coding are prerequisites to data analysis. According to Johnson and Christensen, transcription is the process of transforming audio recordings of interviews into typed text.³²⁸ The text is then called a transcript.

³²²Ibid., 190.

³²³Ibid., 10.

³²⁴Coffey et al, *Making Sense of Qualitative Data*, 10.

³²⁵Henning et al, *Finding Your Way in Qualitative Research*, 101.

³²⁶Ibid., 103.

³²⁷Ibid., 98.

³²⁸Johnson et al, *Educational Research*, 426.

Data coding, on the other hand, refers to the process of dividing data into units of meaning.³²⁹ In other words, data coding refers to the logical classification of data into units of meanings using symbols, descriptive words, or categories. Data coding, like data analysis, has no fixed formulae. At the moment there exists no commonly agreed way of coding qualitative data. In most cases the researcher has to rely on his or her intuition.³³⁰ In this research, data was coded using simple, familiar, descriptive, archival terminology. Appendix B and C provide master coding terms and a summary of the participants responses. In qualitative research generally and in this research specifically, data coding and analysis were concurrent activities. Collins and colleagues remind us that

in fact, in qualitative research the distinction between these processes is artificial. The researcher interprets data the moment he or she starts organizing it. The researcher refines his or her interpretation each time the researcher reworks the data. Interpretation involves reflecting on the possible meaning of data, exploring particular themes and hunches and ensuring that adequate data has been collected to support the researcher's interpretation.... Although the process of interpreting data begins during data collection, it intensifies once the researcher has collected his/her data.... In this respect qualitative researchers rely on data saturation. The researcher knows he or she has obtained data saturation when subsequent collection simply reconfirms the researcher's current knowledge.³³¹

To suggest that coding and analysis are a continuum or can occur concurrently does not mean that they are the same. Coffey and Atkinson are quick to state that although coding may be part of the process of analysis it should not be seen as a substitute for analysis in itself.³³² On the contrary, coding constitute the staff of analysis in the sense that it enables the researcher to identify meaningful data and sets the stage for interpreting and drawing conclusions.³³³

³²⁹Henning et al, *Finding Your Way in Qualitative Research*, 105.

³³⁰Collins et al, *Research in the Social Sciences*, 244-245.

³³¹Ibid., 246-247

³³²Coffey et al, *Making Sense of Qualitative Data*, 26.

³³³Ibid., 27.

Quantitative data was the easiest to analyze due to the use of SPSS. In the end all the qualitative data gathered from interviews, observation, and documents was weaved together with quantitative data from the close-ended questionnaire to produce this dissertation.

3.7 CONCLUSION

This study was conducted using a historical case study method. The historical case study method is unique in that it is the only research method with a concentrated focus on events that have already taken place. The study's research questions were answered through data collected from interviews, original SA TRC records, and through a open ended and close-ended questionnaire data. Secondary sources were also used. The University of Pittsburgh's Institutional Review Board was involved to ensure that the research questions were addressed through ethical and scientifically acceptable research methods. Open-ended interview data was analyzed using a master coding list and the close-ended questionnaire data was analyzed using SPSS to arrive at the findings of this dissertation.

4.0 A NARRATIVE OF THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION AND ITS RECORDS

4.1 INTRODUCTION

This chapter offers a contextual understanding of the records of the SA TRC through a historical narrative of the SA TRC itself. The records of the SA TRC were a product of the political and legislative factors that gave birth to the SA TRC. These factors primarily included, but were not limited to the post-apartheid political settlements between President Frederick De Klerk and Nelson Mandela, and the legal framework that operationalized those settlements, chiefly the Promotion of National Unity and Reconciliation Act of 1995.³³⁴

The Promotion of National Unity and Reconciliation Act of 1995 created the SA TRC, defined its mandate, and established three committees meant to achieve its objectives: the Human Rights Violations Committee (HRVC),³³⁵ the Amnesty Committee, and the Reparation and Rehabilitation Committee (RRC).³³⁶ Before one can give attention to the management of SA TRC records it is important to undertake a historical narrative of the TRC process itself.

³³⁴*Promotion of National Unity and Reconciliation Act, No. 34 of 1995.*

³³⁵HRVC for the Human Rights Violations Committee.

³³⁶RRC for the Reparation and Rehabilitation Committee.

4.2 THE HISTORICAL AND LEGISLATIVE BASIS OF THE SOUTH AFRICAN TRC

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*³³⁷ the historical and legislative basis of the SA TRC can be traced first to the current ruling ANC government before the first democratic elections in 1994.³³⁸ Professor Kader Asmal, a leading ANC political figure, mentioned the idea of a truth commission on his installation as professor of Human Rights Law at the University of Western Cape on May 25th 1992³³⁹ when he said, "we must take the past seriously as it holds the key to the future. The issues of structural violence, of unjust and inequitable economic social arrangements, of balanced development in the future cannot be properly dealt with unless there is a conscious understanding of the past."³⁴⁰ Soon afterwards, Asmal's call turned into a serious proposal of the ANC National Executive Committee. This was especially true after allegations by members of the ANC of serious human rights violations in some of their camps while in exile. As a result of these allegations the ANC set up its own internal commission of enquiry headed by Stuart, Skweyiya and Motsuenyane.³⁴¹ Reports coming from the internal ANC commission confirmed that gross human rights violations had taken place in its camps but cautioned that these violations had to be seen within the context of a pervasive culture of human rights violations that had taken place in South Africa over a much longer period of time.

³³⁷*Truth and Reconciliation Commission of South Africa Report, Vol 1* (Cape Town: CTP Book Printers, 1998), 49.

³³⁸*Ibid.*

³³⁹*Ibid.*

³⁴⁰*Ibid.*

³⁴¹*Ibid.*, 50.

The *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁴² revealed that the ANC Executive Committee proposed the appointment of a truth commission to better comprehend the larger human rights violation issues. The same report states that this proposal alone made the ANC the first liberation movement and a government-in-waiting to call for an independent investigation into allegations of violations of human rights committed both by its own members and by the previous regime.³⁴³ Many governments that initiated truth commission did so due to pressure either from the United Nations or from powerful international NGOs like the Amnesty International.

The elections that took place in 1994 in South Africa marked the triumph of the negotiation process between President Frederick De Klerk and Nelson Mandela. These negotiations began seriously in Groote Schuur in May 1990³⁴⁴ with the establishment of a working group made out of representatives from the ruling government and the liberation movements. One of the biggest issues that the working group had to define, among many others, was what constituted political offenses as distinguished from other offenses in South Africa during apartheid. The working group found that “while there was legislation allowing for the pardon or release of people who had already been sentenced or were awaiting trial...there was no generally accepted definition of political offences or political prisoners in international law.”³⁴⁵ The *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁴⁶ has stated that this void was resolved by relying on the principles of Extradition Law.³⁴⁷ In line with these principles the working group concluded that cases of political offences should be dealt with on

³⁴²Ibid.

³⁴³Ibid.

³⁴⁴This first meeting became known as the Groot Schuur Minute.

³⁴⁵*Truth and Reconciliation Commission of South Africa Report, Vol 1*, 50.

³⁴⁶Ibid.

³⁴⁷Ibid.

an individual basis, that certain offences, such as treason, were of a purely political nature, and that criminal acts of a serious nature, even murder, might be regarded as political offences.³⁴⁸ In further trying to define political offenses, the working group turned to the Norgaard principles.³⁴⁹

The Norgaard principles, used successfully in determining political offences in the neighboring southern African country of Namibia, took into account factors such as motive, context, the nature of the political objective, the legal and factual nature of the offence, the object of the offense, and whether the act was committed in the execution of an order and with the approval of the organization concerned.³⁵⁰ According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*,³⁵¹ the parameters of what constituted political offences were accepted by all negotiating parties. Further, it was agreed that some form of amnesty for politically motivated crimes would be in order.³⁵² The government of President De Klerk insisted on a blanket amnesty for past political offences while other parties demanded that amnesty should be linked to some form of a truth commission process. The stalemate between President De Klerk and his political opponents over what constituted political offenses continued for some time until a compromise was reached. This compromise included the idea of a truth commission and was recorded in what became known as the “Post amble” to the constitution.³⁵³

The “Post amble” to the post-apartheid constitution advocated for a truth commission that would provide amnesty to all politically motivated offences. After the 1994 general elections, the new government of national unity, made up of members chosen from all political parties,

³⁴⁸Ibid.

³⁴⁹The Norgaard Principles were named after Carl Aage Norgaard, former president of the European Commission on Human Rights. Norgaard developed criteria to help define politically motivated offenses in Namibia.

³⁵⁰*Truth and Reconciliation Commission of South Africa Report, Vol 1*, 51.

³⁵¹Ibid., 52.

³⁵²Ibid.

³⁵³Ibid.

approved the South African truth commission on July 26th 1995.³⁵⁴ The *Promotion of National Unity and Reconciliation Act* set out to

provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a truth and reconciliation commission, a committee on Human Rights Violations, a committee on Amnesty and a committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that commission and those committees; and to provide for matters connected therewith.³⁵⁵

The *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁵⁶ reveals that on December 15th 1995 President Mandela appointed Archbishop Desmond Tutu, Alex Boraine, Mary Burton, Advocate Christ de Jager, Reverend Bongani Finca, Sisi Khampepe, Richard Lyster, Mynand Malan, Khoza Mgojo, Hlengiwe Mkhize, Dumisa Ntsebeza, Wendy Orr, Advocate Denzil Potgieter, Mapule Ramashala, Fazel Randera, Yasmin Sooka, and Glenda Wildschut as members of the commission.³⁵⁷

The *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁵⁸ again tells us that a day after these appointments the commission held its first meeting at Bishops court, the

³⁵⁴*Promotion of National Unity and Reconciliation Act, No. 34 of 1995.*

³⁵⁵*Ibid.*

³⁵⁶*Truth and Reconciliation Commission of South Africa Report, Vol 1, 44.*

³⁵⁷*Ibid.*

³⁵⁸*Ibid.*

residence of the Archbishop of Cape Town.³⁵⁹ At this meeting, the city of Cape Town was chosen as the headquarters of the commission and the commissioners were assigned to three committees.

Archbishop Desmond Tutu was chosen as the chairperson of the Human Rights Violations Committee (HRVC).³⁶⁰ Wynand Malan, Yasmin Sooka, Alex Boraine, Mary Burton, the Rev Bongani Finca, Richard Lyster, and Fazel Randera were made vice-chairpersons of the HRVC.³⁶¹ Advocate Chris de Jager, Sisi Khampepe, and Advocate Denzil Potgeieter were assigned to the Amnesty Committee. The Reparation and Rehabilitation Committee (RRC) was given to Hlengiwe Mkhize, Wendy Orr, the Reverend Khoza Mgojo, Mapule Ramashala, and Glenda Wildschut.³⁶² Dumisa Ntsebeza, the eminent human rights lawyer, was appointed as head of the Investigation Unit.³⁶³

4.3 THE HUMAN RIGHTS VIOLATION COMMITTEE HEARINGS

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁶⁴ the HRVC³⁶⁵ held its first meeting at the Johannesburg International Airport³⁶⁶ on January 8,th 1996. A work plan for the committee was tabled and it was agreed that the HRVC would function in a

³⁵⁹Ibid.

³⁶⁰Ibid.

³⁶¹Ibid.

³⁶²Ibid.

³⁶³It was subsequently agreed that Dumisa Ntsebeza should also serve on the Human Rights Violations Committee.

³⁶⁴*Truth and Reconciliation Commission of South Africa Report, Vol 1*, 44.

³⁶⁵HRVC for Human Rights Violations Committee.

³⁶⁶The Johannesburg International Airport has now been renamed Oliver Tambo International Airport. Oliver Tambo was the first President of the ANC in exile.

decentralized manner. As a result four regional offices of the HRVC were opened in Johannesburg, Cape Town, East London, and Durban.³⁶⁷ At its second meeting in January 1996 the commission agreed that the Johannesburg office would be located in the Sanlam Building at the corner of Jeppe and Von Wielligh streets while the Cape Town office would be located at 106 Adderley Street.³⁶⁸ At its third meeting in February 1996 the commission agreed that the East London regional office would be located in the NBS Building, 15 Terminus Street and the Durban office was to be located at Metlife House, 391 Smith Street, Durban.³⁶⁹

The duties and functions of each of these offices were clearly spelled out in the *Promotion of National Unity and Reconciliation Act*. The act, among other things, mandated the committee to inquire into systematic patterns of abuse, to attempt to identify motives and perspectives, to establish the identity of individual and institutional perpetrators, to find whether violations were the result of deliberate planning on the part of the state or liberation movements, and to designate accountability, political or otherwise, for gross human rights violations.³⁷⁰ In order to satisfactorily fulfill its mandate of investigating patterns of abuse the HRVC engaged in public hearings. There were basically five types of hearings that the HRVC committee held: victim hearings, event hearings, special hearings, institutional hearings, and political hearings.³⁷¹

³⁶⁷*Truth and Reconciliation Commission of South Africa Report, Vol 1, 277.*

³⁶⁸*Ibid.*, 46.

³⁶⁹*Ibid.*, 46-47.

³⁷⁰*Ibid.*, 277.

³⁷¹*Ibid.*, 145-149.

4.3.1 The Victim Public Hearings

The *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁷² says that the victim public hearings “constituted the core of the commission’s work.”³⁷³ The victim hearings allowed victims who had made public statements to the commission the opportunity to testify in public.³⁷⁴ The *Truth and Reconciliation Commission of South Africa Report, Vol 1*³⁷⁵ further states that the first public hearing took place on April 15th 1996 in East London.³⁷⁶ Altogether 21,000 verified victims appeared in public before the commission with nearly 38,000 allegations of gross human rights violations, of which nearly 10,000 were killings.³⁷⁷ The commission allowed victims to testify in the language of their choice. To make this possible the commission hired the services of a translation company which provided simultaneous translation services.³⁷⁸

4.3.2 Event Hearings

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*,³⁷⁹ the event hearings focused not on the individual experiences of the victims but on specific events in which gross violations of human rights occurred.³⁸⁰ The event hearings explored the context in which a specific event occurred and typically involved testimony not only from victims but also from alleged perpetrators and experts with specific knowledge about the event or issues related

³⁷²Ibid., 147.

³⁷³Ibid.

³⁷⁴Ibid.

³⁷⁵Ibid., 283.

³⁷⁶Ibid.

³⁷⁷Ibid., 170.

³⁷⁸Ibid., 147.

³⁷⁹Ibid.

³⁸⁰Ibid.

to it.³⁸¹ In the words of the commission, event hearings “were selected as window cases aimed to provide detailed insights into particular cases that were representative of broader patterns of abuse in South Africa.”³⁸² In other words, event hearings provided affected communities with the opportunity to speak about their collective experiences of abuse, thus offering a more global perspective of human rights abuses. Some of the landmark event hearings heard by the commission included the 1976 Soweto Students Uprisings, the 1986 Alexandra Six Day War, the killing of White Farmers in the Transvaal Province, the 1986 killing of the “Gugulethu Seven,” and the 1990 Bisho massacre.³⁸³

4.3.3 Special Hearings

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*,³⁸⁴ the special hearings identified patterns of abuse experienced by vulnerable individuals or groups who had suffered gross human rights violations.³⁸⁵ The hearings were held on children and youth, women, and compulsory national service/conscription. The *Truth and Reconciliation of South Africa Report, Vol 4*³⁸⁶ states that the special hearings on children provided an opportunity to focus on the impact of apartheid on children and youth.³⁸⁷ The report states that, “over the years, children and young people were victims of and witnesses to many of the appalling gross human rights violations in South Africa’s history. The effects of exposure to ongoing political violence may have had serious effects on the development of many of the children. It was

³⁸¹Ibid.

³⁸²Ibid.

³⁸³Ibid., 147-48.

³⁸⁴Ibid., 148.

³⁸⁵Ibid.

³⁸⁶*Truth and Reconciliation Commission of South Africa Report, Vol 4*, 250.

³⁸⁷Ibid.

therefore considered imperative that the trauma inflicted on the children and young people be heard and shared within the framework of the healing ethos of the commission.”³⁸⁸

The first special hearing on children and youth was held in Johannesburg on June 12th 1997.³⁸⁹ An “Overview of the Experience of Children and Youth”³⁹⁰ under apartheid stated that most of South Africa’s children grew up in the context of conflict and in a world made up of teargas, bullets, whippings, detention and death on the streets. It was an experience of military operations and night raids, of roadblocks and body searches. It was a world where parents and friends got carried away in the night to be interrogated. It was a world where people simply disappeared, where parents were assassinated and homes petrol bombed.³⁹¹

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 4*,³⁹² the hearings on women in the SA TRC were prompted by the March 1996 workshop entitled “Gender and the Truth and Reconciliation Commission” organized by the Center for Applied Legal Studies (CAL)³⁹³ at the University of Witwatersrand in Johannesburg.³⁹⁴ Participants at this workshop included psychologists, members of the Gauteng legislature, lawyers, people from NGOs, and representatives from each of the four sub-regions of the SA TRC.³⁹⁵ Relying on direct materials from in-depth interviews with women leaders like Winnie Mandela, the workshop discussed ways in which the commission might be missing some of the truth through a lack of sensitivity to gender issues.³⁹⁶ As a result of this conference the commission agreed to the

³⁸⁸Ibid.

³⁸⁹*Truth and Reconciliation Commission of South Africa Report, Vol 4*, 226.

³⁹⁰Ibid., 253.

³⁹¹Ibid.

³⁹²Ibid., 284.

³⁹³CALS for the Center for Applied Legal Studies

³⁹⁴*Truth and Reconciliation Commission of South Africa Report, Vol 4*, 284.

³⁹⁵Ibid.

³⁹⁶Ibid., 284.

proposal for a special hearing on women.³⁹⁷ The women's hearings focused on a range of issues stretching from relationships to sexual, physical, and psychological abuses in the cities of Cape Town, Durban, and Johannesburg.³⁹⁸ Most of the women who spoke at the special hearings were political leaders and activists in their own right.³⁹⁹

On the issue of relationships, women narrated how their relationships were often used against them to extract information about their activist husbands. The *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴⁰⁰ detailed how women's involvement in political activities dislocated their families and left them unable to handle and care for their children.⁴⁰¹ Further, incarcerated women recounted how they were raped and sexually abused by prison warders.⁴⁰² For instance, "women were degraded when menstruating. Most commonly, women would be forced to stand, with or without pads, with blood running down their legs while being tortured. Ms Phyllis Naidoo was forced to use newspapers instead of pads...Ms Mohamed also reported that another woman had rats pushed into her vagina."⁴⁰³

Compulsory Military Service or conscription was a feature of the apartheid military infrastructure. According the *Truth and Reconciliation Commission of South Africa Report, Vol 4*,⁴⁰⁴ all White males were forced to undergo military training. The commission heard that in terms of the policy all White men were to register for military service at sixteen while still at school.⁴⁰⁵ White kids who did not make a career in the permanent force were required either

³⁹⁷Ibid., 331.

³⁹⁸Ibid.

³⁹⁹Ibid.

⁴⁰⁰Ibid., 312.

⁴⁰¹Ibid.

⁴⁰²Ibid., 300.

⁴⁰³Ibid.

⁴⁰⁴Ibid., 225.

⁴⁰⁵Ibid.

before or after tertiary education to render two years of national service in one of the five arms of the Defense Force.⁴⁰⁶ After this they were placed in part-time citizen force for twelve years during which time they were to serve 720 days in designated camps.⁴⁰⁷ Then they were placed in active citizen reserve force for five years and required to serve twelve days a year in a local commando unit until the age of fifty-five. Finally, the *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴⁰⁸ recounts how White males were permanently placed on a national reserve register until they were sixty-five.⁴⁰⁹ Not all White youths agreed to be a part of the conscript and many of them paid a heavy price for their conscience. Therefore, in focusing the commission's work on their experiences, the Reverend Desmond Tutu stated that the purpose of the special hearings on compulsory military service was

to provide an opportunity for those who suffered, and continue to suffer from their experiences as conscripts, to share their pain and reflect on their experiences; explore the range of experiences of those affected by conscription. Included amongst these were those who opposed conscription and those who believed they were fulfilling their duty, those who fought on the border, servicemen who participated in township policing, those who were part of the citizen's force and those who served as conscripts in the South African Police (SAP). It included those who went into exile to avoid conscription, those who opposed it at home, and the experiences of families who suffered as a result of the traumatization of their husbands, sons or friends.⁴¹⁰

⁴⁰⁶Ibid.

⁴⁰⁷Ibid.

⁴⁰⁸Ibid.

⁴⁰⁹Ibid.

⁴¹⁰Ibid., 223.

4.3.4 Institutional Hearings

The *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴¹¹ states that institutional hearings were held to find out how some influential sectors in South Africa contributed to gross human rights violations under apartheid.⁴¹² Some of the sectors that appeared before the commission included the business and labor sector, the faith community, the legal community, the health sector, the media sector, and the prisons department.⁴¹³

The *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴¹⁴ has also highlighted the fact that the business and labor sector hearings underpinned the role played by business in the violation of human rights, the relationship between the state and business, and whether or not business benefited from apartheid.⁴¹⁵ During the hearings, the level of business involvement in apartheid was divided into three categories: first-order involvement, second-order involvement, and third-order involvement.⁴¹⁶ The first-order involvement was used to distinguish businesses that were directly involved with the state in the formulation of oppressive policies or practices that resulted in low labor costs.⁴¹⁷ Second-order involvement hinged to some extent on businesses that provided their services to the apartheid state knowing that their products would be used for unacceptable purposes.⁴¹⁸ Third-order involvement referred to businesses that benefited indirectly from apartheid by operating and taking advantage of a

⁴¹¹Ibid., 2.

⁴¹²Ibid.

⁴¹³Ibid., 1-199.

⁴¹⁴Ibid., 18.

⁴¹⁵Ibid.

⁴¹⁶Ibid., 24.

⁴¹⁷Ibid.

⁴¹⁸Ibid., 25.

racially structured social setup which deliberately depressed the earnings of Black South Africans.⁴¹⁹

Business organizations such as the steel and engineering companies, the Anglo American Corporation, the Textile Federation, the Council of South African Banks, and labor organizations like the Congress of South African Trade Union (COSATU)⁴²⁰ made submissions to the commission. The *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴²¹ further says that overall the hearings on businesses revealed that “certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies. Other businesses benefited from cooperating with the security structures of the former state. Most businesses benefited from operating in a racially structured context.”⁴²²

The hearings on faith communities focused on how all faith communities (e.g., Christian churches, the Bahai Faith) acted either as agents or victims of an oppressive state.⁴²³ The submissions heard how many faith communities, contrary to their deepest principles, “mirrored apartheid society, giving the lie to their profession of a loyalty that transcended social divisions.”⁴²⁴ An extreme example was the Dutch Reformed Church. According to submissions heard before the commission, the Dutch Reformed Church went far beyond simple approval and legitimization to active promotion of apartheid.⁴²⁵ While the Dutch Reformed Church openly admitted to giving official sanction to apartheid other faith communities admitted to actions and

⁴¹⁹Ibid., 26.

⁴²⁰Ibid., 19-22.

⁴²¹Ibid., 58.

⁴²²Ibid.

⁴²³Ibid., 65.

⁴²⁴Ibid.

⁴²⁵Ibid., 66.

practices that amounted to acquiescence with the system.⁴²⁶ Churches that did not cooperate with the state related how they suffered under apartheid, their activities disrupted, their leaders persecuted, and their land taken away.⁴²⁷ The *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴²⁸ reported that the most famous attack on churches was the bombing of the Khotso House in 1988.⁴²⁹ The Khotso House was the headquarters of the South African Council of Churches (SACC).⁴³⁰ On the whole, though, the hearings heard that challenges to the consciences of Whites by faith communities were rare.⁴³¹ Therefore, faith communities acknowledged that either through acts of commission, legitimization or of omission, they often provided de facto support for apartheid.⁴³²

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 4*⁴³³ the institutional hearings on the legal community were instituted because of the belief that the courts and the legal professions of apartheid connived in the legislative and executive pursuits of injustice.⁴³⁴ The hearing on the legal profession heard how members of the bench actively contributed to the entrenchment and defense of apartheid through the courts.⁴³⁵ The Pretoria Bar, for example, refused to admit Black members and only passed an apology for its racism in October 1997,⁴³⁶ three years after majority rule in South Africa. What is interesting about the legal profession, though, is that, despite an invitation to all its branches to appear publicly before

⁴²⁶Ibid., 66.

⁴²⁷Ibid., 59.

⁴²⁸Ibid., 66.

⁴²⁹Ibid., 75.

⁴³⁰SACC for the South African Council of Churches.

⁴³¹*Truth and Reconciliation Commission of South Africa Report, Vol 4*, 65.

⁴³²Ibid.

⁴³³Ibid., 101.

⁴³⁴Ibid.

⁴³⁵Ibid.

⁴³⁶Ibid.

the commission the judicial officers declined and only responded in the form of a few written submissions.⁴³⁷ However, this failure to cooperate did not stop the commission from concluding that the courts and the organized legal profession unwittingly connived in the legislative and executive pursuit of apartheid injustices.⁴³⁸

The institutional hearing on the health profession was initiated to establish the extent to which apartheid forced health workers to abandon their ethics in favor of a distasteful system.⁴³⁹ According to the *Truth and Reconciliation Commission of South Africa Report, Vol 4*,⁴⁴⁰ the hearings on health established that many doctors had a difficult time upholding medical standards and human rights with obligations owed to the state and the security forces.⁴⁴¹ Doctors were under a statutory obligation to provide medical care to prisoners and detainees, to record truthfully and without falsification information on their mental and physical conditions, and to ensure that inmates were provided with basic sanitation, food and general health care.⁴⁴² The same report says that, on the other hand, there was great pressure on them to falsify and support the police and prison authorities for national security reasons.⁴⁴³ Therefore, even though most health workers were not directly involved in committing gross human rights violations, their most common offence was failure to carry out their duties within internationally accepted guidelines of medical ethics and human rights.⁴⁴⁴

⁴³⁷ Ibid., 93.

⁴³⁸ Ibid., 101.

⁴³⁹ Ibid., 111.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid., 113.

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 4*,⁴⁴⁵ the institutional hearing on the media took place on September 15-17th 1997 at the offices of the South African Broadcasting Corporation (SABC).⁴⁴⁶ The main purpose of the hearing was to find out the extent to which the media could be said to have been directly responsible for gross human rights violations.⁴⁴⁷ The central point made in these submissions was that media outlets that directly supported government policy had provided a cloud of cover under which gross human rights violations were possible.⁴⁴⁸ Spotlight was placed on radio, television, and print media. A detailed account of the media submissions is covered under “Institutional Hearings: The Media,” in the *Truth and Reconciliation Commission of South Africa Report, Vol 4*.⁴⁴⁹

The Prisons department also made submissions. The last institutional hearing on prisons in South Africa was heard at the Johannesburg Fort prison.⁴⁵⁰ According to *Truth and Reconciliation Commission of South Africa Report, Vol 4*,⁴⁵¹ the Johannesburg Fort prison was deliberately chosen because of its symbolic importance as a site of resistance against apartheid.⁴⁵² This is a prison whose list of inmates included Mahatma Gandhi and President Nelson Mandela.⁴⁵³ The purpose of the prison hearings was to investigate evidence of gross human rights violations suffered by prisoners either in detention or serving long prison sentences.⁴⁵⁴ The HRVC heard that 80,000 South Africans were detained from 1960-1990 of

⁴⁴⁵Ibid., 165.

⁴⁴⁶SABC for the South African Broadcasting Corporation.

⁴⁴⁷*Truth and Reconciliation Commission of South Africa Report, Vol 4*, 165.

⁴⁴⁸Ibid.

⁴⁴⁹Ibid., 165-193.

⁴⁵⁰Ibid., 199.

⁴⁵¹Ibid.

⁴⁵²Ibid.

⁴⁵³Ibid.

⁴⁵⁴Ibid.

which up to 80% were eventually released without charges.⁴⁵⁵ On the whole, the commission noted that prisons played a significant role as prime sites of detention, intimidation, and death.⁴⁵⁶

4.3.5 Political Hearings

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 2*,⁴⁵⁷ the political hearings of the commission focused primarily on four broad issues: the state inside South Africa, the state outside South Africa, the liberation movements, and the Homelands or what became known as independent Black states inside South Africa.⁴⁵⁸ The hearings on the activities of the state inside and outside South Africa were covered by the first paragraph of the *Promotion of National Unity and Reconciliation Act*⁴⁵⁹ of 1995 which provided “for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from March 1st 1960 to the cut off date contemplated in the constitution, within or outside the Republic emanating from the conflicts of the past.”⁴⁶⁰

First, the *Truth and Reconciliation Commission of South Africa Report, Vol 2*⁴⁶¹ revealed that inside South Africa, the South African state used both overt and clandestine methods to neutralize armed resistance from its opponents.⁴⁶² Overt methods included bannings and

⁴⁵⁵Ibid., 201.

⁴⁵⁶Ibid.

⁴⁵⁷*Truth and Reconciliation Commission of South Africa Report, Vol 2*, 1-400.

⁴⁵⁸Ibid.

⁴⁵⁹The *Promotion of National Unity and Reconciliation Act of 1995*, or PAIA as it is popularly called in South Africa, started the South African TRC.

⁴⁶⁰Ibid.

⁴⁶¹*Truth and Reconciliation Commission of South Africa Report, Vol 2*, 165.

⁴⁶²Ibid.

banishments, detentions without trial, judicial executions, and public order policing.⁴⁶³ More clandestine and covert forms of control included torture, extra judicial killings, and support for surrogate forces.⁴⁶⁴

Second, the commission heard that, outside South Africa, the South African security forces or their agents in the nine regional states of Botswana, Lesotho, Swaziland, Angola, Mozambique, Zimbabwe, Zambia, Namibia, Tanzania, and the Seychelles Republic committed human rights violations against their perceived enemies under a policy of hot pursuit.⁴⁶⁵ In addition, violations were committed in the United Kingdom, France, Belgium, the Netherlands, and Scandinavia against imagined or real enemies of apartheid.⁴⁶⁶

Third, the South African pariah state was not the only one involved in gross human rights abuses. The irony of the whole thing was that those claiming to fight the apartheid government were also equally involved in egregious violations. According to the *Truth and Reconciliation Commission of South Africa Report, Vol 2*,⁴⁶⁷ the liberation movements' hearings analyzed the excesses committed by the PAC,⁴⁶⁸ the ANC, and the South African Communist Party (SACP),⁴⁶⁹ the three most prominent anti apartheid movements of the time. The *Truth and Reconciliation Commission of South Africa Report, Vol 2*⁴⁷⁰ says that, in the process of these hearings, the commission drew a distinction between a just war and just means and arrived at the finding that even though the war against apartheid was just, some of the means used by the

⁴⁶³Ibid.

⁴⁶⁴Ibid.

⁴⁶⁵Ibid., 42.

⁴⁶⁶Ibid.

⁴⁶⁷Ibid., 325.

⁴⁶⁸PAC for the Pan Africanist Congress.

⁴⁶⁹SACP for the South African Communist Party.

⁴⁷⁰*Truth and Reconciliation Commission of South Africa Report, Vol 2, 325.*

liberation movements to overthrow it defied civilized conduct and thereby breached accepted norms of international law.⁴⁷¹

Fourth, the *Truth and Reconciliation Commission of South Africa Report, Vol 2*⁴⁷² states that the homeland political submissions revealed the truth about the gross human rights violations committed in the homelands in the period 1960-1990.⁴⁷³ The so-called homelands were “independent Black states” created by the South African White regime to quell calls for universal suffrage.⁴⁷⁴ Altogether, the South African state created twelve homelands: Kwazulu, Kwandebele, Bophutatswana, Ciskei, Transkei, Lebowa, Venda, Kangwane, Gazankulu, and Qwaqwa.⁴⁷⁵ Even though homelands functioned like full independent states, the international community never recognized them. Furthermore, homelands leaders became violent targets of anti-apartheid activists who considered them traitors. This resulted in intra-tribal bloodshed which the commission felt needed to be investigated in detail.⁴⁷⁶

4.3.6 Special Investigations/Closed-Door Hearings

The Promotion of National Unity and Reconciliation Act⁴⁷⁷ also provided room for closed-door hearings, or in-camera hearings as they were popularly called. The act stated that “any article produced or information submitted at such investigation shall not be made public until the

⁴⁷¹Ibid.

⁴⁷²Ibid., 400.

⁴⁷³Ibid.

⁴⁷⁴Homelands were initially called African reserves. In the 1980s Homelands became known as Black States.

⁴⁷⁵*Truth and Reconciliation Commission of South Africa Report, Vol 2*, 425.

⁴⁷⁶Ibid., 402.

⁴⁷⁷Ibid., 494.

commission determines otherwise.”⁴⁷⁸ Piers Pigou, former SA TRC investigator and now SAHA’s Executive Director, has stated in an interview with this researcher that “Section 29 of the TRC act was a provision of the act that allowed the TRC to subpoena people and to hold hearings in-camera.”⁴⁷⁹ Natalie Skomolo, also a former SA TRC records manager, echoed similar statements when she stated in an interview with this researcher that the TRC special investigation hearings “protected perpetrators who felt that whatever they were going to reveal was not good for the public.”⁴⁸⁰ The records of in-camera hearings were also transferred to the National Archives for preservation. The closed-door hearings records offer a good example of TRC records that have access restrictions.

According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*,⁴⁸¹ a witness protection program was instituted on May 1st 1996.⁴⁸² The purpose of the witness protection program was to provide protection to “any person giving evidence before, during and after any commission hearing.”⁴⁸³ Special investigations were conducted on apartheid’s Chemical and Biological Weapons Program, on the Mandela United Football Club, on the exhumations of apartheid victims, on the Helderberg Crash, on the death of President Samora Machel of Mozambique, on secret state funding program, and on the political violence that characterized the era of negotiations and transition from 1990-1994.⁴⁸⁴ The *Truth and Reconciliation Commission of South Africa Report, Vol 2*⁴⁸⁵ has revealed that the special

⁴⁷⁸Section 29 of the *Promotion of National Unity and Reconciliation Act, No. 34, 1995*.

⁴⁷⁹Piers Pigou, interview by author, Johannesburg, March 9th 2007.

⁴⁸⁰Natalie Skomolo, interview by author, Johannesburg, March 14th 2007.

⁴⁸¹*Truth and Reconciliation Commission of South Africa Report, Vol 1*, 387.

⁴⁸²Ibid.

⁴⁸³Ibid.

⁴⁸⁴*Truth and Reconciliation Commission of South Africa Report, Vol 2*, 488-577.

⁴⁸⁵Ibid., 510.

investigations into South Africa's Chemical and Biological Warfare (CBW)⁴⁸⁶ program, or Project Coast, were held in Cape Town in June and July 1998.⁴⁸⁷ According to the report, the hearings focused on how science was subverted by "white coasted scientists, professors, doctors, dentists, veterinarians, laboratories and respected universities"⁴⁸⁸ to cause diseases and to undermine the health of Black communities.⁴⁸⁹

The commission report into the special investigation of the Mandela United Football Club focused on the controversial role of Winnie Mandela, the former wife of President Nelson Mandela, in the murder of Stompie Seipei in December 1988.⁴⁹⁰ The investigations into the secret burial of activists and exhumations focused on uncovering the whereabouts of those who disappeared, their secret burials, and the identity of perpetrators involved in their killing during the period of the commission's mandate.⁴⁹¹

The *Truth and Reconciliation Commission of South Africa Report, Vol 2*⁴⁹² explained that secret state funding investigations looked closely at the use of overt funding to promote policies of the former state and to fund operations directed against the opponents of apartheid.⁴⁹³ The hearings into the political violence from 1990-1994 explored the nature and pattern of political violence, starting from the public pronouncement of major political reforms by President Frederick De Klerk on February 1990 to the 1994 elections.⁴⁹⁴

⁴⁸⁶CBW for Chemical and Biological Warfare program.

⁴⁸⁷Op Cit, *Truth and Reconciliation Commission of South Africa Report, Vol 2*, 510.

⁴⁸⁸Ibid.

⁴⁸⁹Ibid.

⁴⁹⁰Ibid., 556.

⁴⁹¹Ibid., 543.

⁴⁹²Ibid., 524.

⁴⁹³Ibid.

⁴⁹⁴Ibid., 583.

4.3.7 Summary

The work of the HRVC basically centered around six hearings: individual hearings, event hearings, political hearings, special hearings, institutional hearings, and special investigation hearings. All the records of the HRVC, in their various forms, were transferred to the National Archives in Pretoria for preservation and access. The *Truth and Reconciliation Commission of South Africa Report, Vol 6*,⁴⁹⁵ says “all the information collected by the HRVC was captured electronically on the commission’s database. This includes testimony from victims’ statements, testimony taken at hearings, investigation material, transcripts of section 29 hearings, submissions made by institutions and individuals, and research and collaborative material. Original documents and other hard copies are held in the commission’s archive, which is currently in the custody of the National Archives.”⁴⁹⁶

4.4 THE AMNESTY COMMITTEE HEARINGS

Amnesty hearings were a product of the amnesty process provided for by the new constitution of South Africa. The Amnesty hearings kicked off after the HRVC had determined perpetrators of human rights. Amnesty targeted only specific people who came out badly under the HRVC hearings. According to the “Codicil of the South African TRC Final Reports”⁴⁹⁷ the legal basis of the amnesty process is to be found in the legal process that emerged from the political negotiations between the nationalist government of President Frederick De Klerk and the

⁴⁹⁵*Truth and Reconciliation Commission of South Africa Report, Vol 6, 578.*

⁴⁹⁶*Ibid.*, 578.

⁴⁹⁷*Ibid.*, 3.

liberation movements.⁴⁹⁸ The original provisions, contained in the interim Constitution of the Republic of South Africa Act No. 200 of 1993, stated that "this constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice....The adoption of this constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past....In order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of the conflict of the past."⁴⁹⁹

The Amnesty Department was based at the SA TRC headquarters in Cape Town.⁵⁰⁰ The primary functions of the Amnesty Committee, as articulated in the *Truth and Reconciliation Commission of South Africa Report, Vol 1*,⁵⁰¹ was to consider applications for amnesty associated with political violence committed from March 1st 1960 to May 10th 1994.⁵⁰² The deadline for amnesty was extended up to the September 30th 1997.⁵⁰³ A total of 7,127 amnesty applications were received before this deadline resulting in 7,127 applicants' files now in the custody of the National Archives.⁵⁰⁴

4.4.1 Summary

The Amnesty hearings concerned themselves with perpetrators who appeared before the committee to apply for political pardon. The *Truth and Reconciliation Commission of South*

⁴⁹⁸Ibid.

⁴⁹⁹Ibid.

⁵⁰⁰Ibid., 268.

⁵⁰¹*Truth and Reconciliation Commission of South Africa Report, Vol 1*, 267.

⁵⁰²Ibid.

⁵⁰³Ibid.

⁵⁰⁴Ibid., 267-269.

*Africa Report, Vol 6*⁵⁰⁵ categorically stated that the decisions of the committee, the names of those who applied for amnesty, and the bio-data of all eligible victims were all recorded on the electronic database.⁵⁰⁶ This dissertation is dedicated to examining how the National Archives has preserved and administered access to all the records of its truth commission including this database.

4.5 THE REPARATION AND REHABILITATION COMMITTEE

According to the “Administrative Reports of the Commission’s Statutory Committee on Reparation and Rehabilitation,”⁵⁰⁷ the chief purpose of the Reparation and Rehabilitation Committee (RRC)⁵⁰⁸ was to make recommendations to the president on appropriate measures for rehabilitation of victims and on measures to be taken to restore their human and civil dignity.⁵⁰⁹ In addition, the RRC’s job was to gather evidence relating to the identity, fate, and whereabouts of victims.⁵¹⁰ The issue of which victim to compensate has been a topical issue in South Africa emanating from the information provided by the HRVC⁵¹¹ to the President’s Fund stationed at the Department of Justice (DOJ).⁵¹² The *Truth and Reconciliation Commission of South Africa Report, Vol 6*⁵¹³ has described the relationship between the RRC and the President’s Fund as an

⁵⁰⁵*Truth and Reconciliation Commission of South Africa Report, Vol 6, 748.*

⁵⁰⁶*Ibid.*

⁵⁰⁷*Ibid.*, 285.

⁵⁰⁸RCC for Reparation and Rehabilitation Committee.

⁵⁰⁹*Truth and Reconciliation Commission of South Africa Report, Vol 1, 285.*

⁵¹⁰*Ibid.*

⁵¹¹*Ibid.*

⁵¹²*Truth and Reconciliation Commission of South Africa Report, Vol 6, 169.*

⁵¹³*Ibid.*

interdependent one.⁵¹⁴ The RRC was responsible for making recommendations for compensation and the President Fund was responsible for implementing the recommendations.⁵¹⁵

4.5.1 Summary

The Reparation and Rehabilitation Committee used the records and findings of the Human Rights Violations Committee and those of the Amnesty Committee to compensate victims of apartheid. The *Truth and Reconciliation Commission of South Africa Report, Vol 6*⁵¹⁶ has revealed that the TRC database “linked the findings of the Human Rights Violation Committee with the decisions of the Amnesty Committee to provide lists of victims to the Reparation and Rehabilitation Committee.”⁵¹⁷

4.6 THE ROLE OF THE INVESTIGATIVE AND RESEARCH UNITS OF THE SOUTH AFRICAN TRC IN ACHIEVING ITS MANDATE

The Investigative Unit of the SA TRC began operation in March 1996 under the leadership of Dumisa Ntsebeza.⁵¹⁸ According to the *Truth and Reconciliation Commission of South Africa Report, Vol 1*,⁵¹⁹ the Investigative Unit was set up to provide an investigative service to the commissions’ committees (principally the HRVC and the Amnesty Committees) and to initiate

⁵¹⁴Ibid.

⁵¹⁵Ibid.

⁵¹⁶Ibid., 748.

⁵¹⁷Ibid.

⁵¹⁸*Truth and Reconciliation Commission of South Africa Report, Vol 1*, 331.

⁵¹⁹Ibid., 326-344.

independent investigations as determined by the commission.⁵²⁰ The *Truth and Reconciliation Commission of South Africa Report, Vol 1*⁵²¹ says that the Investigative Unit was structured into four SA TRC regional offices led by a regional head.⁵²² Further, only people with investigative skills chosen from a broad spectrum of the South African society were selected to be investigators, including experienced investigators provided by the European governments of the Netherlands, Norway, Denmark, Sweden, Ireland, Germany, and Switzerland.⁵²³

Working very closely with the Investigative Unit was the Research Department. All six of the SA TRC final reports, used extensively in this dissertation, were produced by the research department. The primary functions of the research department, as outlined by the *Truth and Reconciliation Commission of South Africa Report, Vol 1*⁵²⁴ were:

- (i) to assess and add value to information before the commission;⁵²⁵
- (ii) provide an understanding of the historical context within which alleged gross human rights violations referred to the commission occurred;⁵²⁶
- (iii) facilitate the writing of the final TRC report submitted to the President in October 1998.⁵²⁷

The credibility of any research work is always assessed by the weight of its data as well as the integrity of its data-gathering methods. The SA TRC research department used and analyzed data gathered from all the hearings captured in the commission's database.⁵²⁸ The *Truth and*

⁵²⁰Ibid., 332.

⁵²¹Ibid.

⁵²²Ibid.

⁵²³Ibid., 328.

⁵²⁴Ibid., 374.

⁵²⁵Ibid.

⁵²⁶Ibid.

⁵²⁷Ibid.

⁵²⁸Ibid., 377-381.

*Reconciliation Commission of South Africa Report, Vol 1*⁵²⁹ says these data included statements from perpetrators, submissions made by political parties, NGOs, the military, churches, the health sector, amnesty applicants, transcripts of hearings, including in-camera hearings and materials retrieved from the National Archives, the National Intelligence Agency, the South African Police, cabinet minutes, minutes of State Security Council, and the South African National Defense Force archives.⁵³⁰ The final product of the SA TRC research department, as already stated before, were the six volume final TRC reports built from "reports of individual deponents, as well as submissions by political parties, institutes and professional bodies. Reliance has been placed on the transcripts of the hearings of the commission- both human rights violations hearings and amnesty hearings- and the transcripts of in-camera hearings. Documentation from commission inquiries, such as police dockets, court transcripts, inquest findings, post mortem reports and so on has been used."⁵³¹

4.7 A NARRATIVE OF THE ARCHIVE OF THE SOUTH AFRICAN TRC

The question of what constitutes the SA TRC archive is a complex question which has been discussed at length in the first global conference dedicated to "archiving truth commission records" by Yale University from February 22-24, 2006.⁵³² Fullard has conceded that, in the case

⁵²⁹Ibid., 377-378.

⁵³⁰Ibid., 377-380.

⁵³¹*Truth and Reconciliation Commission of South Africa Report, Vol 3, 1.*

⁵³²*Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference.* Proceedings of a Conference on "Archiving Truth Commission Records," (Yale University: February 22-24, 2006).

of South Africa, confusion arose concerning the borders of the SA TRC archive.⁵³³ Fullard told the Yale audience that there is ambiguity about

what falls outside the physical domain of the truth commission...In our work we intersected with lots of other archives: those of the South African Defense Forces, the police, etc...The South African truth commission had multiple arms gathering information, and we had a tough time even figuring out what we had ourselves. Like many truth commissions we had a massive gathering of information without a central repository and even without a place where every document was registered as it entered the building. This was a critical problem...Documents went into custody of the National Archives, but were the property of the Department of Justice. This split physical custody and ownership and control. The day the truth commission ceased to exist both the DOJ and National Archives were empowered to make decisions- a bit complex.⁵³⁴

In her book *Final Acts: A Guide to Preserving the Records of Truth Commissions*,⁵³⁵ Peterson contents that South Africa's truth commission produced every physical record medium imaginable: databases, photographs, audiotapes, videotapes and even objects.⁵³⁶ According to a SAHA-produced *Guide to Archival Resources Relating to the Truth and Reconciliation Commission*,⁵³⁷ these various records types resulted primarily from the three SA TRC statutory committees: HRVC, Amnesty, and RRC.⁵³⁸

The SAHA *Guide to Archival Resources Relating to the Truth and Reconciliation Commission* started in 2003 when Harris engaged a consultant to undertake a study of all the records of the SA TRC with the idea of developing a comprehensive access tool to all these

⁵³³Madeleine, Fullard. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*. Proceedings of a Conference on "Archiving Truth Commission Records," (Yale University: February 22-24, 2006).

⁵³⁴Ibid.

⁵³⁵Peterson, *Final Acts*, 43.

⁵³⁶Ibid.

⁵³⁷*Guide to Archival Resources Relating to the Truth and Reconciliation Commission* (SAHA: 2004), 9.

⁵³⁸Ibid.

records. This consultancy, sometimes referred to as the “TRC Archival Audit”⁵³⁹ relied on direct contact with former commissioners, NGOs, archivists, priests, TRC officials, lawyers, and journalists.⁵⁴⁰ In an interview with this researcher, Sello Hatang, one of the pioneers of the SA TRC archival audit said that they started the SA TRC “archival audit” because SAHA was trying to find out the whole TRC archives through an audit. One of the disappointing things is that there are still a lot of TRC records that are out there and not yet accounted for. If you were to have a better coordination between civil society and government you would find that most of these records would be repatriated to South Africa because in most cases people would not on their own come forward to say they have TRC records.⁵⁴¹ What comes out of Hatang’s thoughts is that the definition of what constitutes the SA TRC archive for South Africans are records resulting from the records of the commission itself and those held by NGOs and universities. It would seem from this, therefore, that the SA TRC archives is not just merely limited to the primary technical records of the commission but goes further to include all other TRC records kept by NGOs in South Africa.

The view that the TRC archives is bigger than what is stored by the government has also been expressed by Dominy, the National Archivist of South Africa, Pigou, former SA TRC investigator and now chief archivist at SAHA, and Sam Jacob, the University of Michigan produced SAHA archivist. Dominy has been quoted by the author of this dissertation asserting that “the TRC archive stretches far beyond the records of the technical committees of the TRC... Broadly speaking the TRC saw itself as touching all South Africans so if you look at it like that the South African National Archives is only responsible for the technical product at the

⁵³⁹The TRC Archival Audit, as the name suggests, attempted a comprehensive audit of all the TRC records held by both governmental and non governmental organizations in South Africa.

⁵⁴⁰*Guide to Archival Resources Relating to the Truth and Reconciliation Commission* (SAHA: 2004).

⁵⁴¹Sello Hatang, interview by author, Johannesburg, April 3rd 2007.

governmental and commission operation level. But there are TRC archives that have been generated in civil society and in other institutions other than government which form part of the family of these records.”⁵⁴² Pigou sees the SA TRC archive as records directly related to the commission in terms of its operation and mandate and those kept by NGOs.⁵⁴³ In his taped words, Pigou says the SA TRC archive is

the material of the administration of the institution itself and the content of the material that was generated during that process...However, SAHA would include as a broader sort of next layer materials relating to the broader mandate and produced by non governmental organizations.... There is specific material that came out of the commission and housed by the commission and there is a lot of material that relates to the contributions to the commission which should also in theory be in the TRC archive but which is not always there because of the concern about what should have been captured. We know a lot of people kept materials around them as well and then there is this broader group which is more related to security forces and Intelligence records. Also, on the other side civil society and other groupings monitoring the violence made their own analysis and so forth. I would argue that in theory these records should be encapsulated in the broader TRC archive.⁵⁴⁴

It is important to understand that what comes out of these viewpoints is the definition of the SA TRC archive as delineating records coming from three basic sources. The first source are records flowing directly from the work of the commission itself, the second source are records coming from the NGOs, and third source are records that are still accumulating from secondary sources. In the words of Jacob “we are looking at the TRC as a process.”⁵⁴⁵ Pigou has further been quoted saying that the SA TRC archive “is an ongoing process. For example, the South African Broadcasting Cooperation radio archives of the TRC. Here, 900 cassettes of interviews and analysis were produced over five years. All that material will be indexed and made available

⁵⁴²Graham Dominy interview by author, Pretoria, April 13, 2007.

⁵⁴³Piers Pigou, interview by author, Johannesburg, March 9, 2007.

⁵⁴⁴Ibid.

⁵⁴⁵Sam Jacob, interview by author, Johannesburg, March 9, 2007.

through the SABC. This is an enormous resource which will be added to the SAHA directory in due course. We hope to continue building the directory. We also have a bibliography of books, documents, book chapters and articles that have been written about the TRC and that also become part of the TRC archive.”⁵⁴⁶ These distinctions are very important because this dissertation is primarily concerned with the preservation and access to the SA TRC records resulting directly from the three statutory committees of the South African TRC and currently in the custody of the National Archives.⁵⁴⁷

4.8 THE SALIENT ATTRIBUTES OF THE SOUTH AFRICAN TRC ARCHIVE

In her country report on managing truth commission records in South Africa, Peterson has described the nature of SA TRC records as “a wide variety of physical types, from paper to audiotape and videotape, photographs and electronic documents and databases.”⁵⁴⁸ According to the *Guide to Archival Resources Relating to the Truth and Reconciliation Commission*⁵⁴⁹ the SA TRC produced multi-media and multi-genre records⁵⁵⁰ documenting all processes entailing the commission’s functional structure. These records included records from the administrative, management, and operational reports of the commission’s three statutory committees. Also, in “Archiving Commission Material...,”⁵⁵¹ the commissioners state that the commission’s records “which are in the form of documents, video and audio tapes, pictures and photographs as well as

⁵⁴⁶Op Cit, Pigou, interview with author, Johannesburg, March 9, 2007.

⁵⁴⁷Peterson, *Final Acts*, 77.

⁵⁴⁸Ibid.

⁵⁴⁹*Guide to Archival Resources Relating to the Truth and Reconciliation Commission* (SAHA, 2004).

⁵⁵⁰Ibid., 12.

⁵⁵¹*Truth and Reconciliation Commission of South Africa Report, Vol 5*, 343.

computerized database, are a national asset which must be both protected and made accessible.”⁵⁵² The *Guide to Archival Resources Relating to the Truth and Reconciliation Commission*⁵⁵³ further states that “as the national broadcaster SABC was tasked with televising, recording and broadcasting all the public proceedings of the TRC. SABC radio broadcasted all the hearings in each of the eleven official languages, thereby ensuring that the people who did not have access to the print media would not be denied access to information about the TRC.”⁵⁵⁴ The SAHA SA TRC audit has established that the National Archives of South Africa has 245 videotapes totaling 334 hours of special hearings records⁵⁵⁵ covering areas, such as the activities of the armed forces, business, labor, the former regime’s biological and chemical weapon’s program, political parties, the situation of women and children under apartheid, and the activities of the State Security Council.⁵⁵⁶

The *Guide to Archival Resources Relating to the Truth and Reconciliation Commission* has also confirmed that the National Archives has HRVC hearings tapes constituting 435.5 hours of testimony recorded on 308 videotapes starting with the first opening public hearing in East London on April 15th 1996 and ending in the city of Cape Town on June 11th 1997.⁵⁵⁷ The same *Guide to Archival Resources Relating to the Truth and Reconciliation Commission* mentions that, of the three statutory committees of the TRC, “the amnesty videotapes recorded by the SABC are the most comprehensive, and the most extensive hearings”⁵⁵⁸ starting with the first amnesty hearing held in Pietermaritzburg on July 23rd 1995 and ending in Durban on May 12th

⁵⁵²Ibid.

⁵⁵³*Guide to Archival Resources Relating to the Truth and Reconciliation Commission* (SAHA: 2004).

⁵⁵⁴Ibid., 146.

⁵⁵⁵Ibid., 68.

⁵⁵⁶Ibid.

⁵⁵⁷Ibid., 69.

⁵⁵⁸Ibid.

2000.⁵⁵⁹ The amnesty videotapes referred to here also include, among other things, “the amnesty applications of Eugene de Kock of Vlakplaas, of perpetrators in the Bisho massacre, of perpetrators of the likes of Craig Williamson for various crimes such as the bombing of the ANC diplomatic mission in London and in Lusaka, the murder of Ruth First, and Jeanette Schoon and her daughter. They include amnesty applications for “third force” destabilization such as the Boipatong killings, the murder of the Gugulethu 7, the Motherwell 4, Pebco 3 and Cradock 4.”⁵⁶⁰ In addition, the TRC also had a website launched in 1996 as part of the commission’s media strategy.⁵⁶¹ It contained all the transcripts of both HRVC and amnesty hearings, amnesty decision transcripts, press releases and news reports from the South African Press Agency (SAPA). It also contained an interactive Register of Reconciliation that users could sign.⁵⁶² Finally, the *Truth and Reconciliation Commission of South Africa Report, Vol 6*⁵⁶³ reveals that all the information collected by the commission was captured electronically on the commission’s database.⁵⁶⁴ These information included victim statements, their contacts, testimonies taken in all the hearings, in-camera hearings, submissions made by faith communities, the security establishments, NGOs, the media and the business communities.⁵⁶⁵

⁵⁵⁹Ibid., 70.

⁵⁶⁰Ibid., 70.

⁵⁶¹ Visit the original TRC website at <http://www.truth.org> 10/26/08.

⁵⁶²*Truth and Reconciliation Commission of South Africa Report, Vol 6*, 748.

⁵⁶³Ibid., 578.

⁵⁶⁴Ibid.

⁵⁶⁵Ibid.

4.9 THE COMMISSION'S RECOMMENDATIONS REGARDING THE MANAGEMENT OF THE TRC ARCHIVE

The *Truth and Reconciliation Commission of South Africa Report, Vol 5*⁵⁶⁶ says that the key recommendation made by the commission regarding its records was that they be kept and managed by the National Archives of South Africa.⁵⁶⁷ For instance, the codicil to the final SA TRC report or Volume 6 recommended that “the database be owned, managed, and maintained by the National Archives of South Africa.”⁵⁶⁸ The National Archives must take responsibility for ensuring that the database forms the cornerstone of an electronic repository of historical materials concerning the work of the commission, is enriched by electronic multi-media facilities to support audio-visual and other graphic materials, is in a format that allows for distribution to schools, other educational institutions and the general public by means of CD-ROM or other portable electronic format, and that it uses language that is accessible to a majority of South Africans.⁵⁶⁹ The *Truth and Reconciliation Commission of South Africa Report, Vol 5*⁵⁷⁰ also instructed the National Archives to take over the website from the Department of Justice (DOJ) and to continue to make the existing material, including the reports of the commission, available to the public locally and internationally on the website.⁵⁷¹ Also, the commission expected the National Archives to expand the website in creative ways by taking into account the fact that many commission records are stored in computer files.⁵⁷²

⁵⁶⁶*Truth and Reconciliation Commission of South Africa Report, Vol 5*, 344.

⁵⁶⁷*Ibid.*

⁵⁶⁸*Truth and Reconciliation Commission of South Africa Report, Vol 6*, 729.

⁵⁶⁹*Ibid.*

⁵⁷⁰*Ibid.*, 344.

⁵⁷¹*Ibid.*

⁵⁷²*Ibid.*

On the big question of access, the *Truth and Reconciliation Commission of South Africa Report, Vol 6*,⁵⁷³ instructed the DOJ, the legal owners of the SA TRC records “to provide public notice of the intent to transfer the records of the commission to the National Archives. The notice should include a statement about the basic access provisions for the records.”⁵⁷⁴ The subsection on “Archiving Commission Material and Public Access,”⁵⁷⁵ instructs the National Archives to protect and make these records accessible to the public.⁵⁷⁶ The report authoritatively commands that “all commission records be accessible to the public, unless compelling reasons exist for denying such access, bearing in mind that the individual’s right to privacy, confidentiality and related matters must be respected. In this regard particular attention needs to be given to the release or withholding of details of human rights violations statements in cases where individuals feel their safety is prejudiced.”⁵⁷⁷

The SA TRC developed guidelines for the National Archives as to how it was to administer that access. The *Truth and Reconciliation Commission of South Africa Report, Vol 5*,⁵⁷⁸ states that, in the case of closed-door hearings, the National Archives was supposed to refer all requests for access to the DOJ.⁵⁷⁹ In the case of all other records categories, the commission instructed that a policy of unrestricted public access should be applied.⁵⁸⁰ Furthermore, “the following information, which is already in the public domain, be made available as soon as practically possible to the public: transcripts of hearings; reasons for amnesty decisions; public

⁵⁷³Ibid.

⁵⁷⁴Ibid.

⁵⁷⁵*Truth and Reconciliation Commission of South Africa Report, Vol 5*, 343.

⁵⁷⁶Ibid.

⁵⁷⁷Ibid., 344.

⁵⁷⁸Ibid.

⁵⁷⁹Ibid.

⁵⁸⁰Ibid.

statements issued by the commission; all other material already available to the public on the commission's internet website."⁵⁸¹

4.10 CONCLUSION

Chapter 4 attempted to give the reader a contextual understanding of the records of the South African TRC through a narrative of the SA TRC. The SA TRC was created by an act of parliament referred to as the Promotion of National Unity and Reconciliation Act of 1995. The act established three committees, namely, the HRVC, the Amnesty Committee and the Reparation and Rehabilitation Committee.

The HRVC instituted six hearings, namely, the individual hearings, event hearings, political hearings, special hearings, institutional hearings and the closed-door hearings. The victim hearings constituted the core of the commission's work and allowed individual victims of apartheid to testify publicly before the commission. The event hearings focused on the collective/community experience of state sanctioned violence. In other words, event hearings focused on major landmark events that traumatized whole communities as opposed to individuals in South Africa. These events included but were not limited to the Sharpeville massacre, the Soweto uprisings, the killing of the Gugulethu Seven and the Bisho massacre of 1990. The political hearings primarily focused on four broad areas of violence, namely, the state inside South Africa, the state outside South Africa, the liberation struggle, and the so-called Homelands or independent Black states. The special hearings identified patterns of abuse committed against

⁵⁸¹Ibid.

children, youths, women and the White victims of compulsory military conscription. The institutional hearings focused on institutions like the health sector, the business sector, the faith community, the media, and the justice and prison systems. The aim here was to establish the gravity of institutional collusion with apartheid. The closed-door hearings allowed people who privately wanted to share their experiences under apartheid to come forward and to tell their stories.

The Reparation and Rehabilitation Committee was set up to make recommendations to the president on the right measures to be taken for the rehabilitation and reparation of victims of apartheid. The Amnesty committee evaluated those who qualified for amnesty according to the yardstick set by the commission. Only those perpetrators whose transgressions amounted to political crimes from 1960-1994 could qualify for amnesty.

5.0 THE SOUTH AFRICAN NATIONAL ARCHIVES' MANAGEMENT OF ITS TRUTH AND RECONCILIATION COMMISSION RECORDS

5.1 INTRODUCTION

The records of the SA TRC were centralized to Cape Town and transferred to Pretoria from October 25 to October 29th 2001⁵⁸² in line with the recommendations of the SA TRC reports. The transfer also fulfilled the requirements of the National Archives Act of 1996 which gives the National Archivist power to manage all public records with enduring value.⁵⁸³ When the National Archives received SA TRC records they came in all media; as a result, the success of the National Archives in managing the records has depended largely on whether the records were paper, audiovisual, or electronic. The main problem facing the National Archives regarding the SA TRC has centered on the management of electronic records. This challenge forced the National Archives to solicit help from Michigan State University. The question of how to manage electronic records is not unique to the National Archives of South Africa but continues to be a big problem to many archival repositories. While many archives were comfortable with paper records, many seem ill-prepared to manage their electronic counterparts. Figure 1 below

⁵⁸²“Safeguarding/Escorting Documents of the Truth and Reconciliation Commission (TRC): Cape Town to Pretoria 2001-10-25 until 2001-10-29,” October 17, 2001. In Correspondence: Transfer of Sensitive TRC Records to the Department of Justice, File No. A.2.2.1 (B) (SAHA Guidebook: 2004), 90.

⁵⁸³*National Archives of South Africa Act (Act No. 43 of 1996).*

highlights the location of South Africa in Africa and the movement of TRC records from Cape Town to Pretoria.

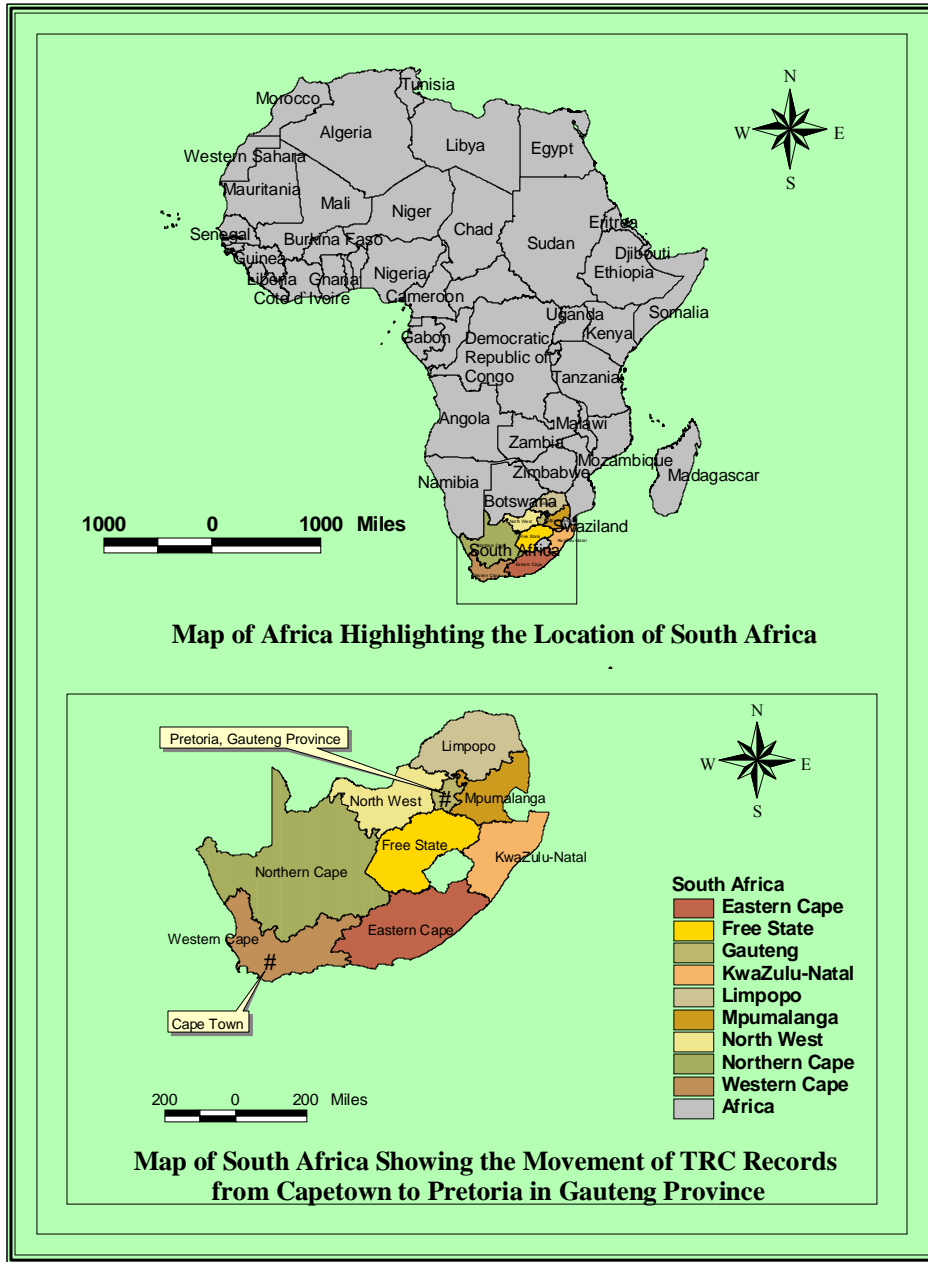


Figure 1: A Highlight of the Location of South Africa in Africa and the Movement of TRC Records From Cape Town to Pretoria.

5.2 RESEARCH QUESTION ONE: HOW HAS THE SOUTH AFRICAN NATIONAL ARCHIVES MANAGED ITS TRC RECORDS?

5.2.1 Managing the TRC Paper Records

The technical process of preserving the paper records of the SA TRC in terms of providing a safe storage environment has never been a problem for the National Archives of South Africa due to their cumulative experience in managing paper records. In fact, in *Exploring Archives: An Introduction to Archival Ideas and Practice in South Africa*,⁵⁸⁴ Harris states that the South African experience of managing the written and paper records dates back to 1652 when the Europeans first colonized the shores of South Africa.⁵⁸⁵ Harris says that by the 19th century the familiar British bureaucratic pattern of accumulating records in the public offices and of transferring them to the provincial archives of the then Cape, Natal, the Orange Free State and the Transvaal had become common practice.⁵⁸⁶ The union of the two Dutch and British colonies of the Cape, Natal, the Orange Free State, and the Transvaal, historically called the 1910 Union of South Africa, resulted in the centralization of the provincial archives. Storing SA TRC paper records under the right environment has not been a problem to the South African National Archives. The expertise of the National Archives of South Africa in managing paper records is demonstrated by the preservation and conservation skills that it is currently rendering to other African countries. In “Timbuktu Rare Manuscripts Project: Promoting African Partnerships in

⁵⁸⁴Verne Harris, *Exploring Archives: An Introduction to Archival Ideas and Practice in South Africa* (Pretoria: 2000), 6.

⁵⁸⁵Ibid.

⁵⁸⁶Ibid.

the Preservation of Africa's Heritage,"⁵⁸⁷ Minicka recounts the leadership role played by the National Archives of South Africa in helping to restore the old manuscripts of Timbuktu dating as far back as the 9th Century.⁵⁸⁸ There has never been any doubt about the professional ability of the National Archives to preserve the SA TRC paper records. What is under contention is whether the government of South Africa, through its agent, the National Archives, is fully committed to providing access to these records.

5.2.2 Managing the TRC Audiovisual Records

*A Guide to Archival Resources Relating to the Truth and Reconciliation Commission*⁵⁸⁹ has highlighted the fact that "as the national broadcaster the South African Broadcasting Corporation (SABC) was tasked with televising, recording and broadcasting all the public proceedings of the TRC. SABC radio broadcasted all the hearings in each of the eleven official languages, thereby ensuring that the people who did not have access to the print media would not be denied access to information about the TRC."⁵⁹⁰ Also, the SAHA TRC audit has established that the National Archives of South Africa has so far received 245 videotapes from the SABC totaling 334 hours of special hearings records⁵⁹¹ covering areas such as the activities of the armed forces, business, labor, the former regime's biological and chemical weapon's program, political parties, the situation of women and children under apartheid, and the activities of the State Security

⁵⁸⁷Mary Minicka, "Timbuktu Rare Manuscripts Project: Promoting African Partnerships in the Preservation of Africa's Heritage," *Esarbica Journal* 25 (2006), 35-68.

⁵⁸⁸*Ibid.*, 41.

⁵⁸⁹*Guide to Archival Resources Relating to the Truth and Reconciliation Commission* (SAHA: 2004), 146.

⁵⁹⁰*Ibid.*

⁵⁹¹*Ibid.*, 68.

Council.⁵⁹² The same source has also unequivocally confirmed that the National Archives has HRVC hearings tapes constituting 435.5 hours of testimony recorded on 308 videotapes starting with the first opening public hearing in East London on April 15th 1996 and ending in the city of Cape Town on June 11th 1997.⁵⁹³ The guide further mentions that, of the three statutory committees of the SA TRC, the amnesty videotapes recorded by the SABC are the most comprehensive and the most extensive hearings,⁵⁹⁴ starting with the first amnesty hearing held in Pietermaritzburg on July 23rd 1995 and ending in Durban on May 12th 2000.⁵⁹⁵ The amnesty videotapes referred to hear also include, among other things, “the amnesty applications of Eugene De Kock of Vlakplaas, of perpetrators in the Bisho massacre, of perpetrators of the likes of Craig Williamson for various crimes such as the bombing of the ANC diplomatic mission in London and in Lusaka, the murder of Ruth First, Jeanette Schoon and her daughter. They include amnesty applications for “third force” destabilization such as the Boipatong killings, the murder of the Gugulethu 7, the Motherwell 4, Pebco 3 and Cradock 4.”⁵⁹⁶ NARA suggests that audio-visual records should not be stored where the temperature exceeds 72 degrees Fahrenheit and the relative humidity is higher than 50 percent. Cooler, drier storage conditions that are relatively free from harmful gases⁵⁹⁷ are desirable to increase the life expectancy of audio-visual records.

The room temperature for SA TRC records at the National Archives ranges from 13–21 degrees Celsius which when converted, falls below 72 Fahrenheit. It is evident from this that the National Archives has been able to meet at least the temperature requirements for audiovisual

⁵⁹²Ibid.

⁵⁹³Ibid., 69.

⁵⁹⁴Ibid.

⁵⁹⁵Ibid., 70.

⁵⁹⁶The HRVC hearings of June 27, 1996 heard how four Black members of the security establishment, referred to as the Motherwell Four, were eliminated by their White security counterparts.

⁵⁹⁷“Managing Audiovisual Records: An Instruction Guide” Available at <http://www.archives.gov/records-mgmt/publications/> 10/26/2008.

records. Even though the National Archives has been able to meet the temperature requirements of audiovisual records, data gathered from interviews shows that there is need to pay attention to issues of technological obsolescence, funding, good management practices, and continuous training of staff if the archives is to stay on top the preservation game. For instance, when asked if technological obsolescence was a factor in the preservation of audiovisual records, 4 respondents, or 20% of the twenty people interviewed agreed. When asked if management complacency was a factor in the preservation of audiovisual records, 12 respondents, or 60% of the twenty people interviewed gave “Yes” as the answer and when asked if the training of staff had a positive effect on the preservation of audiovisual records 14 respondents, or 70% of the twenty people interviewed strongly agreed. Edmonson says in *Audiovisual Archiving: Philosophy and Principles*⁵⁹⁸ that the internal physics and chemistry of audiovisual carriers make many of them very vulnerable to inappropriate temperature and humidity, the effects of atmospheric pollution, mould and various types of decay and distortion which affect their physical integrity and the quality of the image and sound information they contain.⁵⁹⁹

5.2.3 Managing the TRC Electronic Records

Managing the SA TRC electronic records has not been an easy job for the National Archives of South Africa. According to Harris,

the electronic records were in the main a real concern. The database has been well managed although the National Archives has no say on what is been handled right now which in the long term could be a real problem. But the real concern are all those other electronic applications which were used extensively throughout the work of the commission and downloaded from the hard drives, diskettes, servers

⁵⁹⁸Ray Edmonson, *Audiovisual Archiving: Philosophy and Principles* (Paris: UNESCO, 2004), 19.

⁵⁹⁹*Ibid.*, 45.

etc. The website is a real problem as well. If you look in the internet archives you will find the website preserved there. Although we here cannot manage it well. If you ask both National Archives and the department of Justice to show you how the TRC website looked as it closed down they wouldn't be in a position to do that for you but the internet archive can to a large extent.⁶⁰⁰

In *Transfer of Sensitive TRC Records to the Department of Justice*⁶⁰¹ under “Discussions with TRC Regarding Preservation of Electronic Records Systems,”⁶⁰² Govinder and Salie from the SA TRC Office told Kirkwood of the National Archives that “the TRC database and its specifications are complex. Oracle consultants were used in its design and subsequently maintenance. Current IT staff indicated that consultants would be needed even to produce the specifications of the system. This indicates that any reconstruction of the database in another functional environment might be difficult.”⁶⁰³ It is obvious from the confessions of people directly involved in the management of South Africa’s TRC records that something needed to be done to salvage the SA TRC electronic records. In *Final Acts: A Guide to Preserving the Records of Truth Commissions*⁶⁰⁴ Peterson has advised that “it is desirable that the custodian of the records of a commission have experience in handling all the physical types of materials that are in the commission’s records. In particular, it is important that the archives either already has the knowledge and skills to handle electronic records or is able to obtain that support from another trusted source. As commissions rely increasingly on electronic systems, the ability to preserve electronic information becomes crucial for the ultimate custodian.”⁶⁰⁵

⁶⁰⁰Verne Harris, interview by author, Johannesburg, April 13th, 2007.

⁶⁰¹“Discussions With TRC Regarding Preservation of Electronic Records Systems,” In Correspondence: Transfer of Sensitive TRC Records to the Department of Justice (National Archives), File No. A2.2.1 (a) (SAHA Guidebook: 2004), 90

⁶⁰²Ibid., 90.

⁶⁰³Ibid.

⁶⁰⁴Peterson, *Final Acts.*, 56.

⁶⁰⁵Ibid., 46.

A “Letter from Acting Director General: Arts and Culture to the Deputy Minister of Arts, Culture, Science and Technology,”⁶⁰⁶ dated January 27, 2003,⁶⁰⁷ highlighted the lack of capacity in managing SA TRC electronic records and led the National Archivist, Dominy, to seek donor assistance from the Mellon Foundation in New York.⁶⁰⁸ The result of this trip was a \$50,000 grant to the National Archives and the appointment of Michigan State University as fund administrators.⁶⁰⁹ The Mellon Foundation grant was supposed to assist in the provision of technical support for the processing of SA TRC electronic records.⁶¹⁰ The appointment of Michigan State University led to a very complicated relationship with the National Archives and a long stalemate in the management of SA TRC electronic records, now addressed below.

⁶⁰⁶“TRC Records: Grant from Mellon Foundation,” Letter from Acting Director General: Arts and Culture to the Deputy Minister of Arts, Culture, Science and Technology, January 27, 2003. In External Organization: Participation in Projects with Michigan State University, File No. 5/2/1, Vol 7 (National Archives: 12/02/2002-02/28/2003).

⁶⁰⁷Ibid.

⁶⁰⁸Ibid.

⁶⁰⁹Ibid.

⁶¹⁰Ibid.

5.3 MICHIGAN STATE UNIVERSITY, THE NATIONAL ARCHIVES, AND THE MANAGEMENT OF THE SOUTH AFRICAN TRC ELECTRONIC RECORDS

5.3.1 Michigan State University's Involvement with the National Archives of South Africa

According to "A Proposal Submitted to The Andrew Mellon Foundation from Michigan State University,"⁶¹¹ dated December 22, 1999, Michigan State University's relationship with South Africa started in 1978 when it became the first university in the United States to support the United Nations Cultural Boycott of South Africa.⁶¹² A report written on June 21st 2000 by Mandy Gilder, the Deputy Archivist of South Africa, entitled "Report on the General Agreement for Co-operation Between Michigan State University and the National Archives of South Africa,"⁶¹³ stated that from 1998 to 1999 Michigan State University intensified its relationship with South Africa by sending representatives to South African heritage institutions about a possible USA/SA partnership whose focus would be on the training of heritage workers by American Institutions.⁶¹⁴ In November 1999, through a grant from the Andrew W. Mellon Foundation,⁶¹⁵ Michigan State University actualized its partnership with South African heritage institutions by hoisting the "International Partnerships for South African Culture, History, and Education Workshop."⁶¹⁶ According to the "South African National Heritage Training and Technology

⁶¹¹"A Proposal Submitted to the Andrew Mellon Foundation From Michigan State University," In External Organization: Participation in Projects with Michigan State University, File No. 5/2/1, Vol 7 (National Archives: 12/02/2002-02/28/2003).

⁶¹²Ibid., 15.

⁶¹³Mandy Gilder, "Report on the General Agreement for Co-operation Between Michigan State University and the National Archives of South Africa," In External Organization: Participation in Projects with Michigan State University, File No. 5/2/1, Vol 7 (National Archives: 12/02/2002-02/28/2003).

⁶¹⁴Ibid.

⁶¹⁵"A Proposal Submitted to the Andrew Mellon Foundation From Michigan State University," Op Cit, 5.

⁶¹⁶Ibid.

Program,” dated December 22, 1999,⁶¹⁷ “this landmark event brought together a diverse bi-national group in Durban, South Africa, to discuss the training of cultural heritage workers in a democratizing South Africa, dedicated to building inclusive cultural institutions that address the needs of all South Africa. Delegations from major repositories and documentation centers, coordinators of existing South African heritage training programs, representatives of museums and universities in the United States and South Africa, representatives of the Mellon and Ford Foundations and officials from South African education and cultural ministries all participated in the workshop.⁶¹⁸

5.3.2 The General Agreement for Cooperation Between Michigan State University and the National Archives of South Africa

After the November 1999 workshop, Michigan State University entered into formal agreements with the National Archives, the African National Congress Archives, the Mayibuye Center Archives, the Robben Island Museum, the University of Witwatersrand (which houses SAHA), the University of Durban- Westville and Documentation Center, and the University of Natal and Killie Campbell Collections.⁶¹⁹ The preamble to *The General Agreement for Cooperation Between Michigan State University and the National Archives of South Africa*⁶²⁰ stated that “this linkage agreement between the National Archives and Michigan State University is hereby

⁶¹⁷“South African National Heritage Training and Technology Program,” In External Organization: Participation in Projects with Michigan State University, File No. 5/2/1, Vol 7 (National Archives: 12/02/2002-02/28/2003), 5.

⁶¹⁸Ibid.

⁶¹⁹“A Proposal Submitted to the Andrew Mellon Foundation From Michigan State University,” 20-21.

⁶²⁰*The General Agreement for Cooperation Between Michigan State University and the National Archives of South Africa*, November 1 1999, In External Organization: Participation in Projects with Michigan State University, File No. 5/2/1, Vol 7 (National Archives: 12/02/2002-02/28/2003).

established in order to build a mutual, active, and rewarding relationship between the two institutions.”⁶²¹

According to the “Report on the General Agreement for Cooperation Between Michigan State University and the National Archives of South Africa,”⁶²² the memo of understanding between the National Archives and MSU basically reiterated that the two institutions would cooperate as far as projects were concerned.⁶²³ The contents of the agreement committed MSU and the National Archives to developing collaboration on the following areas:

- (a) providing support for a website for the National Archives of South Africa;⁶²⁴
- (b) training and support for projects aimed at preserving, arranging and making accessible archival records in South Africa and the use of the internet for educational and research purposes;⁶²⁵
- (c) collaborating in the development and educational outreach programs through on-line exhibits, publications, on-line distribution, and other projects regarding particular holdings of the National Archives so that the holdings of the National Archives reach the widest possible public and research audiences both in South Africa and worldwide.⁶²⁶

The agreement further stated that such collaboration may involve materials from the various National Archives registers, audiovisual resources, photographs, and oral sources, as well as the

⁶²¹Ibid.

⁶²²Gilder, “Report on the General Agreement for Co-operation Between Michigan State University and the National Archives of South Africa.”

⁶²³Ibid.

⁶²⁴*The General Agreement for Cooperation Between Michigan State University and the National Archives of South Africa*, Op Cit.

⁶²⁵Ibid.

⁶²⁶Ibid.

records of the SA TRC, with the approval of the National Archivist.⁶²⁷ The agreement between the National Archives and Michigan State University now enabled the National Archives to seek funding for their SA TRC electronic records abroad through MSU.⁶²⁸

5.3.3 MSU and the Funding of the TRC Electronic Records

In September 16th 2002, acting on behalf of the National Archives of South Africa, Peter Knupfer of MSU wrote to Thomas Nygen, the Program Officer for the Andrew Mellon Foundation, applying “for a chairman’s discretionary grant of \$50, 000 for planning, evaluation and technical assistance to the National Archives of South Africa.”⁶²⁹ The grant was supposed to “enable Michigan State University to assist the National Archives in planning for accessioning, organizing, cataloguing and providing public access to the records of the TRC and emergency technical assistance to allow the National Archives to access and work with the electronic records of the TRC.”⁶³⁰ Knupfer further explained that the records included: the commission’s main Oracle database of approximately 22,000 victims statements and 10,000 perpetrator statements; several spin-off databases that duplicate sections of the main database; the analyst’s notebook investigative software and related files used by the SA TRC Unit to probe, aggregate, and analyze specific cases and records; assorted backup media of office files and miscellany that constitutes corroboration and research for the final SA TRC report; the SA TRC website

⁶²⁷Ibid.

⁶²⁸MSU for Michigan State University.

⁶²⁹Peter Knupfer, “Draft TRC Mellon Proposal,” In External Organization: Participation in Projects with Michigan State University, File No. 5/2/1, Vol 7 (National Archives: 12/02/2002-02/28/2003), 1.

⁶³⁰Ibid.

currently in a holding pattern at the DOJ; and unpublished materials in electronic form that were previously available through the commission's website.⁶³¹

According to Knupfer's draft proposal, the electronic records of the SA TRC were in dire need of preservation, accessioning, and migration to more accessible formats and software.⁶³² In addition, emergency technical assistance applied for in the grant would help the National Archives release the records from the database's existing proprietary format and place them into "a safe, flexible, more usable, and current open source architecture to safeguard sensitive materials and enable the National Archives staff to properly preserve and protect data."⁶³³ A call was also made to assist with funds to rescue the commission's website currently languishing at the DOJ due to lack of training staff who could return it to full operating condition.⁶³⁴

The \$50, 000 grant was awarded and Govinder was selected to lead the project based on her previous employment with the SA TRC as its IT manager. A report sent to this researcher by Govender on how the money was spend stated that

all the TRC electronic records housed at the National Archives in Pretoria have been located, a basic inventory made, and stored together in one secure location. I have improved the labeling of disks, tapes and CDs, and stored the disks in proper disk boxes and plastic cases in an attempt to prevent further damage. Many of them had been left in large cardboard boxes. A combination of being moved around and the accumulation of dust have no doubt caused some loss of data. In consultation with MSU a computer has been purchased for the National Archives. The computer has a 300 gigabyte hard drive, a CD writer, a magnetic tape drive, and appropriate software to restore all electronic data. The aim is to contain the entire electronic records of the TRC on one computer.... The computer has not been connected to the LAN or to a phone line to further control access. I have created an inventory of current records on the computer.⁶³⁵

⁶³¹Ibid.

⁶³²Ibid., 2.

⁶³³Ibid.

⁶³⁴Ibid.

⁶³⁵Ruendree Govender, e-mail message to author, March 28, 2006.

Govender further stated that⁶³⁶ out of the 61 CDs left by the commission, 30 CDs were restored through the grant and 29 CDs are still pending.⁶³⁷ Out of a total of 468 magnetic tapes, 84 (approximately 85GB of data) were restored.⁶³⁸ The remaining 384 tapes all contain incremental database backups created at all SA TRC offices.⁶³⁹ There are 1,356 3 ¼" disks and 145 5 ¼" disks that still need to be restored. In total, approximately 100 GB of data have been restored.⁶⁴⁰

In trying to explain the roots of the SA TRC electronic records problem, the MSU consultant stated that the problem started right at the SA TRC regional offices.⁶⁴¹ In her own words:

nobody was focusing on electronic records and its archiving so I got involved with creating backups and just preserving them. We did not have the resources to actually deal with things long term. We did not have the resources to preserve them but we made the best of what we had and saved things in different formats so that when it was handed to the National Archives it would be expanded into a proper archive. We preserved what we had on tape backups because the materials were deteriorating as a result of being kept in very bad conditions, so, I launched a project to copy them into CDs and the idea behind that was to just have an extra copy in different formats as that would give us a greater chance of having them preserved at some point. Decisions like trying to buy a CD writer took a year before management could approve it....It was difficult to convince people that it did not look important now to preserve these tapes that were deteriorating but at some point this is going to be really bad and we needed to deal with it.⁶⁴²

According to Govinder, from the very beginning, most commissioners were highly computer illiterate and accidentally deleted records because they did not understand the importance of what they were dealing with.⁶⁴³ Second, there was no real procedure or training which sensitized

⁶³⁶Ibid.

⁶³⁷Ibid.

⁶³⁸Ibid.

⁶³⁹Ibid.

⁶⁴⁰Ibid.

⁶⁴¹Ruendree Govender, interview by author, Cape Town, November 23, 2005.

⁶⁴²Ibid.

⁶⁴³Ibid.

them about the importance of what they were dealing with.⁶⁴⁴ Third, the SA TRC was using old computers that had really small hard-drives, which forced staff to delete records to remain within their designated quotas. Almost all computers had only 500 MB hard drives.⁶⁴⁵

5.3.4 The Impasse in the Relationship Between MSU and the National Archives of South Africa

Even though the relationship between MSU and the National Archives looked very promising from the beginning complications soon developed. The breakdown of the relationship between MSU and the National Archives had a negative effect on the National Archives because it deprived them of all the benefits contained in the memorandum of understanding between it and MSU. According to Govender, the breakdown in the relationship had nothing to do with the absence of funding to carry the project to bigger heights.

we have people who are willing to give money, whatever amount we are asking for, to go in, hire enough people and equipment including former TRC workers. All this is possible and I do not know why this is not being taken forward. When you interview Dr Dominy it would be very important to ask him why this project is not being taken forward. Or what actually the plans are because as far as I am concerned nothing is happening or happening incredibly slowly and it is notoriously difficult to get access to the records.... The Mellon Foundation was really interested to fund it and there are lots of other sources available but we could not apply to any one of them without the archives saying “yes” we are ready to go with this. And I am not even saying the National Archives should do this with the Michigan State University, the archives can do this on their own but I just do not know why it is not being done.⁶⁴⁶

⁶⁴⁴Ibid.

⁶⁴⁵Ibid.

⁶⁴⁶Ibid.

However, the National Archivist offered a different explanation. In an interview recorded on April 13th 2007 Dominy explained that he did

not think the relationship with MSU broke down at a personal level but there was perhaps an institutional mismatch. The expectations from the two parties were different. On our side we have the TRC records as archives of the government of South Africa. The TRC was established by a South African legislation and the legislation says how it is to be handled from the archival perspective. Institutionally when we deal we deal inter-governmentally and yet our partner was not a US government but a university. The university's perspective is that it needs the material for research and for fostering the acts and extending the reputation of the university. When you get a difference of emphasis like that it can lead to other problems. One of the people could not understand why we had as a condition that a particular part of the project would have to be located here in Pretoria and wanted to be able to work on it where it is more convenient for them individually in another city and that meant that we could not exercise our responsibility and control over the material.⁶⁴⁷

According to Dominy, the difficulties with MSU were symptoms of problems that are with the broader donor community; they relate back to this very perspective that SA TRC records are a South African heritage and they are managed by the South African government for the people of South Africa.⁶⁴⁸ In his view, the National Archives could not favor one foreign institution over the needs of our own people, be it the MSU, Yale, Mott, Ford, or Mellon Foundation.⁶⁴⁹

They all have the same sort of problem that I alluded to when I talked about MSU. This is not to decry the good work that all these institutions do or the quality and integrity of the people working there, I have not got a problem with that. Let me give you an example of the Aluka project which has been operating in our region as a whole. When you access material in the South Africa archives you are accessing in terms of the national act of South Africa. If we allow Aluka or Michigan to copy material and put it on their website they –Aluka– have said that for African scholarship it is free but for North American or European scholarship they would pay. Now if you are an American you can walk into the South African archives and can see the documentation under exactly the same conditions as the South Africans can see it.⁶⁵⁰

⁶⁴⁷Graham Dominy, interview by author, Pretoria, April 13th, 2007.

⁶⁴⁸Ibid.

⁶⁴⁹Ibid.

⁶⁵⁰Ibid.

Further, the National Archivist stated that they “do not discriminate in terms of national identity. So, it just does not work in terms of our law. The people who started that project-ALUKA are go-getters. They would just get material, process material, and put it on the website.”⁶⁵¹ Another problem that led to the impasse in the relationship had to do with copyright issues. Dominy stated that this also proved to be a difficulty because the copyright issue is vested in the South African law.⁶⁵² According to the National Archivist, the intellectual property rights are specified by the act that governs the SA TRC as the responsibility of the South African government. It is also a problem if the National Archives place any SA TRC material on a website that is branded as MSU, Yale University, Oxford, Kings College, and London.⁶⁵³ In the words of Dominy, “the direction which MSU wanted the archives to take caused severe problems with us and our copyright regime and these have to be negotiated very carefully. Strangely, I have found that the most fruitful relationship we have had is actually with the Mormon Church. The Genealogical Society of Utah where the agreements with them state very specifically that they may copy or may make the documents available on the same conditions that it is made available in South Africa and everybody, Mormon or whoever would want to use it understands that this documentation is a documentation from the National Archives of South Africa.”⁶⁵⁴ It is the Mormon sort of arrangement which the National Archivist would have preferred to have with MSU.⁶⁵⁵

⁶⁵¹Ibid.

⁶⁵²Ibid.

⁶⁵³Ibid.

⁶⁵⁴Ibid.

⁶⁵⁵Ibid.

The stalemate in the MSU/SA TRC relationship meant that not much progress has been made in the preservation of SA TRC electronic records and that they are in danger of both hardware and software obsolescence. An analysis of responses presented at Figure 3 of this dissertation explicitly shows that some urgent measures need to be taken to save the electronic memory of the SA TRC. When asked if SA TRC electronic records are deteriorating (see Appendix D, question 84 of the close-ended questions) 90% of the respondents or 18 people out of the twenty interviewed, agreed. When asked if the physical condition of SA TRC electronic records is a factor in their deterioration (see Appendix D, question 85 of the close-ended questions) all the twenty people interviewed agreed. When asked at question 85 of the close-ended questionnaire if technological obsolescence was a factor in the deterioration of electronic records again all the twenty people interviewed thought that technological obsolescence posed a real threat to the preservation of SA TRC electronic records. Also, all the twenty people interviewed thought that the lack of money was a big factor in the preservation of SA TRC electronic records. 13 respondents, or 65% of the twenty interviewed strongly thought that the poor training of archivists in the area of electronic records accounted for the poor preservation state of electronic records at the National Archives. It is easy to tell from these numbers that the National Archives needs some external help to assist it to deal with TRC records in the electronic mediums. The problem of how to manage electronic records is not only an issue at the National Archives of South Africa only. It would seem at the moment that no state archives the world has provided a model solution to this problem.

5.4 ACCESS TO THE TRC RECORDS AND THE ROLE OF THE SOUTH AFRICAN HISTORY ARCHIVE

Edmonson has stated in *Audiovisual Archiving: Philosophy and Principles*⁶⁵⁶ that “preservation is necessary to ensure permanent accessibility: yet preservation is not an end in itself. Without the objective of access it has no point.”⁶⁵⁷ Therefore, no matter how well preserved the SA TRC records are at the National Archives, the records cannot achieve their full meaning without access. Edmonson has further stated that “preservation and access are two sides of the same coin. For convenience they are considered separately....but they are so interdependent that access can be seen as an integral part of preservation. Indeed, the widest definition of preservation embraces almost the totality of an archives functions.”⁶⁵⁸

The legal framework for access to the records of the South African TRC is emphasized by the constitution of the republic of South Africa, the National Archives act and by PAIA. The South African Constitution of 1996 (Section 32) states that everyone has the right of access to any information held by the state and any information that is held by another person that is required for the exercise or protection of any rights...⁶⁵⁹ The National Archives act of 1996 states that "the foremost purpose of preserving archives is to ensure that they are made available for use. In terms of South Africa's archival legislation, any member of the public has a right of access to archives that are older than twenty years, free of charge. Archivists perform professional processing of records acquired to promote intellectual control over their contents, so

⁶⁵⁶Edmonson, *Audiovisual Archiving: Philosophy and Principles*, 19.

⁶⁵⁷Ibid.

⁶⁵⁸Ibid.

⁶⁵⁹The Constitution of the Republic of South Africa, Act 108 of 1996. Also available at <http://www.polity.org.za/govdocs/constitution/saconst.html> 10/26/2008.

that they may be consulted efficiently by users. During processing, various finding aids are prepared, including indexing of references to records on the National Automated Archival Information Retrieval System.”⁶⁶⁰ The preamble to the PAIA⁶⁶¹ says the act gives “effect to the constitutional right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights; and to provide for matters connected therewith.”⁶⁶² However, notwithstanding these legal instruments, access to the records of the SA TRC has not been easy. As a result, NGOs like SAHA have devoted most of their resources to fight for access in South Africa using PAIA.

According to its latest 2006 *Guidebook*⁶⁶³ SAHA was established in 1988 in Johannesburg by representatives of the United Democratic Front (UDF),⁶⁶⁴ and the Congress of the South African Trade Unions (COSATU),⁶⁶⁵ as a repository for the collection of all records relating to the South African political struggle.⁶⁶⁶ Soon after the passing of the access act in 2000, SAHA expanded its contribution to the democratic process by launching its “Freedom of Information Program,”⁶⁶⁷ whose aim was “to extend the boundaries of freedom of information and to build up an archive of materials released under the act for public use.”⁶⁶⁸ In the words of Harris, SAHA

conceptualized a TRC archives with various elements. The first element was to monitor what was happening with the formal TRC official archives and to lobby for public access. The second element was to do what nobody else was going to

⁶⁶⁰“Access to and Use of Archives,” available at <http://www.national.archives.gov.za> 10/26/2008.

⁶⁶¹*Promotion of Access to Information Act, Act No. 2 of 2000.*

⁶⁶²*Ibid.*

⁶⁶³*Guidebook* (SAHA: 2006).

⁶⁶⁴UDF for United Democratic Front

⁶⁶⁵COSATU for the Congress of South African Trade Unions.

⁶⁶⁶*Guidebook*, Op Cit.

⁶⁶⁷Hatang, “Freedom of Information: Problems, Prospects and Lessons: The South Africa Experience,”

70.

⁶⁶⁸*Ibid.*

do which is, to document all the bits and pieces out there, what lawyers, the media, churches have got, audit what is out there with the aim of enhancing prospects for preservation and access. The third element was to acknowledge that a lot of staff was out there and somebody needs to collect it. SAHA collected a lot of material as you know. The fourth element was to do an oral history project, to record conversations with people who worked in the TRC. We realized that key questions concerning records have not been asked. The fifth element was to digitize as much as possible and then post the information on the web.⁶⁶⁹

The first objective, that of testing the parameters of PAIA, resulted in several access battles between the SAHA, the DOJ, and the National Archives of South Africa. This dissertation will confine itself to two key, widely known access cases, namely, the 34 SA TRC missing records case and the case of access to the records of the Cradock Four.

5.4.1 The 34 Boxes of Sensitive TRC Records Case

In *National Security and Open Government: Striking the Right Balance*,⁶⁷⁰ Klaaren says that the long saga of the 34 sensitive SA TRC records started in 1999 when the 34 boxes of SA TRC records were transferred from the commission's offices and placed under the custody of the DOJ, instead of being transferred to the National Archives in Pretoria.⁶⁷¹ The files included a list of informers and a confidential submission by the ruling ANC.⁶⁷² The concern raised by SAHA was to stop the potential influence over access to these records by the Intelligence community.⁶⁷³

According to Harris, the author of the lawsuit,

⁶⁶⁹Verne Harris, interview by author, Johannesburg, April 13th, 2007.

⁶⁷⁰Jonathan Klaaren, "Access to Information and National Security in South Africa," in *National Security and Open Government: Striking the Right Balance* eds. Campbell Public Affairs Institute (Syracuse: Maxwell, 2003), 198.

⁶⁷¹Ibid.

⁶⁷²Ibid.

⁶⁷³Ibid.

the reality is that those boxes were moved from the TRC under very strange circumstances and in my position as head of the liaison between the TRC and the National Archives I was informed by staffers at the TRC office that this removal had taken place and given a list. So, I had a pretty good idea of what was in the boxes because of information got from two people who had created those files.... The reason was that those files had moved to intelligence and everybody was scared of intelligence and I was told to back off. But then I realized this is wrong and these records are vulnerable”⁶⁷⁴

In May 2001, SAHA put a PAIA access request to the DOJ in relation to these records.⁶⁷⁵ In December 2001, the DOJ indicated that they did not have the records and suggested that SAHA approach the National Archives. SAHA immediately wrote to the National Archives to seek clarification but instead got the National Intelligence Agency which indicated in writing that the records were still with the DOJ.⁶⁷⁶ On April 12th 2002 the National Intelligence Agency confirmed that indeed NIA⁶⁷⁷ had the records.⁶⁷⁸ In the words of Allan, the SAHA human rights lawyer,

there were conflicting reports about who had the 34 boxes and who actually had the records. Originally TRC was meant to have sent them to Justice to be housed at the National Archives for public access. There were then many reports that NIA had them. SAHA subsequently made a request to access all documents relating to the chain of custody and an inspection of those particular records. Those requests were submitted simultaneously. What immediately transpired was that the Department of Justice, the National Archives and the National Intelligence Agency formed some sort of committee to identify who had them; a process that resulted in a lot of finger pointing. Then a rough index was made and then the NIA provided some information regarding the chain of custody. DOJ initially refused to provide access. Then from then on it was series of negotiations about accessing the documents themselves.⁶⁷⁹

⁶⁷⁴Verne Harris, interview with author, Johannesburg, April 13th, 2007.

⁶⁷⁵Klaaren, “Access to Information and National Security in South Africa,” 198.

⁶⁷⁶Ibid.

⁶⁷⁷NIA for the National Intelligence Agency.

⁶⁷⁸Klaaren., 198.

⁶⁷⁹Kate Allan, interview with author, Johannesburg, February 14th, 2006.

According to Allan, SAHA was then forced to commence court proceeding at the end of 2002.⁶⁸⁰ The respondents, the DOJ and the National Archives, did not file their responses until late 2004.⁶⁸¹ Allan further stated that throughout that period, the DOJ, NIA, and the National Archives were trying to delay the process and kept pushing back the timeline in which they were meant to file their defense, during which time SAHA gained access to some but not all of the records.⁶⁸²

In its 2005 *Annual Report*,⁶⁸³ SAHA stated that court proceedings were halted in 2004 to allow for a negotiated settlement but very little progress was made in 2005.⁶⁸⁴ “The Department of Justice provided lengthy reasons for refusal, citing grounds such as that the records related to ongoing investigations (i.e. the assassination of Dulcie September), that the records contained information relating to third parties, that the records would violate non-proliferation obligations (i.e. with respect to chemical and biological weapons) and that the records related to ‘Section 29’ hearings. Section 29 of the *Promotion of National Unity and Reconciliation Act* of 1995 provided room for closed-door hearings and protected witnesses who did not want to appear in public. SAHA sought clarification regarding a number of issues raised in the refusals, but to date the Department has failed to respond.”⁶⁸⁵ The SAHA 2005 *Annual Report* further mentions that, despite the frustrations, over access to the 34 boxes it won some 60 to 70% of the records sought. This was a significant achievement in light of the department’s consistent refusal to allow public access. It has become apparent that the department of Justice uses similar reasoning for refusing

⁶⁸⁰Ibid.

⁶⁸¹Ibid.

⁶⁸²Ibid.

⁶⁸³*Annual Report* (SAHA: 2005).

⁶⁸⁴Ibid., 31.

⁶⁸⁵Ibid.

other requests for access to information, asserting that matters are sub judice, that third party interests prevail, etc, etc.”⁶⁸⁶

5.4.2 Access to the Cradock Four Records

The case of the Cradock Four started in July 2005 when SAHA, on behalf of David Forbes, a film producer, initiated High Court proceedings against the Minister of Justice and the National Archives of South Africa for refusal to grant access to the records of the Cradock Four Amnesty hearings.⁶⁸⁷ The Cradock Four - Matthew Goniwe, Sparrow Mkhonto, Fort Calata and Sicelo Mhlauli, were abducted while returning to Cradock from a meeting in Port Elizabeth. The four were leaders of the United Democratic Front, an anti-apartheid movement in the Eastern Cape.⁶⁸⁸ According to police evidence, the four men were kidnapped at a roadblock outside Port Elizabeth. They were then allegedly taken to Olifantshoek Pass and later to Port Elizabeth where they were assaulted, killed and their bodies and the vehicle in which they were travelling burnt on June 27, 1985. Two inquests were held following the killing of the Cradock activists. During the second inquest in 1994, evidence was led which pointed to the involvement of the then South African Defense Force in the killing of the activists. This evidence related to a signal which was allegedly sent by Colonel Lourens du Plessis, on behalf of Brigadier van der Westhuizen to Major General van Rensburg in which the 'permanent removal' from society of the deceased was recommended. However, the court held that it was unable, on the basis of evidence before it at

⁶⁸⁶Ibid.

⁶⁸⁷Shadrack Katuu, “SAHA Challenges Minister of Justice's Continuing Shroud of Secrecy,” email message to the Esarbica listserve, May 3, 2006.

⁶⁸⁸“New Evidence for the Cradock Four,” at <http://www.doj.gov.za/trc/media/1999/9910/p991020b.htm>. 10/26/08.

the time, to establish who were responsible for the killing of the Cradock activists. Former Vlakplaas police bosses Eugene De Kock and Eric Taylor, Johannes Lotz, Nicholas Van Rensburg, Harold Snyman (deceased), Johan Van Zyl and Hermanus Barend Du Plessis applied to the SA TRC for amnesty for the killings.⁶⁸⁹

A few years ago, filmmaker David Forbes began the process of making a documentary about the Cradock Four.⁶⁹⁰ To assist with research and footage for the documentary, Forbes utilized his right of access to information by submitting a request pursuant to the *Promotion of Access to Information Act 2 of 2000* (PAIA) for the transcripts of, and documents presented in, the open Amnesty hearings into the deaths of the Cradock Four.⁶⁹¹ The DOJ refused the request in the first instance and on appeal, citing reasons of third party privacy and potential prejudice to ongoing investigations.⁶⁹² The refusal was inexplicable, particularly given that the majority of the transcripts were published on the website of the department.⁶⁹³ As a result, in June 2005, SAHA, on behalf of David Forbes, sued the Minister of Justice and the National Archives of South Africa for refusal to release the Cradock Four records⁶⁹⁴ According to Allan, the coordinator of SAHA's Freedom of Information Program, the minister then released copies of the transcripts of the hearings and two documents titled 'biological background' and 'map overlay' in response to the SAHA petition.⁶⁹⁵ The transcripts, however, were not complete and the map overlay was simply a photocopied page from the street directory of the Port Elizabeth

⁶⁸⁹“New Evidence for the Cradock Four,” at <http://www.doj.gov.za/trc/media/1999/9910/p991020b.htm> 10/26/08.

⁶⁹⁰Katuu, “SAHA Challenges Minister of Justice's Continuing Shroud of Secrecy,” email message to the ESARBICA Listserve, May 3, 2006.

⁶⁹¹Ibid.

⁶⁹²Ibid.

⁶⁹³Ibid.

⁶⁹⁴Ibid.

⁶⁹⁵Ibid.

region.⁶⁹⁶ Unhappy with the released documents, SAHA appealed the case. On September 14, 2006, the DOJ settled the case out of court.⁶⁹⁷ According to a press release from Allan, “the Minister of Justice... provided access to all documents utilised in the Amnesty Committee hearing about the deaths of the Cradock Four. The order requires that the Minister of Justice allow the applicants access to the documents within 30 days, and that the Minister pay the applicants costs in the matter.”⁶⁹⁸ Allan further stated that, due to the role they played in accessing the Cradock Four records, Forbes is now able to finish the documentary which will examine the lives of the men whose political opinions and activities led to their deaths.⁶⁹⁹ “SAHA is pleased that it has been able to assist South Africans to realise their right of access to information. However, SAHA is concerned with the belated nature of the respondents' offer of settlement. SAHA believes this demonstrates that the Ministry of Justice failed to adequately consider the merits of the case when it was clear that their defence was ill-founded, and have unnecessarily expended considerable public resources resisting the claim.”⁷⁰⁰

Further, Allan has commented that SAHA is concerned that the settlement prevented a judgment which would provide clarity regarding the interpretation of a number of exemptions that are being regularly and, in SAHA's opinion, often incorrectly used by public bodies.⁷⁰¹ This is a big problem in the South African access landscape because, as Allan observed, “most South Africans do not have the means to challenge such decisions by means of litigation, and this case again demonstrates the need for an independent commission which has power to make binding

⁶⁹⁶Ibid.

⁶⁹⁷Kate Allan, “SAHA Press Release – 14 September 2006,” email message to the ESARBICA listserve, May 3, 2006.

⁶⁹⁸Ibid.

⁶⁹⁹Ibid.

⁷⁰⁰Ibid.

⁷⁰¹Ibid.

decisions, so that requesters of information are not prevented from accessing information through unnecessary delays or a lack of resources.”⁷⁰² It is clear from these two cases that SAHA has been a major catalyst in the management of access to SA TRC records. Harris, the man who played a key role in both cases, has been quoted in an interview with this author saying,

I could then use the Promotion of Access to Information Act (PAIA) as a tool to (i) get the state to admit where these files are (ii) get them to move these files to where they belong which is at the National Archives, (iii) and to put as much of them as possible into the public domain. I think SAHA was very successful in this regard...as a result of SAHA efforts about ¾ of those files are now in the public domain. It’s really important that you engage the TRC archive not just as another state archive. It’s far more than that. It’s emblematic of these big issues of memory and access and public participation in the creation of memory. It is emblematic of commitment to making archive a resource to the public. Making archives a human rights issue.⁷⁰³

Pigou, the current SAHA chief executive officer, has also underlined SAHA’s role in access to SA TRC records. SAHA was testing the “waters in terms of different documentation to see what was available using the promotion of access to information act....What I am saying is that ...we are not going to suspend our efforts to try and get access to certain records that seat in the TRC archive until the National Archives sorts them out... If SAHA withdrew from the field they could be serious problems. I am sure a lot of people would like us to withdraw... but equally there are others who want us to stay.”⁷⁰⁴ As recently as November 2007, SAHA has continued to play its watchdog role by filing an official complaint against the DOJ to the South African Human Rights Commission (SAHRC).⁷⁰⁵

⁷⁰²Piers Pigou, interview by author, Johannesburg, March 9th, 2007.

⁷⁰³Verne Harris, interview with author, Johannesburg, April 13th, 2007.

⁷⁰⁴Ibid.

⁷⁰⁵SAHRC for the South African Human Rights Commission.

5.5 SAHA'S PETITION TO THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC) AGAINST THE DEPARTMENT OF JUSTICE OVER THE TRC RECORDS

On November 1st 2007, SAHA filed a complaint to the South African Human Rights Commission against the DOJ over its refusal to grant them SA TRC records requested through PAIA.⁷⁰⁶ The petition, signed by SAHA's "Freedom of Information Program" coordinator, Kate Allan, makes reference to the frustrations experienced by SAHA in getting access to the SA TRC records, especially the 34 sensitive boxes, the Cradock Four Amnesty records, TRC victim database, and closed-door or in-camera hearings of the SA TRC.⁷⁰⁷ According to Allan, SAHA petitioned the DOJ to the Human Rights Commission because

over the course of the last six years SAHA has had a difficult relationship with the Department of Justice. We have made numerous public statements about the problems experienced in accessing, in particular, TRC records and have litigated in two matters and appealed to the Minister in several others... More recently we made numerous attempts to engage in a more facilitative relationship by requesting meetings with the Director General (the first meeting was cancelled and he ignored our second request) and with the Deputy Information Officer. We met with the Deputy Information Officer in October 2006. The meeting, as far as we were concerned, brought consensus on a number of issues. However when we submitted our minutes for comment the Deputy Information Officer disputed the content and, after requesting a meeting to discuss the meeting minutes, refused to provide us with an amended set. We consequently filed a comprehensive complaint with the South African Human Rights Commission outlining a number of areas in which the department is not fulfilling its obligations. In response to the complaint, the Minister denied that there were any problems with implementation of PAIA within her department, and refused to participate in a mediation to resolve outstanding requests and concerns raised by us.⁷⁰⁸

⁷⁰⁶Kate Allan, "Complaint to the South African Human Rights Commission Regarding the Department of Justice," email message to the ESARBICA Listserve, November 1st, 2007.

⁷⁰⁷Ibid.

⁷⁰⁸Ibid.

According to Allan, the request for a copy of the SA TRC victims' database occurred in late 2006 following settlement of the litigation relating to access to records of the SA TRC hearings into the murder of the Cradock Four.⁷⁰⁹ Allan says at a meeting they had with the Deputy Information Officer SAHA requested for access to the TRC Victims Database.⁷¹⁰

in that request we sought access to the database but noted that we did not want any personal information, i.e. names and addresses of victims, but was seeking information about categories of violations etc with which it could conduct quantitative and qualitative research about apartheid era violations. We also noted the designers of the database had informed us that personal information could be redacted, and that they were willing to consult with the department in this regard. The department in the first instance refused on the basis that the record contained personal information. When we appealed on the basis that we specifically stated that we did not want personal information, we began receiving complaints from individuals who had received third party notices from the department which stated that 'Kate Allan of the South African History Archive has requested all of your personal information on the TRC Victims Database'.⁷¹¹

Allan goes on to say that when SAHA complained to the DOJ about this misrepresentation and to the lie regarding their alleged request for the personal information of the victims they were treated with arrogance by the Deputy Information Officer (DIO).⁷¹² Up to now, SAHA has not been given the database because the Minister of Justice now alleged that to accede to SAHA's request would be to create an entirely new record, which they are not obligated to do.⁷¹³ The case of the Cradock Four was also referred to in the petition because, in the words of SAHA, the case demonstrated

the lengths to which the department will go to prevent access. In that case, the department obtained affidavits from two of the widows of the deceased men stating that they opposed access. The widows later provided affidavits to SAHA stating that representatives arrived at their houses unannounced, and they felt

⁷⁰⁹Ibid.

⁷¹⁰Ibid.

⁷¹¹Ibid.

⁷¹²Ibid.

⁷¹³Ibid.

under duress to sign the affidavits, but that they in fact did not oppose access...The Minister in response stated that: If any form of intimidation or coercion was exerted on them, it is surprising why they did not inform the Police who would undoubtedly have provided them with the necessary protection. When Mr David Forbes subsequently obtained counter-affidavits from the widows, the department of Justice accepted and respected these as it appeared to us that they had changed their minds. It was for this reason that the department decided to settle the case and agreed to grant access to the record as we respect the wishes of the relevant third parties. The Minister was informed of the 'change of mind' of the widows when SAHA submitted its replying affidavit in April 2006, however she didn't agree to provide access until September 14th 2006, five minutes before the scheduled hearing.⁷¹⁴

SAHA also petitioned over the release of closed-door hearings records. Buoyed by the fact that at their final meeting in March 2003 the commissioners made a recommendation that the confidentiality of in-camera hearings be removed, SAHA arranged a meeting for access to these records with the DOJ.⁷¹⁵

at the meeting we also discussed a number of other matters, including our request for access to records of in-camera hearings of the TRC and our intention to request the amnesty application of Eugene de Kock. In relation to the former, we submitted a request for all in camera hearing transcripts in which we noted that some of these had been aired in subsequent public hearings. The request was refused in a blanket fashion on the basis that disclosure of the records could breach the privacy or threaten the life or safety of third parties, and could cause prejudice to ongoing investigations and prosecutions. The grounds utilized are, word for word, the same as those utilized in the earlier 34 boxes and Cradock cases. The department in doing so makes no distinction between records which have been aired in public hearings and those which have not.⁷¹⁶

The blanket refusals that seem to consume the DOJ are incomprehensible to SAHA, especially given the fact "that paragraph 103 of Volume 5, Chapter 8 of the Final TRC report categorically states that: all commission records be accessible to the public, unless compelling reasons exist

⁷¹⁴Ibid.

⁷¹⁵Ibid.

⁷¹⁶Ibid.

for denying such access.”⁷¹⁷ What emerges out of this section is the fact that SAHA continues to use every weapon at its disposal to seek access to the SA TRC records.

5.6 CONCLUSION

This chapter attempted to answer the study’s first research question, namely, “How Has the South African National Archives Managed the Records of Its Truth Commission?” The answer to this question was divided into several parts. The first part looked at managing the TRC paper records, the second part looked at managing the TRC audiovisual records, the third part looked at managing the TRC electronic records and the fourth looked at the role of SAHA in helping the archives to manage these records.

The findings of this research suggest that given its experience in managing paper records, the National Archives of South Africa does not seem to have any problems managing the TRC’s paper records. Also, the expertise available at the Film archives places the SA TRC’s audiovisual records out of danger. It is the TRC’s electronic records that are a major concern. The problem faced by the National Archives in managing the TRC’s electronic records led it to sign a memorandum of understanding with MSU. Through this partnership MSU was able to secure a grant of \$50 000.00 for use by the National Archives. However, the relationship between MSU and the National Archives soon soured. The fall-out between Michigan and the National Archives did not happen at a personal level. Rather, it happened at a professional level. It would seem that the reason for the collapse of the relationship lied in the fact that the two had different

⁷¹⁷Ibid.

interpretation of the memorandum of understanding. At the time of writing this dissertation the National Archivist did not seem to offer any easy solutions to the problem of TRC's electronic records.

Another player involved in forcing the National Archives to grant access to the TRC records has been SAHA. Excited by the launching of PAIA in 2001 SAHA took it upon itself to test the parameters of the new freedom of information act through requests for TRC records. Of the many requests that SAHA made two stand out, namely, the 34 boxes of sensitive TRC records case and the case of the Cradock Four records. Even though the two cases drained SAHA financially it was ultimately able to secure the records for the public good. The case of the 34 boxes and the Cradock Four case demonstrate the positive role that an NGO has played in facilitating an atmosphere of access to TRC records in South Africa.

6.0 WHAT PROBLEMS AND CHALLENGES HAS THE SOUTH AFRICAN NATIONAL ARCHIVES EXPERIENCED IN PRESERVING AND MAKING TRUTH AND RECONCILIATION COMMISSION RECORDS IN ALL MEDIA ACCESSIBLE TO THE PUBLIC?

6.1 INTRODUCTION

Ever since moving the SA TRC records from Cape Town to Pretoria from October 25 to October 29th 2001⁷¹⁸, and being tasked with their preservation and access, the National Archives of South Africa has experienced many problems in preserving and making TRC records accessible to the public. Some of these problems include unprocessed records, resource shortages (both human and financial), the problem of old apartheid laws that are still in operation in post-apartheid South Africa, logistical problems between the Department of Justice and the National Archives, the problem of secrecy, and the lack of political will.

⁷¹⁸“Safeguarding/Escorting Documents of the Truth and Reconciliation Commission (TRC): Cape Town to Pretoria 2001-10-25 until 2001-10-29,” October 17, 2001. In Correspondence: Transfer of Sensitive TRC Records to the Department of Justice, File No. A.2.2.1 (B) (SAHA Guidebook: 2004), 90.

6.2 UNPROCESSED RECORDS

The problem of unprocessed SA TRC records has been identified as a big access challenge. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*,⁷¹⁹ Hayner has expressed concern that when it comes to truth commission records, “for me the big question is whether the tools for preserving and getting access to information are there.”⁷²⁰ Dominy, the National Archivist of South Africa, has also observed that unprocessed records remain the biggest problem facing access to the SA TRC records.⁷²¹ In an interview recorded on April 13th 2007⁷²² Dominy admitted that they are lagging behind with the processing of TRC records and that this

situation is not ideal. We have not really reached a magic situation where we have inventories and catalogues up on the web and available in hard copy and beautifully bound. But given the fact that the material came in chaos, in boxes, the three people working on it Natalie Skomolo, Zahira Adam and Gerrit Waggener have done wonders in actually arranging it on the shelves, getting proper shelf lists and being able to locate what is needed in the paper records within a very short period of time. It’s not up to top professional standards yet, but it is a workable solution.⁷²³

The situation is slightly different with the SA TRC audiovisual materials. Dominy has also mentioned that as far as the audio material is concerned “we have the controls that enable one to link from an audio to the paper based so you can pull up both the paper record and an audio recording from the same hearing.”⁷²⁴ Further, a form of intellectual control had been imposed on

⁷¹⁹Priscilla Hayner. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*. Proceedings of a Conference on “Archiving Truth Commission Records,” Yale University, February 22-24, 2006.

⁷²⁰Ibid.

⁷²¹Graham Dominy, interview by author, Pretoria, April 13th, 2007.

⁷²²Ibid.

⁷²³Ibid.

⁷²⁴Ibid.

the audiovisual records five years ago.⁷²⁵ The final inventories are not available yet but the National Archives can operationally locate and make that material available as a copy.⁷²⁶ However, “electronic records are still the problem area and they will be the area that will be our first to sort out. The material that is on disks and hard drives are still the problem partly as a result of the difficulties we had with Michigan State University and other agencies from outside the country.”⁷²⁷

In “Report on Work Done at the TRC,”⁷²⁸ produced by Hatang and Wagener for the National Archives confirmed that “although the TRC had a filing system in most instances it was not followed. This made the compiling of comprehensive lists very difficult. Each file or lever arch file had to be identified before it could be described. In some instances a lever arch file will be marked incoming correspondence and then would contain all correspondence received, whether personal or not.”⁷²⁹

In addition, a report entitled “Discussion Document for Steering Committee on Winding Down Process of the Truth and Reconciliation Commission”⁷³⁰ revealed that not every SA TRC regional office complied with the filing system that was compiled by Harris and his colleagues for use by all SA TRC offices.⁷³¹ In fact, Hatang has been quick to state in an interview with this researcher that the classification system devised for SA TRC records was not followed at all.

⁷²⁵Ibid.

⁷²⁶Ibid.

⁷²⁷Dominy, interview by author, April 13th, 2007.

⁷²⁸“Report on Work Done at the TRC,” June 6, 2001. In Organization and Control Meeting-TRC, 2001/2002. File Reference: 2/10/27. Vol 1 (National Archives).

⁷²⁹“Report on Work Done at the TRC,” June 6, 2001. In Organization and Control Meeting-TRC, 2001/2002. File Reference: 2/10/27. Vol 1 (National Archives).

⁷³⁰“Discussion Document for Steering Committee on Winding Down Process of the Truth and Reconciliation Commission,” In Organization and Control Meeting-TRC, 2001/2002, File Reference 2/10/27, Vol 1 (National Archives).

⁷³¹Ibid., 5.

Hatang told this author that, “the truth is that the classification system was not followed and as a result of this people classified the records as they saw fit. For access purposes the National Archives had to redo the process in terms of arrangement and description. This is one of the factors which caused delay in making the records accessible. Had the filing system been followed the National Archives would have avoided some of the court battles that were occasioned by the failure to avail the records.”⁷³²

Madeleine Fullard, a distinguished South African advocate attached to the SA TRC, has also highlighted this problem. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*,⁷³³ Fullard told her American audience that

the critical need in South Africa right now is to develop a detailed inventory of the TRC records. No such inventory exists. The archives are imagined archives, imagined by government, the public also has a certain notion, no one really knows because we do not have a detailed inventory. It is a nightmare accessing documents, especially if you need them, as do people in my work. If we had a detailed inventory a lot of drama, paranoia, fears, and trauma, would dissipate...there isn't an immediate phase to work on making the documents available as the recommendations of the truth commission suggests.⁷³⁴

Harris, a leading archival practitioner in South Africa and TRC records specialist also commented that access of the SA TRC records in South Africa is hampered by the fact that

very little processing work has taken place so that even if the National Archives wants to give access to a particular request it is difficult to find the material. Over time it's going to be more and more difficult to process the collection meaningfully because you need to be talking to people who created the records to understand how those systems work and how those records relate to them. So, I do not want to sound negative what I am saying is that there are many problem areas and anybody who cares about archives and the TRC archives in post-apartheid South Africa must advocate for intervention.⁷³⁵

⁷³²Sello Hatang, interview by author, Johannesburg, April 3rd, 2007.

⁷³³Madeleine Fullard. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*. Proceedings of a Conference on “Archiving Truth Commission Records,” Yale University, February 22-24, 2006.

⁷³⁴Ibid.

⁷³⁵Verne Harris, interview by author, Johannesburg, April 3rd, 2007.

In a paper presented at a seminar organized by the *Institute For Justice and Reconciliation*⁷³⁶ under the theme ‘What has the TRC achieved? An Assessment After Ten years,’⁷³⁷ Harris once again reiterated the fact that even though the SA TRC recommended that its archive should be accessible to the public unless compelling reasons exist for denying such access and that the government should allocate adequate additional funding to the National Archives to preserve and maintain the records, the reality on the ground is far from the one outlined by the SA TRC due to inadequate processing and the absence of detailed finding aids.⁷³⁸ Pigou, the current outspoken SAHA chief executive officer, has also been recorded saying that, “we understand that the fundamental problem with the TRC archive is that it has not been processed, so any request we make, for any aspect of the archives, causes logistical headaches.”⁷³⁹

In his discussion of “Public Access to the TRC Archive,” Harris again laments the fact that inadequate professional processing (such as detailed description, indexing and cross-referencing) limits the full usefulness of the TRC archive.⁷⁴⁰ In the bigger scheme of human rights issues the lack of finding aids for TRC records at the SA National Archives violates the famous Orentlicher principles⁷⁴¹ adopted the United Nations’ Commission on Human Rights in April 2005. In “The Orentlicher Principles on the Preservation and Access to Archives Bearing

⁷³⁶“What Has the TRC Achieved? An Assessment After Ten Years” A Conference Organized by the *Institute for Justice and Reconciliation*, Cape Town, 20-21 April 2006.

⁷³⁷ Ibid.

⁷³⁸ Ibid.

⁷³⁹ Piers Pigou, interview by author, Johannesburg, March 9th 2007.

⁷⁴⁰ Verne Harris, *Archives and Justice: A South African Perspective* (Chicago: SAA, 2007), 296.

⁷⁴¹ The Orentlicher principles were named after Diane Orentlicher, Professor of Human Rights at the Washington College of Law. Diane Orentlicher was appointed by Kofi Annan, the former United Nations Secretary-General, to update the Joinet principles. Louis Joinet, the French Jurist and Human Rights expert, was assigned by the United Nations Commission on Human Rights to work on aspects of International Law touching on human and cultural rights. The Joinet principles focused on the right to know, the duty to remember, the right of victims to know, and the duty of the archives to preserve human rights records, etc, etc.

Witness to Human Rights Violations,”⁷⁴² Mnjama discusses measures for the “preservation of archives” and measures “facilitating access to archives” within the context of the United Nations human rights pronouncements. Mnjama says,

the right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights/or humanitarian law....Access to archives shall be facilitated in order to enable victims and their relatives to claim their rights. Access shall be facilitated, as necessary, for persons implicated, who request it for their defense.⁷⁴³

In “Preservation Versus Access: The User and Archives,”⁷⁴⁴ Cathrine Moyo, also reminds us that failure to provide access on the grounds of unarranged documents actually constitutes an infringement of legal provisions of access.⁷⁴⁵ The reason why this should be the case is that archivists can use non-arrangement as a scapegoat for refusal to provide access. Therefore, “a resolution should be sought regarding this because access is the right of any researcher,”⁷⁴⁶ and should not be denied unless under compelling reasons. This researcher found it ironic that despite an unprecedented lead in the pioneering of an automated finding aid, access to the SA TRC records still remain a major problem.

In her paper to a Chinese audience in the spring of 2005 entitled, “South African Participation in UNESCO Memory of the World Register,”⁷⁴⁷ the Deputy archivist of South

⁷⁴²Nathan Mnjama, “The Orentlicher Principles on the Preservation and Access to Archives Bearing Witness to Human Rights Violations,” *Information Management* 24 (2008), 216.

⁷⁴³ Ibid.

⁷⁴⁴Cathrine Moyo, “Preservation versus Access: The User and Archives,” *Esarbica Journal* 21 (2002): 108-113.

⁷⁴⁵ Ibid., 108.

⁷⁴⁶ Ibid., 108.

⁷⁴⁷Mandy Gilder, “South African Participation in UNESCO Memory of the World Register,” A Paper Presented at the Seventh Meeting of the International Advisory Committee of the Memory of the World Program, Lijiang, June 13-17, 2005.

Africa, Mandy Gilder, proudly stated that when it comes to automated findings aids South Africa took an early lead through the development of the National Automated Archival Information Retrieval System (NAAIRS).⁷⁴⁸ The National Automated Archival Information Retrieval System⁷⁴⁹ was web enabled in 2001 and maintains its status as one of the most comprehensive finding aids the world over. According to Gilder, NAAIRS contains records that are in the National Archives in Pretoria and Cape Town and incorporates national registers of non-public records in the custody of a wide range of private repositories.⁷⁵⁰ Unlike any other archival search engine, NAAIRS has been successful in integrating related but physically dispersed records in both public and private repositories respectfully. However, despite its wide capabilities, NAAIRS has no single listing of any TRC records in South Africa.

6.2.1 Summary

There is no way TRC records are going to be made available to the public without proper tools of access. Arrangement and description of records is a core archival duty. The National Archives should address this problem first before it can even dream of providing access to TRC records.

⁷⁴⁸NAAIRS stands for the National Automated Archival Information Retrieval System

⁷⁴⁹Ibid.

⁷⁵⁰Mandy Gilder, "South African Participation in UNESCO Memory of the World Register," A Paper presented at the Seventh Meeting of the International Advisory Committee of the Memory of the World Program, Lijiang, June 13-17, 2005.

6.3 RESOURCE CONSTRAINTS

The problem of unprocessed records is directly linked to that of resource constraints. Generally speaking, all governments the world over operate within limited budgets. It would follow, therefore, that the South African case is not any different. In the case of South Africa, the staffing and funding problem has adversely affected the arrangement and description of SA TRC records. Natalie Skomolo, the former TRC records manager now on the National Archives payroll, has admitted in an interview held with this researcher that the biggest problem facing access to SA TRC records is time and resources.⁷⁵¹ Skomolo has mentioned that they “do not have enough time and resources to arrange and describe the records. We also need extra people on board to help with arrangement and description. We are doing everything at the moment, retrieve, copy, answer questions and deal with PAIA requests.”⁷⁵² However, it should be mentioned that the picture that emerges here is not one of total doom. Some positive steps have been taken in the processing of some SA TRC records. According to Skomolo “so far the National Archives has arranged and described all the Human Rights Violations Committee records. The Amnesty staff was interrupted because the Cape Town office had 4 000 unprocessed boxes.”⁷⁵³ Hatang has also further stated in an interview recorded on April 3rd 2007 that the issue of capacity is a big one and that “the National Archives is actually trying its best within the limited resources which they have. Sometimes one tends not to appreciate what goes behind making those records accessible but they could do better. So, when those records were transferred from Cape Town to Pretoria they were not in the best shape. For example when the

⁷⁵¹ Natalie Skomolo, interview by author, Pretoria, March 14th, 2007.

⁷⁵² Ibid.

⁷⁵³ Ibid.

commissioners cleared their offices we found some of the records just damped in boxes mixed with mugs, dishes, markers, etc.”⁷⁵⁴

On the problem of staffing Hatang has stated that “for a while that is going to continue to be a challenge. Unfortunately what tends to happen is that priorities lie somewhere else in terms of how government spends its money.”⁷⁵⁵ Hatang believes that, “institutions like the National Archives will continue to get a small piece of the pie until such a time that we increase capacity not only in managing the TRC archive but also in managing the archive generally.”⁷⁵⁶

For instance the archives act tasks the National Archives with having to conduct inspections but I can assure you that there has not been any inspections conducted in the last few years. This leads to information held by government departments getting lost because people will tend to do as they please because they know no one is going to come and say “account for what you have done.” The TRC unit is not the only one that is struggling so I am trying to say to you there should be a holistic approach to dealing with the access problem. Issues of records managements in government departments is a huge problem and until such time that units like the records management unit are given a few more staff members the problem will persist.⁷⁵⁷

In another interview Dominy admitted that the National Archives still has a huge job to tackle because “they have not got the resources to really process and preserve TRC records properly.”⁷⁵⁸

In the words of the National Archivist, a possible solution to deal with this problem has been to include “donor agencies because they can bring resources to the party as long as they understand that we are first trying to do this on behalf of the people of South African,”⁷⁵⁹ and not via a university in the middle of the Atlantic.⁷⁶⁰ In “Archiving Truth Commission Records,”⁷⁶¹

⁷⁵⁴Ibid.

⁷⁵⁵Ibid.

⁷⁵⁶Ibid.

⁷⁵⁷Sello Hatang, interview by author, Johannesburg, April 3rd, 2007.

⁷⁵⁸Graham Dominy, interview by author, Pretoria, April 3rd, 2007.

⁷⁵⁹Ibid.

⁷⁶⁰Ibid.

Dominy has stated that “no funds have yet been received to properly process TRC archives. Various offers have been received to process but have not yet been followed up.”⁷⁶² In explaining the difficulties of securing funding from external sources like Michigan and the Ford Foundation Dominy has stated that “these are records of the South African government. There is a degree of concern about outsiders and access to these records. Funding projects that come in from left field are difficult to get approval for at a political level. It is also difficult to manage donors within our financial regulations. However, our operational budgets are being increased a little bit and the national treasury has allocated about [\$ 170 million] over five years to expand the National Archives, inclusive of TRC records.”⁷⁶³

Gerrit Wagener, the head of the TRC records section, decried to this researcher that “we only have two staff members and they also have to work on other things. Staff and time are the biggest problems. We would need at least four or five more staff members to really arrange and describe the TRC records. Once we have resolved staff issues and our roles are more defined there would not be any problems worth mentioning.”⁷⁶⁴

When talking about the poor funding of TRC records in South Africa, it becomes important to place it within the bigger context of the lack of funding of cultural institutions in Sub-Saharan Africa. Writing in “Preservation Reformatting Strategies in Archival Institutions in Sub-Saharan Africa,”⁷⁶⁵ Ngulube notes that inadequate financial resources generally account for

⁷⁶¹Graham Dominy. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*. Proceedings of a Conference on “Archiving Truth Commission Records,” Yale University, February 22-24, 2006.

⁷⁶²Ibid.

⁷⁶³Ibid.

⁷⁶⁴Gerrit Wagener, interview by author, Pretoria, March 14th, 2007.

⁷⁶⁵Patrick Ngulube, “Preservation Reformatting Strategies in Archival Institutions in Sub-Saharan Africa,” *Esarbica Journal* 21 (2002): 69-82.

the steady deterioration of archival documents in Africa and in South Africa specifically.⁷⁶⁶ A possible solution to this problem lies in sustained education program that will draw the link between records, good governance and accountability. Mnjama also reiterated this point when he observed that

The continued preservation and management of records for posterity requires financial investment and commitment from governments. [TRC] records will age over time and will require some restoration or migration into newer formats. As a result of this access to databases containing information on human rights violations may also be problematic, especially where arrangements have not been made to migrate data from obsolete technologies. Even where such may be deposited with archival institutions, adequate finances need to be allocated for regular maintenance and upgrading of the supporting equipment. Such funding may be difficult to secure in the African continent, where resources supporting archives and library programs are not given high priority by governments.⁷⁶⁷

6.3.1 Summary

One of the greatest impediments to the availability of TRC records in South Africa relates to funding and the problem of staff shortage. The two are not mutually exclusive. However, it is hoped that the now increased budget allocated to the National Archives in the next five years will ameliorate the situation.

⁷⁶⁶ Ibid., 75-76.

⁷⁶⁷Mnjama, "The Orentlicher Principles on the Preservation and Access to Archives Bearing Witness to Human Rights Violations," 223.

6.4 POOR LOGISTICS

A study done by McKinley prepared on behalf of the *Centre for the Study of Violence and Reconciliation* (CSVR)⁷⁶⁸ sub-titled “The State of Access to Information in South Africa”⁷⁶⁹ identified logistical problems between the DOJ and the National Archives over the control of access to SA TRC records. These problems are occasioned by the confusion arising out of the powers given to the National Archives by the National Archives act and those given to the DOJ by PAIA. According to the CSVR⁷⁷⁰ study, the fact that the National Archives act gives power to the National Archivist over the control of TRC records and the fact that, on the other hand, PAIA gives power to the DOJ “presents problems in interpreting which access provisions are to be followed by holders of information and who is ultimately in charge of making decisions about the availability of sensitive information. As the National Archivist, Dominy has pointed out that “it has been quite difficult for us to actually match the two. The interpretation of the provisions of the two acts is a considerable challenge.”⁷⁷¹ In fact, Wagener has identified logistical problems between the DOJ and the National Archives as the single biggest challenge to access. Wagener has been recorded by this researcher saying, “my greatest challenge at this stage is that the TRC belongs to two departments, Justice and the National Archives. There is rather confusion and the end result is that not much is being done because neither department knows what it is supposed to do and what it is not supposed to do. This whole issue can be resolved by

⁷⁶⁸The Center For the Study of Violence and Reconciliation is an NGO that has been devoted to the study of the effects of apartheid on the South Africans.

⁷⁶⁹Dale McKinley. “The State of Access to Information in South Africa,” (CSVR: 2003).

⁷⁷⁰CSVR for the Center for the Study of Violence and Reconciliation.

⁷⁷¹McKinley, “The State of Access,” 6.

clearly stating who is responsible for what.”⁷⁷² Dominy has also admitted that logistical and communication problems between his department and the DOJ are hindering access to the SA TRC records in a very serious way. Dominy is on record saying that

Yes, it is a logistical problem and a communication problem. If anybody wishes to see open material in the TRC public hearings or whatever we do not even bother to follow the PAIA, we just give it to them with no restrictions whatsoever. If they apply to see more confidential material such as Section 29 hearings, which were held in camera, then they have to go through the DOJ to us. This is a clumsy logistical process that has caused delays. Sometimes there have been failures of communication, for example, it actually happened that SAHA had a case against the DOJ. They sued the DOJ and the National Archives. However, there was not even a word from the DOJ to the National Archives until the matter went to court. I only heard about the case on the day of the hearing. Fortunately, the state attorney settled with SAHA on the sticks of the court that day. I did not know this was coming. So, yes, there are communication and logistical problems.⁷⁷³

McKinley’s “State of Access to Information in South Africa,” study says that another access challenge to SA TRC records relates to confusion over the delegated powers of public officials from both the National Archives and the DOJ in enforcing provisions of the two pieces of legislation.⁷⁷⁴ For instance, Sections 11(2) and 13(2) (a) of the National Archives act of 1996 provides wide-ranging powers to the National Archives currently under the Department of Arts and Culture, to approve record-management systems of government bodies and to authorize public records disposal.⁷⁷⁵ On the other hand, PAIA, currently under the DOJ, promotes the role of the DOJ in overseeing South Africa’s information regime. This situation presents clear problems of inter-departmental cooperation in enforcing legal provisions relating to access to records and to the accountability for decisions taken relating to those records.⁷⁷⁶

⁷⁷²Gerrit Wagener, interview by author, Pretoria, March 14th, 2007.

⁷⁷³Graham Dominy, interview by author, Pretoria, April 3rd, 2007.

⁷⁷⁴McKinley. “The State of Access,” 6.

⁷⁷⁵Ibid.

⁷⁷⁶Ibid.

There is another problem also occasioned by these two access legislations that leads to a logistical bottleneck. McKinley's study observed that one of the areas of potential confusion between the National Archives act and PAIA centers on the time periods prescribed for the automatic release of information.⁷⁷⁷ The archives act provides that only archival information that is more than twenty years old should be made automatically available to the public.⁷⁷⁸ However, under certain conditions the act provides the National Archivist with the power to identify records that might be made available sooner, that is, with consideration for protection of privacy, among other considerations.⁷⁷⁹ Ironically, the access provisions of PAIA provide for no such time limitation.⁷⁸⁰ PAIA even pushes public and private bodies that hold the information to publish information manuals for immediate public consumption.⁷⁸¹

It is easy to conclude from this that when faced with a request for access to TRC records, the three TRC records archivists at the National Archives will be confused as to which regulation to follow. Many archivists charged with access to SA TRC records do not know which regulation to follow. Therefore, only people like Harris who have gone the full mile to test the parameters of PAIA know that "PAIA takes precedence over the archives act which means you have an instrument whereby you can secure access to the contents of the TRC archives."⁷⁸² However, Harris has been quick to admit that "PAIA is a very clumsy mechanism because as I say things are not accessible because of lack of finding aids."⁷⁸³

⁷⁷⁷Ibid.

⁷⁷⁸Ibid.

⁷⁷⁹Ibid.

⁷⁸⁰Ibid.

⁷⁸¹Ibid.

⁷⁸²Verne Harris, interview by author, Johannesburg, April 3rd, 2007.

⁷⁸³Ibid.

6.4.1 Summary

One of the biggest challenges of access to SA TRC records so far has centered on the logistical problems between the DOJ and the National Archives. There is no clear line of demarcation between SA TRC records that are to be managed by the National Archives and those that require the intervention of the DOJ. This state of affair creates uncertainty on the part of the SA TRC archivists. Past experience shows that archivists and public officials deal with gray areas by erring on the side of caution and refusing to grant access. Whenever two legislations coming from a single government say different things about a given issue, they paralyze those who are supposed to give effect to them. This problem can be resolved by better communication and co-ordination between these two governments departments.

6.5 OLD ANTI-ACCESS APARTHEID LEGISLATIONS

The problem posed by old anti-apartheid laws is similar to the impediments created by the two laws just discussed under logistical problems above. Dictatorial regimes, by nature, keep a close seal over records and usually devise laws which criminalize information disclosure. When it came to governing through repressive legislations apartheid was as savage as the notorious regimes of former Warsaw Pact countries. The strange thing, though, is that when Nelson Mandela assumed state power in 1994 these laws were not repealed and are now proving to be a great obstacle to accessing SA TRC records in post-apartheid South Africa.

According to McKinley's "State of Access to Information in South Africa,"⁷⁸⁴ the Official Secret Act, the Protection of Information Act (PIA),⁷⁸⁵ and the Minimum Information Security Standards (MISS)⁷⁸⁶ make access to TRC records a big problem.⁷⁸⁷ In *National Security and Open Government: Striking the Right Balance*⁷⁸⁸ Klaaren, professor of Law and Public Administration at the University of Witwatersrand explained that the Protection of Information Act of 1982 actually replaced the Official Secrets Act, No. 16 of 1956.⁷⁸⁹ Further, Klaaren concurred that there is no way the act could facilitate access to SA TRC records because

the Protection of Information Act is very broad in its pursuit of government secrecy. A look at the wording of section 4 of the Protection of Information Act targets any person who has in his possession or under his control or at his disposal ...any document, model, article or information which has been entrusted in confidence to him by any person holding office under the government...or which he has obtained or which he has had access to by virtue of his position as a person who holds or has held office or contract under the government...and the secrecy of which he knows ...or reasonably should know to be required by the security or other interests in the republic.⁷⁹⁰

The Minimum Information Security Standards (MISS)⁷⁹¹ of 1996 is another official government policy document dealing with information security. According to this law, there are certain minimum information security standards that should be observed by all government departments responsible for the handling of classified information. The Minimum Information Security Standards was therefore, initiated as a safeguard to ensure that national interests are protected by

⁷⁸⁴McKinley, "The State of Access to Information in South Africa,"

⁷⁸⁵PIA stands for Protection of Information Act

⁷⁸⁶MISS stands for Minimum Information Security Standards.

⁷⁸⁷McKinley, "The State of Access," 6.

⁷⁸⁸Jonathan Klaaren, "Access to Information and National Security in South Africa," in *National Security and Open Government: Striking the Right Balance*, ed. Campbell Public Affairs Institute (Syracuse: The Maxwell School of Syracuse University, 2003), 190.

⁷⁸⁹Ibid.

⁷⁹⁰Ibid.

⁷⁹¹MISS stands for Minimum Information Security Standards.

classifying information as restricted, confidential, secret or top secret.⁷⁹² The Minimum Information Security Standards law says that “the mere fact that information is exempted from disclosure through PAIA does not provide it with sufficient protection.”⁷⁹³ The restrictive nature of the Minimum Information Security Standards has prompted the *Center for the Study of Violence and Reconciliation* to comment that this law is in “serious conflict with the access intent of PAIA since the continued application of the Minimum Information Security Standards to dealing with sensitive information preemptsaccess rights that are clearly set out under PAIA....Further more, it is unclear to what extent the Minimum Information Security Standards policies and the work of the recently formed inter-departmental committee set up to deal with issues of classification/declassification will coincide or contradict each other. This is more worrying for those seeking access to sensitive documents dealing with human rights violations.”⁷⁹⁴

Dominy has also noted that “the old Minimum Information Security Standards is still in place in the government guidelines but the act in which it was based, the 1980s act of the apartheid period and state of emergency is actually now inconsistent with our new constitution.”⁷⁹⁵ In “Access to Information and National Security in South Africa,”⁷⁹⁶ Klaaren further states that Appendix B of the Minimum Information Security Standards contains a standard declaration form stating that the signatory is familiar with the Protection of Information Act.⁷⁹⁷ This declaration, explicitly self-incriminating, states that

⁷⁹²McKinley, “The State of Access,” 7.

⁷⁹³Ibid.

⁷⁹⁴Ibid.

⁷⁹⁵Graham Dominy, interview by author, Pretoria, April 3rd, 2007.

⁷⁹⁶Klaaren, “Access to Information and National Security in South Africa,” 196.

⁷⁹⁷Ibid.

I realize that I am guilty of an offense should I disclose any information I have at my disposal on account of my office and in respect of which I know, or should reasonably know, that the security of other interests of the Republic demands that such information be kept secret to anyone other than the person lawfully entitled to it; or a person to whom I am duty bound to disclose it to in the interests of the Republic; or a person to whom I have been authorized to disclose such information to, either by the head of the department or another officials authorized by him.⁷⁹⁸

Furthermore, the declaration states that “I realize that the above provisions and instructions are not applicable during my term of office only but also after my services in the department have been terminated.”⁷⁹⁹ It is clear that when faced with a decision to grant access against these very threatening legislations the SA TRC archivists at the National Archives are most likely to err on the side of caution by refusing access.

6.5.1 Summary

Archaic apartheid laws, created during South Africa’s state of emergency period, are still in force and are proving to be a menace to access to SA TRC records in post-apartheid South Africa. This problem can only be overcome if all apartheid anti-access legislations are repealed so that they are in line with PAIA and the new national constitution of South Africa.

⁷⁹⁸Ibid.

⁷⁹⁹Ibid.

6.6 **SECRECY AS AN ACCESS PROBLEM**

Besides other access impediments just mentioned above, it would seem that institutional secrecy remains one of the greatest access obstacles to TRC records today. In “Telling the Truths About the TRC Archive”⁸⁰⁰ Harris expressed a concern that “there are disturbing signs that the TRC archive is far from open.”⁸⁰¹ In post-apartheid South Africa, Hatang was recorded by this author also reiterating the fact that the major impediment to SA TRC records in South Africa is

still treating everything as a secret. The premise that seems to apply in South Africa is that the information belongs to the state and is secret until it can be proven otherwise. The onus of prove usually lies with the requestor. Save to say that you always have to take the matter to court for it to make a determination. There is a problem of government institutions treating state information as their own while in actual fact the information belongs to the people. We should be starting from the premise that all information is available and can be made available, unless if for example, the provision of the access act prevents it from being made readily available.⁸⁰²

Because of an ingrained culture of secrecy Hatang further says

people tasked with making decisions around access to the TRC archive are afraid of making the decisions. In some instances you have to drag the matter to court even when it was unnecessary to do so all because the public servant who has to make the decision made the wrong decision by playing more on the side of caution. The attitude at the moment is, let me be more cautious and let the court decide, and once the court has made a determination on the matter then the documents are released for access. Sadly this route, that is, waiting for the court to decide comes at a huge expense. SAHA is well placed to provide you with the latest figures but when I left SAHA had spent hundreds of thousands of rands to get some of the TRC records. However, not many people have that amount of money; so, access to information is still a commodity for the elite few in the new South Africa. Organizations like SAHA and individuals like me and you are the only persons who can afford it. The common persons on the street cannot get the information...⁸⁰³

⁸⁰⁰Harris, *Archives and Justice*, 383.

⁸⁰¹ Ibid.

⁸⁰²Sello Hatang, interview by author, Johannesburg, April 3rd, 2007.

⁸⁰³Ibid.

In *Blacked Out: Government Secrecy in the Information Age*⁸⁰⁴ Roberts explores in detail the secretive nature of almost all governments with regard to the public's right to access. Commenting specifically on access to information in South Africa, Roberts observes that "secrecy had been a way of life under the apartheid regime, bolstered by strict laws that prevented the release and distribution of information about the activity of security forces. A post-apartheid truth and reconciliation commission was given the power to compel the release of documents."⁸⁰⁵ In "Freedom of Information: Problems, Prospects and Lessons: The South African Experience,"⁸⁰⁶ Hatang points out that South Africa has an interesting history where the opposing sides in the struggle were forced to keep their activities underground to ensure their respective survival.⁸⁰⁷ To fully understand secrecy in post-apartheid South Africa a historical context of secrecy under apartheid is necessary. Harris explains that the survival of the apartheid administrative superstructure depended to a very large extent on secrecy. In "Towards a Culture of Transparency: Public Rights of Access to Official Records in South Africa,"⁸⁰⁸ Harris says that,

politicians and public servants are, understandably, not comfortable with the notion of transparency, preferring to operate beyond the glare of public scrutiny. In apartheid South Africa, this was especially apparent, with government and the operations of its bureaucracies being cloaked in secrecy. Official secrecy (also known as statutory censorship) was framed in legislation that controlled vast areas of public life and gravely inhibited the press from comprehensive reporting of national affairs... These restrictions were manipulated to secure an extraordinary degree of opacity in government and that South Africa's national information

⁸⁰⁴ Alasdair Roberts. *Blacked Out: Government Secrecy in the Information Age* (Cambridge: Cambridge University Press, 2006).

⁸⁰⁵ *Ibid.*, 32.

⁸⁰⁶ Hatang, "Freedom of Information: Problems, Prospects and Lessons: The South African Experience," 72.

⁸⁰⁷ *Ibid.*

⁸⁰⁸ Harris, *Archives and Justice*, 269.

system became grossly distorted to the benefit of government propaganda in an attempt to preserve the power of the White elite and its allies.⁸⁰⁹

In *Freedom of Information and Records Management: A Learning Curve For Botswana*⁸¹⁰ Peter Sebina explains why secrecy is a problem to access and accountability in democratic states not just for South Africa but for the whole world. Sebina says secrecy deliberately creates an artificial scarcity of information to serve the ends of corrupt political regimes and by doing,⁸¹¹

governments contribute to information asymmetries in that they have unlimited access to information while they release into the public domain very little information. Secrecy thus exacerbates corruption in that a government mostly responds to its own needs rather than those of the public. Governments through civil servants can create secrets which are beneficial to itself than to the entire public....Access to information is key to fighting corruption and to enabling members of the public to know, understand and exercise the rights government has set aside for them...The recognition of the importance of access to information by governments denotes a move away from a culture of secrecy to openness and transparency. Secrecy which results from restricted information restricts public participation in the decision-making process of government and further hobbles their ability to participate meaningfully in the entire democratic process.⁸¹²

6.6.1 Summary

This researcher found out that a culture of secrecy practiced by both the apartheid government and the post-apartheid government is a major challenge to access to SA TRC records. It is not very easy to overcome a culture that people used for their daily survival; therefore, the post-

⁸⁰⁹Ibid., 270.

⁸¹⁰Peter Sebina, *Freedom of Information and Records Management: A Learning Curve For Botswana*. A Dissertation Submitted in Partial Fulfillment of the Requirements For the Degree of Doctor of Philosophy. (University of London: 2006).

⁸¹¹Ibid., 88.

⁸¹²Ibid., 89.

apartheid government should take the lead in working to change this highly ingrained anti-access sub-culture. Secrecy is antithetical to democracy, breeds corruption, suppresses healthy debates and limits the ability of a nation to hold its elected officials accountable.

6.7 LACK OF POLITICAL WILL

Laws alone are not enough to ensure the implementation of decisions. Without political will even good intentions, well captured by legislation, become meaningless. Having learned the hard way and with the advantage of benchmarking their access legislation with the very best in the world, the South Africans probably developed the best access laws on paper; however, without the right political support, these laws are mere toothless dogs that cannot bite.

In the recently first-ever “Meeting on Archiving Truth Commission Records”⁸¹³ conference Gonzalez told his colleagues at Yale that harvesting truth commission records requires not just technical efforts but political ones as well.⁸¹⁴ In his concluding remarks Gonzalez reminded his listeners that “one final conclusion is the fact that this work, as many other forms of work, requires not just technical effort to make them happen, but also political efforts. We have concluded that archives must be respected, that governments take seriously archival work, and that international bodies take seriously their responsibilities regarding protection of archives of truth commissions.”⁸¹⁵

⁸¹³ Eduardo Gonzalez. In *Transcripts for the Yale/Artemis Project: Managers of Truth Commissioners Conference*. Proceedings of a Conference on “Archiving Truth Commission Records,” Yale University, February 22-24, 2006.

⁸¹⁴ Ibid.

⁸¹⁵ Ibid.

Coming closer to home, Hatang believes that “there is lack of political will to see things done and until such a time that we reach that stage, I am afraid that the problems we are talking about right now will persist for a long time.”⁸¹⁶ Most of the time the lack of political will is exercised very subtly by African leaders. For instance, most African governments have laws that comply with most United Nations protocols. Most African governments have also committed themselves to a peer review mechanisms by leading human rights organizations like Transparency International and Amnesty International. Therefore, at face-value most comply with minimum human rights statutes on paper. However, most African governments simply do it to appease these international organizations. For instance, owing to international pressure to be seen to be transparent, South Africa enacted a freedom of information legislation in 2001. However, when SAHA used it to access TRC records the government started dragging its feet, simply because powerful elements within the state will simply not allow access to TRC records to happen.⁸¹⁷

6.8 CONCLUSION

This chapter attempted to answer the second research question of this study, namely, “what problems and challenges has the National Archives experienced in preserving and making TRC records accessible to the public?” This study found out that the National Archives has experienced six problems associated with preserving and making accessible TRC records in South Africa. These problems include a backlog of unprocessed records, resource constraints,

⁸¹⁶ Sello Hatang, interview by author, Johannesburg, April 3rd, 2007.

⁸¹⁷ Harris, *Archives and Justice*, 385.

poor logistics, anti-access apartheid laws, the problem of secrecy and a lack of political on the part of the current government to see to it that TRC records are widely made available.

Unprocessed records still remains the biggest problem confronting the National Archives in the management of its TRC records. This problem is partly caused by the ratio of staff to TRC records. Despite the fact that tons and tons of records were transferred to the National Archives only two staff members have been assigned to arrange, describe and develop finding aids for them. This is not an easy task when one looks at the sea of records that still needs to be indexed. Resource constraint is another big problem. This problem boils down to not having enough money to hire enough people to work on the records. The National Archives is currently expanding its physical infrastructure. One hopes that once this is over the budget will be focused on staff development. Another problem identified by this research is poor logistics. Poor logistics simply means that there is poor coordination between the two government departments mainly dealing with TRC records. Some requests have to go through the DOJ and others have to go directly to the National Archives. This state of affairs is confusing to researchers, especially foreign ones who often do not know whether to start their research at the National Archives or at the DOJ.

One of the biggest paradoxes of post-apartheid South Africa is the fact not all apartheid laws died with it in 1994. The current government still has to repeal laws such as the Minimum Information Security Standards and the Protection of Information Act. These two laws, together with the Official Secret Act, contribute to a pervasive environment of secrecy that does not promote the free flow of information in South Africa. When it comes to dealing with secrecy, both the apartheid government and the new government equally share the blame. Apartheid was an inhuman system of government which kept most of its dealings in secret. On the other hand

the liberation movements operated in secrecy to avoid detection. Therefore, a lot has to be done to reverse this entrenched modus operandi in South Africa. The last big problem identified by this research is political will. NGOs' like SAHA already doubt the commitment of the current political elite to transparency and to the free flow of information in South Africa.

7.0 THE PROBLEM OF RECORDS ACCESS, TRC AND ACCOUNTABILITY IN POST APARTHEID SOUTH AFRICA

7.1 INTRODUCTION

The problem of access to records, as outlined in chapter 6, has an impact on accountability in post-apartheid South Africa. “The question is, how has the problem of access to SA TRC records affected accountability in a post-apartheid South Africa?” One cannot answer this question without analyzing, briefly, the SA TRC’s bigger picture. Above all its immediate objectives, the bigger picture espoused by the SA TRC was to build a democratic society with accountable political, economic, and administrative national structures. There can be little doubt, therefore, that the lack of access to records has the potential to impede the realization of sound and accountable political, administrative, and equitable economic/financial structures. SAHA’s petitions against the government are good examples of these impediments. In other words, because records are the raw material of accountability, the post-apartheid government will find it difficult to achieve its objectives of building accountable public institutions unless it rectifies the problems of access to SA TRC records. We should remember that the primary outcome of the SA TRC was not prosecution; rather, the primary task of the SA TRC was about coming up with as complete a record as possible about apartheid excesses. It follows, therefore, that lack of access to these records will, in one way or another, compromise accountability. A closer look at

the SA TRC shows that the people of South Africa, like all developed democracies of the world, wanted to build a post-apartheid nation founded on a strong political, economic, and accountable administrative government structures. It would seem, therefore, that a poor records-keeping culture would work against transparency and accountability.

7.2 THE PROBLEM OF RECORDS ACCESS AND POLITICAL ACCOUNTABILITY IN A POST-APARTHEID SOUTH AFRICA

A good understanding of the negative effects of poor records access cannot take place without defining political accountability in a democratic, post-apartheid South Africa. Whether in South Africa or anywhere else where democratic institutions are developed, the definition of political accountability has remained the same. The World Bank has defined political accountability as the obligation of elected public officials to show accountability to the electorate, to the constitution, to the electoral commission and to the political organization which the organization represent.⁸¹⁸ In representative democracies like South Africa political accountability is tied to good governance and the rule of law. In the case of the SA TRC, political accountability meant demonstrating good governance and the rule of law by prosecuting members of the former regime whose crimes had no political motivations.

The SA TRC records fully identified those who qualified for amnesty and those who were to face the long arm of the law. Therefore, it is very clear that without access or recourse to

⁸¹⁸Kpunder, "Records and Accountability," Proceedings of the June 6 Workshop on Current Records Management, Poverty Reduction, and Corruption Control. (Washington: The World Bank, 2000) Also, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/31/2008.

the records, political accountability is compromised. It should be stated that some of the witnesses who testified against human right violators are dead, which means that the best evidence available against perpetrators is the SA TRC records. It follows, therefore, that if those records are inaccessible then people might as well forget about political accountability as envisaged by the SA TRC because no serious court of law in a democratic dispensation would even bother trying any perpetrator without the records. We should remember that in most democracies of the world, including South Africa, one is presumed innocent until proven guilty. Therefore, the burden of proof does not lie with the perpetrator *per se* but with the state to prove its case beyond reasonable doubt.

It is clear, therefore, from this common understanding of the law of natural justice that professionally processed and accessible SA TRC records are an asset to political accountability in South Africa. Inaccessible and unprocessed SA TRC records are and will be a hindrance to the full realization of political accountability. Besides delaying justice, inaccessible SA TRC records will frustrate many people: political and historical scholars, whose purpose is to study the evolution of political systems through documentary evidence; students of human rights, interested in the application of international law to human rights violations; social workers and psychologists, interested in the welfare and social reconstruction of societies; and religious scholars, interested in spiritual rehabilitation. Students of conflict resolution, interested in non-violent forms of conflict resolution, will also be denied a chance for such engagement in an environment where SA TRC records are poorly processed and indexed or where the raw material for such an engagement is missing.

7.2.1 Summary

It is impossible to prosecute and to hold apartheid human rights perpetrators accountable without the use of TRC records. The TRC reports have all the evidence needed to prosecute apartheid era human rights violators.

7.3 THE PROBLEM OF RECORDS ACCESS AND ADMINISTRATIVE ACCOUNTABILITY IN A POST-APARTHEID SOUTH AFRICA

The World Bank has described administrative accountability as the obligation of persons holding positions of power to explain to those with particular interest why a particular decision has been made.⁸¹⁹ In other words, administrative accountability is the ability of a government to document its administrative procedures in a manner that allows citizens, or a succeeding government, to hold it accountable for its decisions. Administrative accountability allows all forms of audits that guard against corruption and abuse of power. It can be rightly argued that the SA TRC was about one administrative body, the post-apartheid government, holding another administrative body, the apartheid government, responsible for human rights abuses. Purely at the administrative and government level, this kind of audit was very necessary to avoid mistakes of the past administration and to initiate a culture of respect for human rights in the new administration. The unprocessed state of SA TRC records limits the ability of the new administration to maximize the lessons learnt from the apartheid administration. Therefore, the lack of access to SA TRC records would very much compromise administrative accountability. Records are central to

⁸¹⁹Ibid.

administrative accountability and to good governance. Academically, the unprocessed nature of SA TRC records will frustrate students of public administration and political science whose interest is to study and compare the conduct of governments from time to time and across the globe.

7.3.1 Summary

Records are the memory of organizations and SA TRC records are no exception. Besides serving political ends, SA TRC records have assisted the new Black government to execute the day to day delivery of services to the people of South Africa across the political divide. One of the critical areas where TRC reports have proved helpful in addressing the unique problems of post-apartheid South Africa has been in the area of land rights and dispossessed communities. Using TRC records effort is now underway to return hitherto forcibly removed communities in areas like District Six and Sophia town back to their land. Also, a process to identify farm laborers using records for possible compensation is bearing positive results. Public records are created by the public administrative machinery to serve, first and foremost, administration accountability.

7.4 THE PROBLEM OF RECORDS ACCESS AND FINANCIAL ACCOUNTABILITY IN A POST-APARTHEID SOUTH AFRICA

The World Bank defines financial accountability as “the obligation and /or responsibility of anyone handling resources to report honestly and comprehensively on the intended and actual

use of the resources.”⁸²⁰ Behn says that financial accounting focuses on recordkeeping and how money is spent.⁸²¹ The principle of how money is spend, as espoused by Behn, is closer to the meaning of financial accountability echoed by the people of South Africa through their truth commission. Under its reparation and rehabilitation policy, the SA TRC recognized that those who suffered under apartheid were entitled to monetary compensation. According to *Truth and Reconciliation Commission of South Africa Report, Vol 5*,⁸²² the policy development on monetary compensation was informed by the work of other truth commissions, in particular the Chilean commission, which awarded pension to the families of the dead and disappeared, and by the decision of the United Nations to award financial compensation to the victims of the Iran-Iraq war.⁸²³ The Skweyiya commission had also recommended that the victims of maltreatment during apartheid were entitled to monetary compensation, appropriate psychological help, education grants, and financial compensation for property lost.⁸²⁴ However, not everybody qualified for this compensation. It should be emphasized that only those who are on record as deserving compensation qualified for financial compensation. The records of those who qualified for compensation have been transferred to the President’s Fund to allow the right individuals to be rewarded. It is, therefore, obvious that no reparation and rehabilitation could take place

⁸²⁰Proceedings of the World Bank Video Conference Workshop on Current Records Management, Poverty Reduction and Corruption Control, June 6, 2000. The video conference was developed and presented in partnership with the World Bank Information Solutions Group, Information Management Unit; the World Bank Group Archives Partnership Program; The World Bank Institute Distance Learning Unit; and the International Records Management Trust. The conference formed part of the Information Solutions Group's Learning Program on Records and Archives. Also at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTARCHIVES/0,,contentMDK:20035498~pagePK:36726~menuPK:57185~piPK:36092,00.html> 10/31/2008.

⁸²¹Behn, *Rethinking Democratic Accountability*, 7.

⁸²²*Truth and Reconciliation Commission of South Africa Report, Vol 5*, 178.

⁸²³Ibid.

⁸²⁴Ibid.

without records. A lack of access to these records or their poor future management will have dire consequences for the compensation and the rehabilitation of victims of apartheid.

A new SA TRC sub-unit established under the DOJ, and relying solely on the SA TRC records to administer the compensation of victims, shows that as of February 2007 the SA TRC records had identified 21,769 victims for compensation.⁸²⁵ The records kept by the new SA TRC unit show that, out of these, 16,837 victims applied for the money and were approved by the SA TRC.⁸²⁶ To date, 15,610 victims have been financially compensated.⁸²⁷ Three hundred and fifty-seven victims who qualified for reparation are now dead and records collected during the hearings are key to identifying their next of kin so that they could get the money on their behalf. Records from the SA TRC sub-unit also show that, of the total 21,769 victims identified in the SA TRC database, 12,227 beneficiaries are still to be paid.⁸²⁸

Vivian Jacobs, the Deputy Director of the new SA TRC sub-unit stationed at the DOJ, is on record saying that the database been useful in helping exhume bodies and in the identification of real victims. According to her, the database has been absolutely essential because through it they have been able not only to identify people by name but also by their ID numbers and addresses.⁸²⁹ They have also been able to contact people. A good example of how effective SA TRC records have been relates to the request that was made by the South African national television station to contact a victim to find out whether he would like to take part in a reconciliation process with a perpetrator. Using the database, the SA TRC sub-unit was able to

⁸²⁵President's Fund Report as at February 28th 2007 and presented to the author by Vivian Jacobs, TRC Unit, in Pretoria on March 15th, 2007.

⁸²⁶Ibid.

⁸²⁷Ibid.

⁸²⁸Ibid.

⁸²⁹Vivian Jacobs, interview by author, Pretoria, March 15th, 2007.

trace him through 3 different new jobs but eventually found him.⁸³⁰ Jacobs categorically stated that, without the records, they would not have been able to.⁸³¹

Poor access to SA TRC records is dangerous as it might tempt those entrusted with the administration of the fund to embezzle the money. The World Bank and Transparency International have, on countless occasions, warned that one cannot effectively talk of efforts to stamp out corruption without addressing the issue of proper records access. The latest figures coming from the President's Fund reveal that about [\$120,000 000] is still lying unused in the SA TRC fixed account. Without proper record keeping, this money is open to abuse and mismanagement by the very same people supposed to manage it on behalf of the victims. Where there are weak accountability structures, like poor record keeping cultures, human beings naturally take advantage of such situations to enrich themselves. Therefore, unless seriously attended to, the poor management of SA TRC records has the potential to aid those prone to greed and corruption. At the academic level, the lack of proper finding aids will limit the ability of students of finances and accounts to manage resources prudently as called upon by their professions. This is critical to curb post-apartheid fiscal indiscipline. This is especially true against unproven allegations that the NGO culture imported by the SA TRC gave room to poor fiscal structures throughout the SA TRC regional offices.

7.4.1 Summary

Poor management of SA TRC records will affect the long-term compensation of apartheid victims. By the same token, proper management of records will also ensure financial

⁸³⁰Ibid.

⁸³¹Ibid.

accountability in the sense that all victims will get their money. Financial accountability will also ensure that there is proper auditing on those tasked with administering such huge amounts of TRC monies generated by the President's Fund.

7.5 CONCLUSION

This chapter started by acknowledging that the problem of access to records as outlined in chapter 6 has a bearing on political, administrative and financial accountability in post-apartheid South Africa. The South Africans embarked on the TRC precisely because they saw it as the best possible means to account for the past and to build a better future for their citizens. In Westminster democracies, like the one that South Africa has chosen, political accountability is tied to the rule of law and responsible government. It should be remembered that the TRC records contained all the list of perpetrators who were refused amnesty and who still needed to be tried. Therefore, regardless of how one looks at it, records are central to the rule of law and to the full realization of political accountability in post-apartheid South Africa.

By the same token, improper management of TRC records has a bearing on the future functioning of the post-apartheid government machinery. One of the lessons learned during the TRC institutional hearings was a government administration that was not accountable even to the White population that elected it to power. Time and time again the military took extra-judicial steps against perceived enemies of the state without the knowledge of either the judiciary or the police. Similarly, apartheid operated in an administrative environment that normalized indiscriminate torture and arrests by law enforcement officers. A proper administration needs proper record keeping systems if it is to act within the specified limits of the law.

Lastly, this chapter also reviewed the negative consequences of poor recordkeeping and financial accountability. When it comes to financial accountability the TRC reports revealed that apartheid operated an administration weak in fiscal discipline. This problem was mostly caused by the secretive nature of the state and the covert nature of the operations that it had to undertake and finance. The Intelligence and Military budgets of the apartheid state were a closely guarded secret because of the list of human targets that the two organizations had to eliminate. The lack of due processes and procedures also allowed those assigned to do the work to embezzle money for personal ends. Therefore, the post-apartheid government needs to pay careful attention to proper recordkeeping practices if it is to hold those entrusted with the public purse accountable.

8.0 RECORDS, THE SA TRC AND NATIONAL RECONCILIATION: LESSONS LEARNED AND FUTURE RESEARCH PROSPECTS

8.1 INTRODUCTION

A lot of lessons have been learned in this research about records, the SA TRC and accountability. As a result this chapter will devote some space to a discussion of lessons learned and the researcher's recommendations. Some of these lessons and recommendations include a better synergy between the TRC act and the archives act, the creation and hiring of full time records managers to work with truth commissioners, a better definition of the roles of the government departments dealing with commission records, and a smooth closure of the commission offices. Based on the findings of this research this chapter will also offer some reflections on records, the search for truth, nation building and national reconciliation. Lastly, this chapter will discuss future research prospects prompted by this study.

8.2 RECOMMENDATIONS AND LESSONS LEARNED

The first recommendation that one needs to make is to look at the legislation setting up the commission. It is important that the TRC law takes the archives act into consideration. This will ensure that there is no contradiction between the TRC act and the archives act about the place of

the TRC records deposit. Ideally, all the commission's records, by virtue of being public records, should be preserved at the National Archives. It should also be remembered that issues of human rights are of a global nature and will most likely attract international researchers. Given the limited time that international researchers usually have to gather their data, it is important to limit any confusion that might arise regarding the place of deposit for TRC records. Traditionally, the archives has been the most obvious point of entry for many researchers. In South Africa, TRC records are split between the DOJ and the National Archives and researchers have to shuttle between the two departments to get what they want. This scenario presents logistical difficulties for researchers and is also expensive. Even though most of the TRC records are at the National Archives, a good portion of them are also held by churches, universities and other NGOs like SAHA and COSATU to mention just a few. A comprehensive audit followed by the development of a database can link all these organizations together intellectually so that researchers know what to get and from where.

The collection of the records of a truth seeking body is not always the primary reason for the setting up of a commission. Rather, commissions are set up usually to investigate human rights excesses. It is time for governments that have gone through years of strife to know that the records of a truth commission are as important as the process of a truth commission itself. The easiest way to manage truth commission records is to hire records managers' right at the inception stage of the commission. The SA TRC was distinct in the sense that it commissioned seasoned archivists from the very beginning to construct and implement a TRC records classification system. Liberia seems to have learnt a good lesson from their SA counterparts.

Writing from their website, the Human Rights Data Analysis Group (HRDAG)⁸³² states that the Liberian truth commission requested their assistance

to develop a data collection and analysis process to address key questions about the nature of the conflict and violations that occurred. The HRP analysis will examine overall patterns and trends of victims and violations over time and space reported to the Commission. The main analytical study will be based on statistical analysis of victim and witness statements collected by the TRC that correspond to human rights violations from 1979 to 2003. The study will also consider other information about human rights abuses during this period collected from other local and international NGOs. The resulting analysis will enhance the TRC's ability to address its mandate and contribute to the findings of the Commission. The analysis and findings from the project will be published as part of the TRC's final report. The project is designed to conform to scientific norms as well as internationally accepted statistical and technological best practices.⁸³³

One of the areas of concern is the safeguarding of the audiovisual and electronic records of the commission. Even though it looks obvious that truth commissions are always going to produce audiotapes and electronic records, few governments seem prepared to handle these records mediums. However, it is always possible to outsource expertise before the start of the commission if a given government really decides to make its audiovisual and electronic collections a priority.

Old anti-access apartheid era legislations should be repealed to give room to progressive freedom of information laws. It is impossible to understand why nothing has been done to repeal

⁸³²The Human Rights Data Analysis Group (HRDAG) develops information technology solutions and statistical techniques to help human rights advocates build evidence-based arguments. HRDAG is directed by Patrick Ball, and includes programmers, statisticians, project managers and data processing experts. Originally based at the American Association for the Advancement of Science (AAAS), HRDAG has provided technical assistance to official truth commissions in Haiti, South Africa, Guatemala, Peru, Ghana, Sierra Leone, and the International Criminal Tribunal for the Former Yugoslavia. Non-governmental human rights groups in Cambodia, Guatemala and Sri Lanka as well as the United Nations missions in Timor-Leste and Guatemala.

⁸³³<http://www.hrdag.org/about> 10/31/08.

these laws after twelve years of independence. The issues of staff retention and staff welfare are important. One of the reasons why the processing of TRC records is lagging behind is because of the high rate of staff resignation from the National Archives. The issue of staff retention is related to that of staff training. Despite an abundance of graduate training schools both in Africa and abroad, few South Africans possess a graduate diploma in archives and records management. The National Archivist should also consider luring back retired officials who left for greener pastures.

Also, TRC records can only be accessed openly if South Africa undergoes a cultural change in relation to information sharing. There is an entrenched culture of secrecy that dates back to apartheid. South Africa is unique in the sense that both the oppressor and the oppressed survived on secrecy. The instinct towards withholding information is, therefore, very difficult to overcome. South Africa has to repeal all its secrecy laws in order to improve its provision of information to the public. For instance, the Protection of Information Act of 1982 contains clauses that intimidate civil servants and this slows down their delivery of information to researchers.

8.2.1 Summary

The SA TRC offers some useful lessons on the management of records of human rights in general. This is because truth commissions are increasingly becoming a norm for countries recovering from some civil wars. The key lessons are to ensure that the law leading to the creation of the commission accommodates the management of truth commission records from start to finish. Also, the TRC act should emphatically specify the National Archives as the official custodian of the TRC records upon closure of its proceedings. Any legal or political

obstacles that might impede the National Archives from carrying out its usual mandate should be removed.

8.3 SOME THOUGHTS ON RECORDS, THE SEARCH FOR TRUTH, NATION BUILDING AND NATIONAL RECONCILIATION

It should be acknowledged that truth commissions usually operate within certain restrictions which impact heavily on their search for truth. A combination of factors like resource constraints, limited time frames, and a fragile political climate can adversely affect the search for truth once the dust has settled. A particularly major impediment to the search for truth during and after a truth commission is the destruction of records usually takes place prior to the start of the commission or after the end of the commission. The attempts to destroy records by state agents or by those implicated in human rights violations forced the SA TRC to institute investigations into the destruction of records under apartheid. Harris tells us that one of the specific mandates of the SA TRC was to determine what articles have been destroyed, by any person, in order to conceal violations of human rights or acts associated with a political objective.⁸³⁴ The same author goes on to inform us that in the case of South Africa their search for truth was severely hampered by the pre-election records purge that took place from 1991-1994. In the words of Harris

the TRC investigation gave us a sound grasp of the broader process of records destruction...What we can say at this stage is that the evidence suggests a considerable impact on social memory. Swathes of official documentary memory, particularly around the inner workings of the apartheid state's security apparatus,

⁸³⁴Harris, *Archives and Justice*, 306.

have been obliterated. Moreover, the apparent complete destruction of records confiscated from individuals and organizations over many years by the security police has removed arguably the country's richest accumulation of records documenting the struggles against apartheid. The overall work of the TRC suffered substantially as a result. In seeking to reconstruct and understand the past so many pieces of that past's puzzle were missing. The destruction of state documents did more to undermine the investigative work of the commission than any other single factor.⁸³⁵

In *Archives and Justice: A South African Perspective*⁸³⁶ Harris again admits that notwithstanding the harm outlined above TRC investigators were often shocked by the records that survived the purge and which have greatly enriched their knowledge of the truth about the hitherto stolen rights of Black South Africans.⁸³⁷ Harris further says even more important has been the discovery of extensive accumulations of records detailing apartheid's dispossession of individual and community land rights. The discovery of these records has prompted the National Archives and the Department of Land Affairs to work closely with the National Commission for the Restitution of Land Rights to identify records series that the department is using to investigate land claims.⁸³⁸

Upon completion of its work the SA TRC appointed the National Archives as the place to go to in the search for truth about apartheid. Throughout the ages the archives has been a point of departure for most people in the search for truth. In "Characteristic of Archival Documents"⁸³⁹

Elizabeth Shepherd states that

because records are created as a means for, and a by-product of, action, not "in the interest or for the information of posterity", and because they are "free from the suspicion of prejudice in regard to the interests in which we now use them",

⁸³⁵Ibid., 328.

⁸³⁶Ibid.

⁸³⁷Harris, *Archives and Justice*, 306.

⁸³⁸Ibid., 329.

⁸³⁹Elizabeth Shepherd, "Characteristic of Archival Documents." Available at <http://www.ucl.ac.uk/~uczcw/appraisl/characs.html> 11/05/08.

archival documents are "impartial" and "cannot tell anything but the truth". In this sense they are the most reliable evidence available for law and history, whose purposes are to rule and explain the conduct of society by establishing the truth, (as well as revealing the partiality of the creators). They provide first hand evidence because they form an actual part of the corpus, of the facts of the case.⁸⁴⁰

In Writing in "Archives as a Place,"⁸⁴¹ Duranti further reminds us that

the origin of our concept of archives as a place is in Roman law, which is the foundation of the *ius commune* or common law of Europe and has permeated all the juridical outlook of Western civilization. In the Justinian Code, which is the summa of all Roman law and jurisprudence, an archives is defined as *locus publicus in quo instrumenta deponuntur* (i.e., the place where deeds are deposited), *quatenus incorrupta maneant* (i.e., so that they remain uncorrupted), *fidem faciant* (i.e., provide trustworthy evidence), and *perpetual rei memoria sit* (i.e., and be continuing memory of that to which they attest)...Thus the archives was a place of preservation under the jurisdiction of a public authority. The place, by providing the documents with trustworthiness, gave them the capacity of serving as evidence and continuing memory...⁸⁴²

Peterson says that a key political issue in the search for truth is whether the public trusts the custodians of records.⁸⁴³ It would seem from the above that two factors should be considered when it comes to the search for truth. The first factor is the circumstances of records creation. The second factor is the trustworthiness of the place of deposit. Duranti again tells us that from antiquity to the eighteenth century the reliability of documents to serve as evidence

was based on three factors: 1) the degree of control exercised on the procedure of creation, 2) the degree of control exercised on the authors and the 3) the degree of completeness of the documents themselves. However, to create reliable documents was not sufficient if one wished to use them later as evidence. It was necessary that a different authority [in the form of an archives] recognized them

⁸⁴⁰Ibid.

⁸⁴¹Luciana Duranti, "Archives as a Place," *Archives and Social Studies: A Journal of Interdisciplinary Research* 1 (2007): 453.

⁸⁴²Ibid., 447.

⁸⁴³Peterson, *Final Acts*, 29.

as being what they purported to be, and accepted them into custody. These actions of recognition and acceptance into custody represent a declaration of authenticity. In fact, while reliability is linked to creation, authenticity is linked to transmission and preservation. To declare a document authentic means to say that it is precisely as it was when first transmitted or set aside for preservation, and that its reliability, or the trustworthiness it had at the moment, has been maintained intact.⁸⁴⁴

Therefore, acceptance of records into an archives is more than just a mere declaration of authenticity. Rather, it is taking responsibility for preserving that authenticity, and it requires taking the appropriate measures for guaranteeing that authenticity will never be questioned.⁸⁴⁵ These measures include the identification of documents, the assignment to them of an intellectual and physical place and their location and description.⁸⁴⁶

If one is to judge TRC records and the search for truth based on Duranti's article then one is compelled to argue that the TRC records are an appropriate starting place in the search for the truth about apartheid excesses and human rights violations. First, even though TRC records controls were not so perfect a lot of control was exercised on the creation of TRC records. Harris and his team from the National Archives developed a file classification for the SA TRC. Even though this system was not followed to the letter most offices partially used it. In fact, every TRC office was aware of this file system and most attempted to use it. Second, there was a high degree of control exercised on the SA TRC records authors.

In fact, *Truth and Reconciliation Commission of South Africa Report, Vol 6* has a detailed list of all those who worked for the commission and authored its record. Third, there has never been any doubt in South Africa about the degree of completeness of the TRC records. Fourth, a different, third party authority in the form of the National Archives of South Africa has been

⁸⁴⁴Duranti, "Archives as a Place," 454.

⁸⁴⁵Ibid.

⁸⁴⁶Ibid., 454.

assigned to preserve the TRC records. Fifth, the National Archives has already started and is continuing to arrange and describe the records. Therefore, the records of the SA TRC have met all the requirements for trustworthiness as set by Duranti and could be used as the first line of evidence to search for truth in South Africa.

It should be mentioned here that even though the trustworthiness of the National Archives and the TRC records has never been an issue in the case of the SA TRC, it has been an issue elsewhere. Peterson again says that, in Peru where the National Archives reports to the Ministry of Justice, the records related to the citizenship status of President Alberto Fujimori were defaced while in the custody of the National Archives, apparently to hide information detrimental to the president.⁸⁴⁷ Also, the Uruguayan National Archives, which reports to the Ministry of Culture, has been the subject of intense questioning precisely because some people who were involved in that country's dictatorship are working for it.⁸⁴⁸

When it comes to truth commission records and nation building, it is important to first, state that, truth commission records are a very good source of history and law and, therefore, of nation building. Second, truth commission records can have a healing effect in the sense that verifiable evidence explaining the deaths or disappearances of their loved ones can put closer to a painful past. In some extreme situations though, access to TRC records has been troublesome and has not aided nation building. Peterson cautions that the possibility that access can work against the aims of nation building is real.

For example,... some East Germans who gained access to their files learned that a spouse had informed on them and the marriage broke up; parents and children learned that they could not trust each other; neighbors were set against neighbors. Commissions are aware that the information they accumulate can identify both perpetrators and witnesses and could contribute to revenge. In these cases, the

⁸⁴⁷Peterson, *Final Acts*, 30.

⁸⁴⁸ *Ibid.*

extract from the database that Peru planned [of the National Archives of South Africa] will be carefully programmed and the copy of the file will have to be redacted to eliminate certain information, under guidelines that are agreed by the National Archives and by the lawyers who will defend the archives in the event of a legal action against it.⁸⁴⁹

Relating his experiences on the SA TRC Harris also mentioned the fact that during the course of his investigations he saw several files that could create severe difficulties for people now prominent in the public and other sectors.⁸⁵⁰ He says at one point he even remembers one of his TRC colleagues telling him that it would have been better if all these files had been destroyed.⁸⁵¹

For this researcher the potential of truth commission records to build or destroy is a credit on the capacity of records to stand for the facts that they attest to and should be celebrated. This brings us to the issue of truth commission records and nation reconciliation. It is legitimate to state that because records are powerful conveyors of truth, they can serve as powerful tools of healing and recovery. However, as stated before, records can also remind people about the pain that might be best forgotten. This would explain why decisions about what to disclose and what not to disclose will forever remain contested. Government has a responsibility to promote peace while also providing access to TRC records. The only way forward is to reduce chances of another circle of violence while making certain groups of records available.

⁸⁴⁹Ibid., 37.

⁸⁵⁰Harris, *Archives and Justice*, 329.

⁸⁵¹Ibid.

8.3.1 Summary

Truth commission records do have a part to play in reconstructing truth, nation building and in national reconciliation. However, some authoritarian regimes are known to obliterate their records to avoid possible prosecution. It should also be mentioned that even though there is no doubt that TRC records can promote the search for truth they also have the potential to undermine nation building and national reconciliation. This calls for a balancing act between what is to be disclosed and what is not to be disclosed in the public interest.

8.4 FUTURE RESEARCH PROSPECTS

There is a lot that still needs to be done in studying the relationship between records, truth commissions and accountability for human rights atrocities. Even though progress is happening at a snail's pace the South African National Archives continues to process TRC records. A good starting point will be to revisit this dissertation after a passage of about five years to assess progress made, especially on the frontier of electronic records. As already stated before, a lot of NGOs are keeping their own TRC records. It will be interesting to find out what they have that is similar or different from what the National Archives has. Even though close to thirty countries have undertaken a truth commission, there is no known study that has compared the preservation of TRC records from any two countries. For instance, it will be interesting to compare the preservation of the records of the SA TRC with those of Chile in Latin America.

One of the projects that will be of interest to this researcher will be to look at the records of several truth commissions that are in the hands of the UN to find out if the UN just provided a

storage facility or has professionally prepared the records for access. Another area of interest will be to compare church TRC collections in South Africa and Guatemala. The Catholic church of South Africa has accumulated a massive collection of truth commission records. In Guatemala the Remhi Catholic church also has the most sophisticated digitized records of human rights injustice ever gathered by an NGO. In fact, unlike the Guatemalan National Archives the Remhi Catholic church collected more than 25, 000 testimonies of victims and made them available to viewers digitally.⁸⁵²

8.5 CONCLUSION

This chapter made recommendations and outlined future research prospects from this study. One of the best lessons to be drawn from the SA TRC was its transparent nature. There was an honest attempt on the part of both the out-going and in-coming South African governments to know and interrogate the evils of apartheid. The fairness that accompanied the choice of commissioners and the public hearings that it conducted gave this body public legitimacy. However, some work still needs to be done to achieve the TRC's ultimate objective of access to its records. True access cannot take place in an environment that is still dominated by anti-access apartheid laws. The new government will do well to repeal all apartheid anti-access legislations.

The territorial limits of the DOJ and the National Archives should be better defined to promote inter-departmental efficiency and coordination. Ideally, an index of all the TRC records kept by the DOJ should be provided to patrons upfront to avoid wasting precious time shuttling

⁸⁵²Visit Recovery of Historic Memory (Remhi) at <http://www.fhrg.org> 10/31/08.

between two geographically dispersed government departments. Also, the National Archivist can do more to retain and minimize staff attrition. Persistent negotiations with the government might bear fruits. The National Archivist should collaborate more with NGOs to see how much of their TRC records can be included in the National Archives' national automated database.

This brings us to the issue of TRC records and their place of deposit, the search for truth, nation building and reconciliation. The context of records creation enhances their truthfulness as evidence. This statement is true in the case of the SA TRC and its records. The transparent and national character of the TRC process left no doubt on the minds of the people about the truthfulness of its records. A legitimate question to ponder over is whether access to the records of the SA TRC has contributed anyhow to nation building and to reconciliation. The answer here is "yes." Yes, in the sense that the South Africans needed truth to heal and so far that seems to have happened. However, healing and nation building are processes that cannot be achieved overnight.

For this researcher, records are powerful no matter how one looks at them. At the moment the SA National Archives is lagging behind in terms of availing all the TRC materials to the public. However, once it has done everything that it needs to do in terms of processing then true ability of the SA TRC records to serve as an instrument of national reconciliation, the truth and nation building will be put to the test.

APPENDIX A-Primary Interview Sources

NAME OF THE DEPARTMENT AND PERSON INTERVIEWED	TITLE OF THE PERSON	PLACE OF THE INTERVIEW	DATE OF THE INTERVIEW
National Archives			
1. Dr Graham Dominy	National Archivist	Pretoria	04/13/07
2. Mandy Gilder	Deputy Archivist	Pretoria	04/10/07
3. Clive Kirkwood	Deputy Director	Pretoria	10/20/05
4. Gerrit Wagener	Ass. Director: TRC records	Pretoria	03/14/07
5. Brenda Kotze	Ass. Director: Audiovisual archives	Pretoria	10/26/06
6. Bongani Mabaso	Senior Audiovisual archivist	Pretoria	10/26/06
7. Natalie Skomolo	Senior Archivist: TRC records	Pretoria	03/14/07
8. Zahira Adams	Senior Archivist: TRC records	Pretoria	03/14/07
Department of Justice			
9. John Bacon	Records Manager	Pretoria	10/20/05
10. Marie Schouwstra	Webmaster, TRC	Pretoria	10/20/05
11. Connie Van Yuuren	Law Advisor, DOJ	Pretoria	10/20/05
12. Farrouk Hussein	DOJ TRC Co-ordinator	Pretoria	10/20/05
SAHA			
13. Piers Pigou	Director	Johannesburg	03/09/07
14. Sam Jacob	Archivist	Johannesburg	03/09/07
15. Kate Allan	PAIA coordinator	Johannesburg	03/20/07
Nelson Mandela Foundation			
16. Verne Harris	Project manager	Johannesburg	04/13/07
South African Human Rights Commission			
17. Sello Hatang	Manager	Johannesburg	04/03/07
Michigan State University			
18. Ruendree Govinder	TRC IT specialist/Webmaster	Cape Town	11/23/05
New TRC Unit			
19. Dr Seekoe	Director, Victims Support	Pretoria	03/15/07
20. Vivian Jacobs	Deputy Director	Pretoria	03/15/07

APPENDIX B- Master Coding Terms and Their Definitions

Custody	The acquisition, care and control of TRC records
Security	All the measures taken to protect TRC materials from unauthorized access, change, destruction, or other threats
Volume	The quantity of TRC records in various media
Preservation	The professional discipline of protecting TRC records from harm, injury, decay, or destruction, especially through noninvasive treatment
Access	The right or permission granted to locate TRC records through the use of indexes, finding aids, brochures or other tools
Outreach	The process of providing TRC records to underserved communities in South Africa through exhibits, workshops, publications, and educational programs.
Staff Development	All the measures taken to train, motivate and prepare records professionals for their job in the National Archives of South Africa
Government Support	Any assistance, especially financial, given to the National Archives by the Government to ensure proper preservation and

	access to TRC records
Perception	The impression that researchers, staff and ordinary people have about the management of TRC records by the National Archives

APPENDIX C - Master Coding Terms and a Summary of Participants' Responses

Custody	<p>The National Archives designated as the custodian by:</p> <ul style="list-style-type: none"> –the National Archives act –the constitutional act –promotion of national unity and reconciliation act –TRC final reports –dept. of justice –researchers and scholars
Security	<p>Security of TRC records guaranteed by:</p> <ul style="list-style-type: none"> –National Intelligence Agency (NIA) –South African Police –Ministry of Justice and Constitutional Development –the archives building –strong rooms –fire proof doors –electronic security system –humans/people
Volume	<ul style="list-style-type: none"> –3000 cubic meters of written documentation –7101 VHS –4446 Beta Cams –10446 Audio –floppy disks
Preservation	<p>Preservation of Paper, Audiovisual and Electronic records at the National Archives</p> <ul style="list-style-type: none"> –paper records preservation good –audiovisual records preservation bad –electronic records preservation worse
Access	<p>Access to TRC records difficult due to:</p> <ul style="list-style-type: none"> –failure to comply with the access act –legal technicalities –lack of brochures on TRC records –no exhibitions –trc records not arranged and described

	<ul style="list-style-type: none"> —no guides on trc records —access to paper records difficult —access to audiovisual records more difficult —access to electronic records most difficult —secrecy a problem —old apartheid laws still in operation —lack of political will —poor departmental coordination
Staff Development	<p>TRC records specialists at the archives are;</p> <ul style="list-style-type: none"> —few in numbers —non degree holders —overwhelmed with work —de-motivated — lack formal training —poor salaries —no clear-cut staff development policy — inadequate in house training
Government Support	<ul style="list-style-type: none"> —moderate to poor —insufficient budget allocation —ambivalent
Perception	<ul style="list-style-type: none"> —internal bickering between top management — no focus on the core staff issues of professional training —poor staff remunerations —ambiguous job definition —no upward mobility —poor staff morale —archives elitist

APPENDIX D - List of Close-Ended Questions Used in This Study

Custody

1. Does the National Archives have custody of TRC paper records? yes no
2. Does the National Archives have custody of TRC audio records? yes no
3. Does the National Archives have custody of TRC audio-visual records? yes no
4. Does the National Archives have custody of TRC electronic records? yes no
5. Has the National Archives acquired custody of the TRC website from the Department of Justice? yes no
6. Has the National Archives acquired custody of security records from the Military and the Intelligence community? yes no
7. Is custody of TRC records by the National Archives supported by the TRC final reports? yes no
8. Does the National Archives have guidelines for acquiring materials in electronic form? yes no
9. Does the National Archives have guidelines for acquiring audio-visual materials? yes no
10. Has the National Archives initiated the TRC oral archives project? yes no

Policies and Standards

11. Does the National Archives have a preservation policy for paper records? yes no
12. Does the National Archives have a preservation policy for audio records? yes no
13. Does the National Archives have a preservation policy for audio-visual records? yes no
14. Does the National Archives have a preservation policy for electronic records? yes no
15. Is the National Archives guided by international archival paper preservation guidelines and best practices? yes no
16. Is the National Archives guided by international standards and best practices on audio-visual preservation? yes no
17. Is the National Archives guided by international archival guidelines and best practices on the preservation of electronic records? yes no
18. Are members of staff at the National Archives aware of guidelines on the preservation of paper, audio, audio-visual and electronic records? yes no

Security

19. Does the archives employ security personnel? yes no
20. Is the security personnel at the National Archives deployed 24hrs a day? yes no
21. Does the National Archives use closed circuit television cameras (CCTV)? yes no

22. Is the National Archives equipped with alarm systems? yes no
 23. Are the alarm systems linked to the police ? yes no
 24. Are there windows where the TRC records are kept? yes no

The Archives Building and Environmental Conditions

25. Are the TRC records kept in a purpose built archives? yes no
 26. Is the building located in an industrial area? yes no
 27. Is the building located close to a river/dam? yes no
 28. Is the building located close to a military target? yes no
 29. Is the building equipped with de-humidifiers? yes no
 30. Is the building equipped with humidifiers? yes no
 31. Is the building equipped with air filters? yes no
 32. Is the building equipped with air-conditioners? yes no

Temperature and Relative Humidity

33. Does the building have a heating, ventilation, and air-conditioning (HVAC) system?
yes no
 34. Is the HVAC system on all the time? yes no
 35. Are temperature levels monitored all the time at the National Archives? yes no
 36. Are relative humidity (RH) levels monitored all the time at the National Archives? yes
no
 37. Does the National Archives maintain controlled temperatures of between 13°C and 21°C in areas where TRC records are stored? yes no

Light

38. Are TRC records protected from sunlight? yes no
 39. Are there controls for artificial lighting in the storage areas at the National Archives? yes
no
 40. Are light level readings taken all the time? yes no
 41. Are lights turned off in the repository when not in use? yes no

Pest Management

42. Were all the records checked for pests before they were admitted to the archives? yes
no
 43. Have you experienced any insect or vermin invasion in the archives building? yes no
 44. Does the National Archives carry out routine insects checks? yes no

Storage and Handling

45. Is the storage area of TRC records generally clean? yes no
 46. Are the storage boxes for TRC records acid free? yes no
 47. Is there a “no eating sign” prominently displayed in the storage areas? yes no
 48. Is there a “no smoking sign” prominently displayed in the storage areas? yes no
 49. Are the shelves in the storage area made up of wood? yes no
 50. Are the shelves in the storage area made up of steel? yes no
 51. Are staff members the only ones with access to the storage place? yes no

52. Are the National Archives staff members trained in the handling of the records? yes
no
53. Are users trained in the handling of records? yes no
54. Are there guidelines for handling of records by the public? yes no
55. Do users photocopy their own records? yes no

Disaster Preparedness

56. Is there a written disaster preparedness and recovery plan at the National Archives? yes
no
57. Are staff members made aware of all possible disasters? yes no
58. The staff members are made aware of the safe evacuation of people? yes no
59. The staff members are made aware of the safe evacuation of records? yes no
60. Is there a clear chain of command at the National Archives to deal with disaster? yes
no
61. Does the National Archives carry simulated disaster drills? yes no
62. Are staff members at the National Archives adequately instructed in emergency planning?
yes no

Fire Detection and Suppression

63. Does the TRC storage area have a fire detection system? yes no
64. Are fire extinguishers available throughout the repository? yes no
65. Has the National Archives staff been trained on the use of fire extinguishers? yes no
66. Is the National Archives in regular contact with the municipal fire department? yes
no

Preservation of the various TRC records

67. Are the TRC paper records deteriorating?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
68. Is the poor physical condition of TRC paper records a factor in their deterioration?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
69. Are insufficient resources a factor in the deterioration of TRC paper records?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
70. Is management complacency a factor in the deterioration of TRC paper records?
 strongly agree(4)
 agree(3)
 disagree(2)

- strongly disagree(1)
71. Is the poor training of archivists a factor in the deterioration of TRC paper records?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
72. Are the TRC audio records deteriorating?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
73. Is the poor physical condition of TRC audio records a factor leading to their deterioration?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
74. Is technological obsolescence a factor in the deterioration of TRC audio records?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
75. Are insufficient resources a factor in the deterioration of TRC audio records?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
76. Is management complacency a factor in the deterioration of TRC audio records?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
77. Is poor training of archivists a factor in the deterioration of TRC audio records?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
78. Are the TRC audio-visual records deteriorating?
 strongly agree(4)
 agree(3)
 disagree(2)
 strongly disagree(1)
79. Is the poor physical condition of TRC audio-visual records a factor leading to their deterioration?
 strongly agree(4)
 agree(3)
 disagree(2)

- strongly disagree(1)
80. Is technological obsolescence a factor in the deterioration of TRC audio-visual records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
81. Are insufficient resources a factor in the deterioration of TRC audio-visual records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
82. Is management complacency a factor in the deterioration of TRC audio-visual records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
83. Is the poor training of archivists a factor in the deterioration of TRC audio-visual records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
84. Are the TRC electronic records deteriorating?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
85. Is the poor physical condition of TRC electronic records a factor leading to their deterioration?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
86. Is technological obsolescence a factor in the deterioration of TRC electronic records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
87. Are insufficient resources a factor in the deterioration of TRC electronic records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)
88. Is management complacency a factor in the deterioration of TRC electronic records?
- strongly agree(4)
- agree(3)
- disagree(2)

- strongly disagree(1)
89. Is the poor training of archivists a factor in the deterioration of TRC electronic records?
- strongly agree(4)
- agree(3)
- disagree(2)
- strongly disagree(1)

Perception on the Preservation of TRC records

90. Overall how do you consider the preservation of TRC paper records at the National Archives?

- very successful(4)
- successful(3)
- of limited success(2)
- not successful(1)

91. Overall how would you consider the preservation of TRC oral records at the National Archives?

- very successful(4)
- successful(3)
- of limited success(2)
- not successful(1)

92. Overall how would you consider the preservation of TRC audio-visual records at the National Archives?

- very successful(4)
- successful(3)
- of limited success(2)
- not successful(1)

93. Overall how would you consider the preservation of TRC electronic records at the National Archives?

- very successful(4)
- successful(3)
- of limited success(2)
- not successful(1)

94. Overall are you satisfied with the way the National Archives has preserved TRC records?

- very satisfied(4)
- satisfied(3)
- somewhat satisfied(2)
- unsatisfied(1)

Access to TRC records

95. Does the National Archives have an access policy for paper records? yes no

96. Does the National Archives have an access policy for audio records? yes no

97. Does the National Archives have an access policy for audio-visual records? yes no

98. Does the National Archives have an access policy for electronic records? yes no

99. Are the TRC records at the National Archives arranged and described? yes no

100. Does the National Archives have inventories that researchers can use as findings aids to TRC records? yes no

101. Does the National Archives have printed guides to the TRC collection? yes no
102. Can researchers access TRC records on the National Archives website? yes no
103. Does the National Archives have the technical capacity to access TRC electronic records? yes no
104. Have researchers used the promotion of Access to Information Act(PAIA) to access TRC records? yes no

PAIA and Access to TRC records

105. Has the Promotion of Access to Information Act(PAIA) been successful in promoting access to TRC records?
- very successful(4)
- successful(3)
- of limited success(2)
- not successful(1)

Perception on Access to TRC records

106. Overall how would you consider access to TRC records at the National Archives?
- very accessible(4)
- accessible(3)
- of limited access(2)
- inaccessible(1)
107. Overall are you satisfied with the way the National Archives is providing access to TRC records?
- very satisfied(4)
- satisfied(3)
- somewhat satisfied(2)
- unsatisfied(1)

Public Programming

108. Does the National Archives have a public program for TRC records? yes no
109. Does the National Archives have brochures on TRC records? yes no
110. Has the National Archives ever held an exhibition on TRC records? yes no
111. Has the National Archives ever held a workshop on TRC records? yes no
112. Has the National Archives ever used the television programs to promote TRC records)? yes no
113. Does the National Archives use newspapers to promote TRC records? yes no
114. Are members of staff at NASA aware of TRC outreach programs and their role? yes no

Perceptions on the promotion of TRC records

115. Overall how serious do you consider the National Archives attempt to promote TRC records?
- very serious(4)
- serious(3)
- of limited seriousness(2)

not serious(1)

Staff Training

116. Are the National Archives staff trained in records and archives management? yes no

117. In terms of professional training, archivists at the National Archives have received?

masters degree in records and archives(6)

graduate degrees in other fields(5)

bachelors degrees in various fields(4)

inhouse training(3)

workshops and semiNASA(2)

high school certificates

118. Are the National Archives staff given on the job training? yes no

Management

119. Do you think the National Archives top management is doing enough to manage TRC records?

strongly agree(4)

agree(3)

disagree(2)

strongly disagree(1)

Government Support

120. Should government increase the National Archives budget?

strongly agree(4)

agree(3)

disagree(2)

strongly disagree(1)

121. In your view is the management of TRC records a top priority to the current government?

strongly agree(4)

agree(3)

disagree(2)

strongly disagree(1)

APPENDIX E - Graphical Representation of Responses

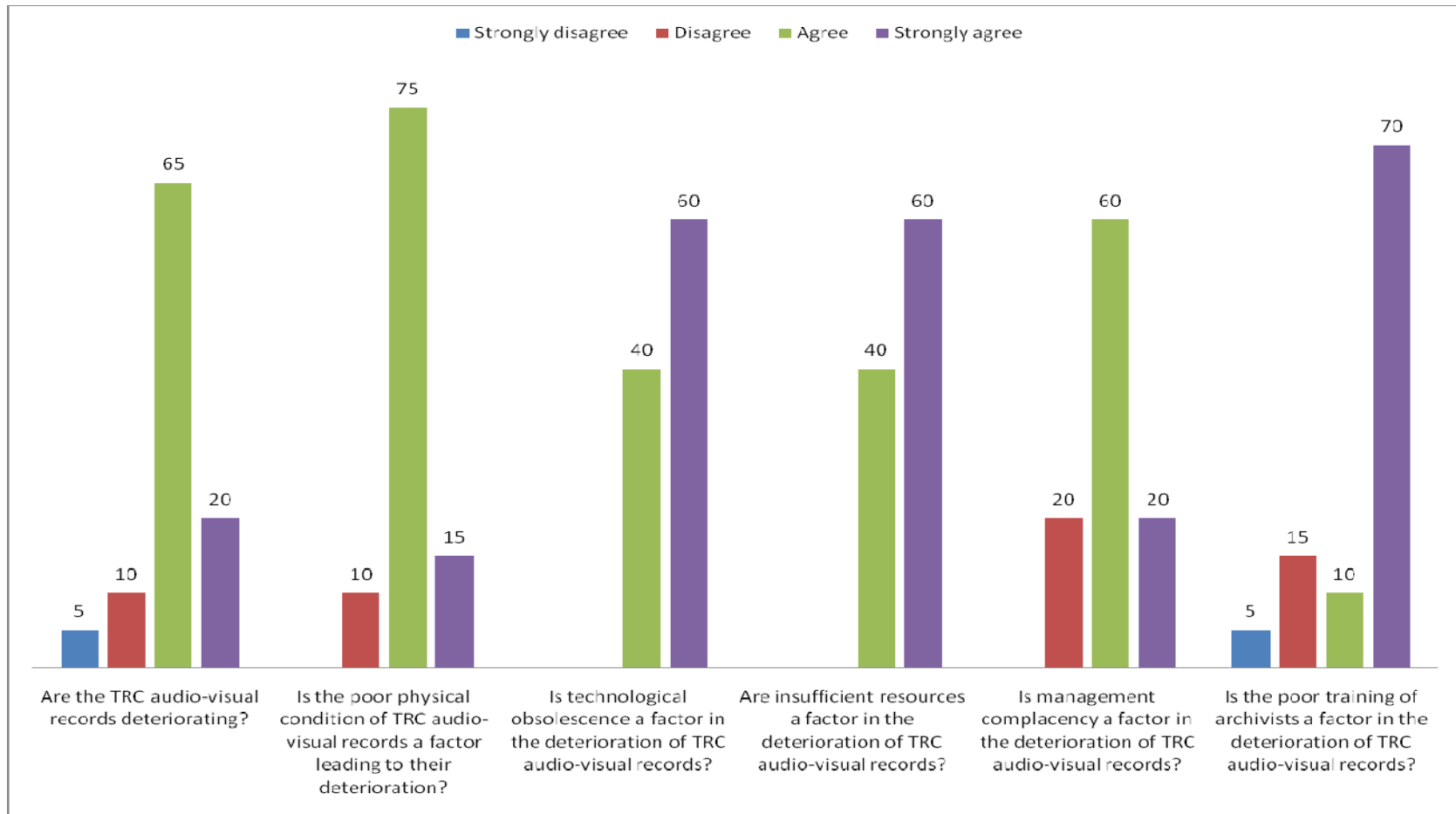


Figure 2: Responses to Close Ended Questions 78-83

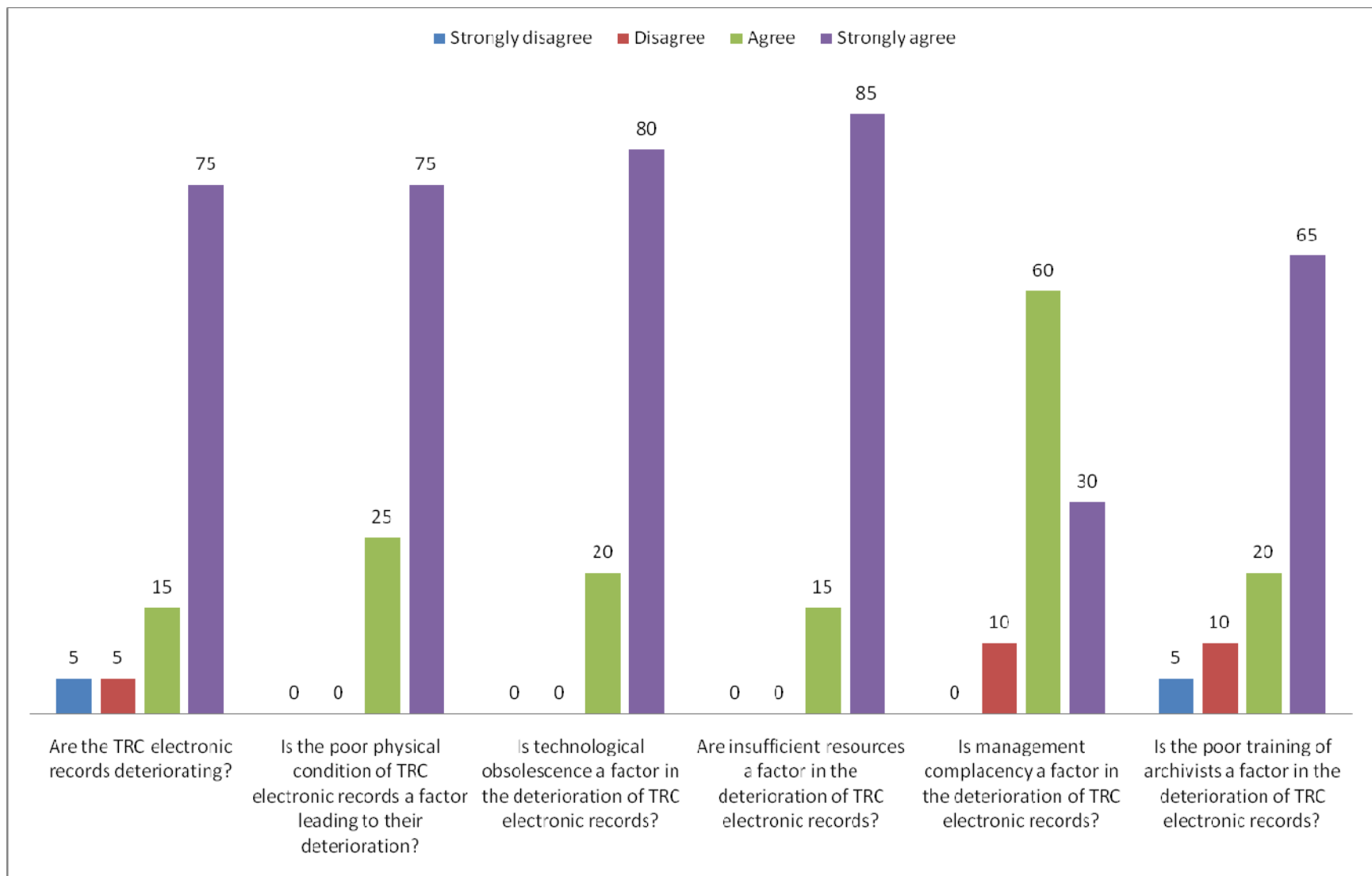


Figure 3: Responses to Close Ended Questions 84-89

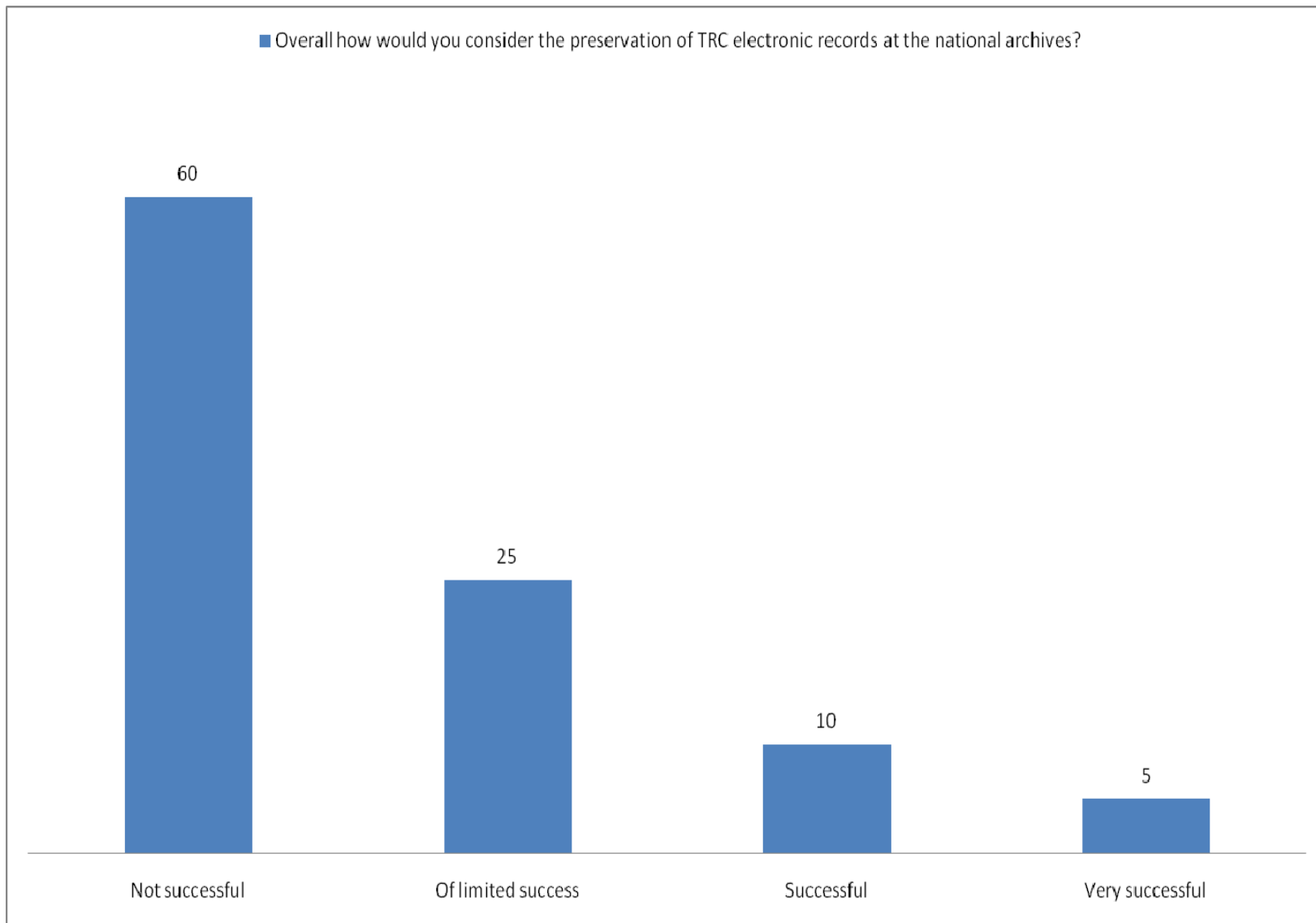


Figure 4: Question 93 on Electronic Records

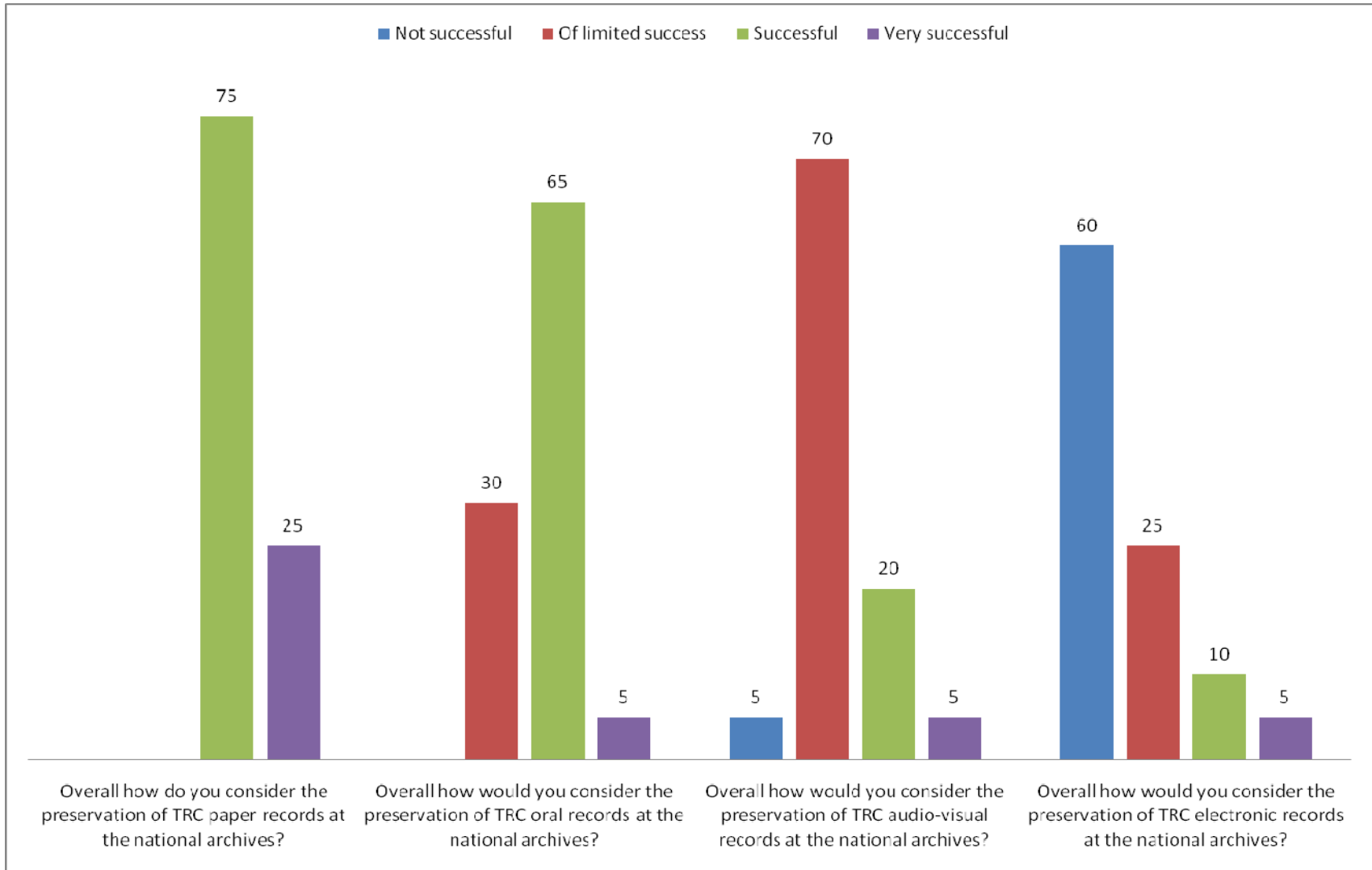


Figure 5: Responses to Close-Ended Questions 90-93

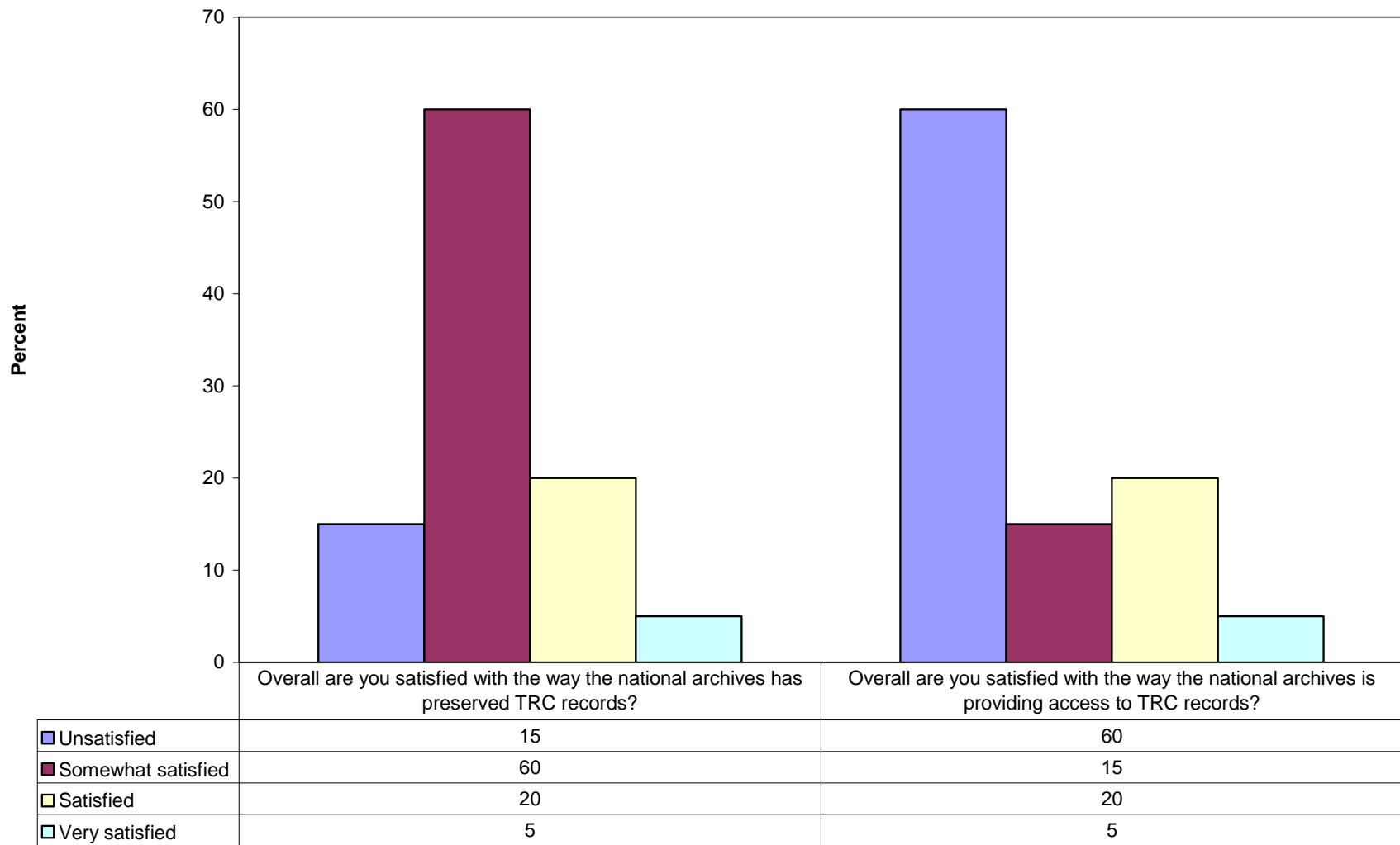


Figure 6: Responses to Close-Ended Questions 94 & 107

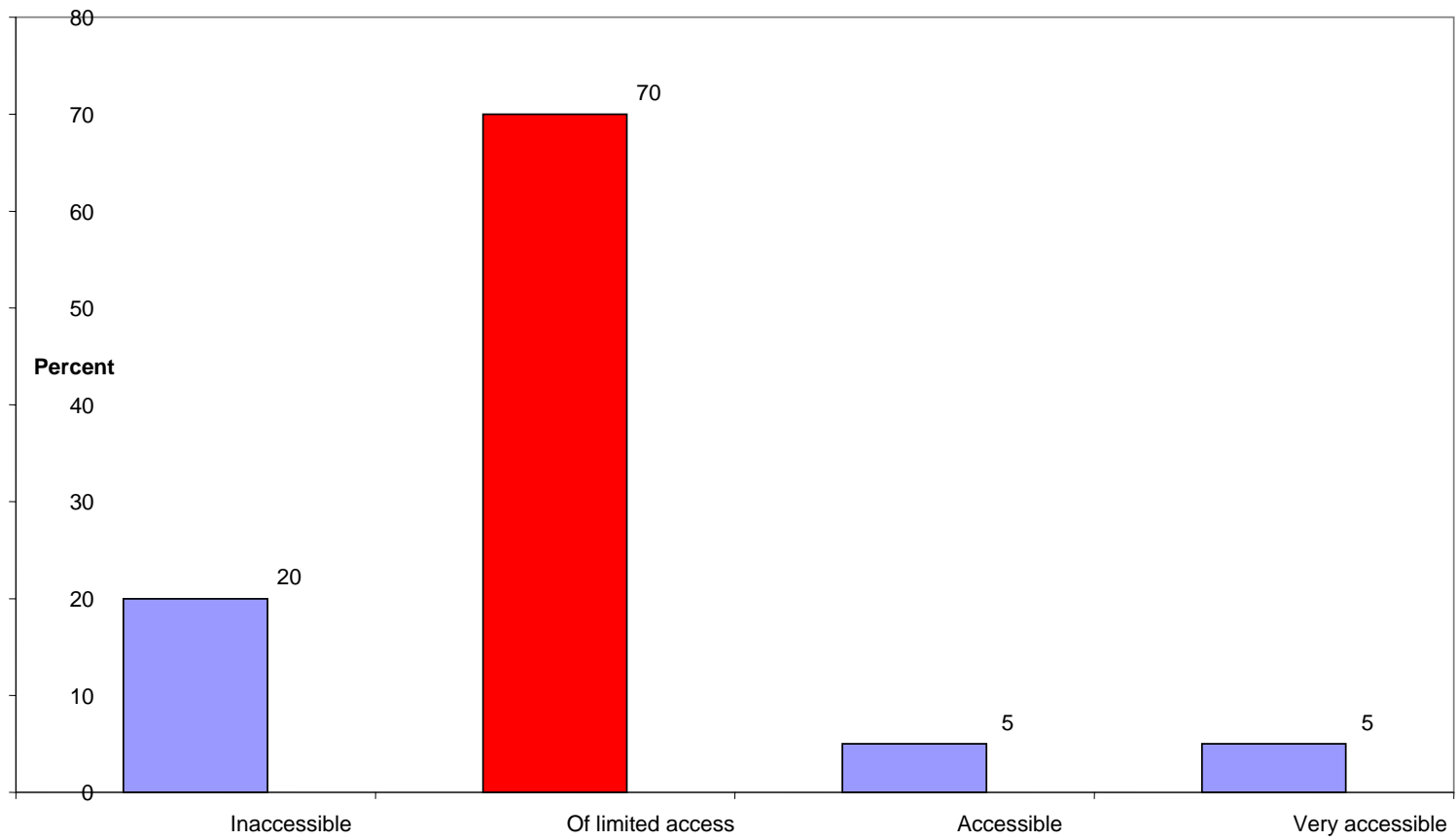


Figure 7: Responses to Close-Ended Question 106

APPENDIX F - List of Acronyms and Abbreviations Used in This Study

ANC African National Congress

TRC Commission Truth and Reconciliation Commission

COSATU Congress of South African Trade Unions

HRVC Human Rights Violations Committee

HVAC Heating, Ventilation and Air-Conditioning System

ICTY International Criminal Tribunal for the former Yugoslavia

IDASA Institute of Democracy in South Africa

IFP Inkatha Freedom Party – known as Inkatha prior to July 1990

MK Umkhonto we Sizwe

NARA National Archives and Records Administration

NASAA National Archives and Records Services of South Africa

NAFVSA National Film, Video and Sound Archives

NGO Non Governmental Organization

ODAC Open Democracy Advice Center

PAC Pan Africanist Congress

PAIA Promotion of Access to Information Act

RRC Reparation and Rehabilitation Committee

SABC South African Broadcasting Corporation

SACP South African Communist Party

SADF South African Defense Force

SAHRC South African Human Rights Commission

SANDF South African National Defense Force

SAP South African Police

SAPS South African Police Services

TRC Truth and Reconciliation Commission

UDF United Democratic Front

UN United Nations

USA United States of America⁸⁵³

⁸⁵³ Most of these acronyms also appear in *Truth and Reconciliation Commission of South Africa Report, Vol 6* (Cape Town: CTP Book Printers, 1998), 787-788.

APPENDIX G - Online Resources

1. **Centre for the Study of Violence and Reconciliation (CSVr) Publications**
<http://www.csvr.org.za/pubslst/pubstrc.htm>
2. **Contrast.org TRC Files**
<http://www.contrast.org/truth/html/summary.html>
3. **Human Right Data Analysis Group**
<http://www.hrdag.org>
4. **International Conflict Research (INCORE), University of Ulster, Guide to Internet Resources on Truth and Reconciliation**
<http://www.incore.ulst.ac.uk/services/cds/themes/truth.html#articles>
5. **National Archives and Records Services of South Africa**
<http://www.national.archives.gov.za>
6. **Netherlands Institute for South Africa (NIZA) Annotated Bibliography of the South African TRC**
<http://www.niza.nl/docs/200416151407561625.pdf>
7. **Official South African TRC Website**
<http://www.doj.gov.za/trc/>
8. **Recovery of Historic Memory**
<http://www.fhrg.org>
9. **South African History Archive**
<http://www.SAHA.org.za>
10. **South African Human Right Commission**
http://www.sahrc.org.za/sahrc/cms/publish/cat_index_26.shtml
11. **Transparency International**
<http://www.transparencyinternational.org>
12. **“TRC: Commissioning the Past” Conference, 7-9 June 1999**

www.trcresearch.org.za

13. United States Institute of Peace

<http://www.usip.org/library/truth.html>

14. University of Ghent TRC Research Bibliography Compiled by Annelies Verdoolaege

<http://cas.1.elis.rug.ac.be/avrug/trc.htm>

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