

## **Remembering to Forget: Issues to Consider when Establishing Structures for Dealing with the Past**

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Thou too shalt groan at heart that all thy spending -  
Cannot repay the dead, the hungry dead.  
(From the poem *Generation to Generation*, Henry Newbolt)

This paper moves from the premise that when countries are attempting to overcome a violent past it is better to deal with the past through investigation, truth recovery, justice and support for victims or survivors of violence than to ignore it. The paper is geared toward countries that are undergoing processes of social and political transformation. Specifically it is targeted at countries that are coming out of protracted periods of political violence.

For example, the Northern Ireland Peace Agreement reached on the 10 April 1998, outlines the need for the establishment of a number of commissions (e.g. Commission on Policing, review of the criminal justice system, etc.) to help facilitate change in the society. The Northern Ireland Victims Commission, under Sir Kenneth Bloomfield,<sup>2</sup> also released its report in April 1998. Furthermore, a new inquiry into the killings that took place on 'Bloody Sunday' in 1972 has also been set up.

The paper should be read in light of these changes, as well as within the growing international trend toward seeing truth commissions and other commissions as useful mechanisms for dealing with a violent past. In this regard, the paper provides some general comparative arguments that can be applied to varying contexts. The paper gives considerable weight to some of the lessons learned from the South African Truth and Reconciliation Commission (TRC) process. It begins by briefly outlining some of the debates about whether a country should investigate or remember its past. Thereafter, it outlines five issues that need to be considered if a process of dealing with the past is to be undertaken.

### **Should we remember?**

There are many arguments as to why the past should not be explored, investigated or uncovered. It could be argued that uncovering the past can de-rail peace initiatives and cause further violence. One could also claim that, if unmanaged, the realisation of uncovering the past can be more psychologically painful than leaving it undisturbed. There is also value in the argument that for the youth (who were not part of past conflict) it is favourable that the past is forgotten so as to allow them to distance themselves from past abuses and old mindsets. In this way they can create a new future unpolluted by the past. Furthermore, the arguments that the past can be manipulated and reinterpreted so that it can be used as a weapon warrant serious consideration.

Nonetheless, these arguments are, for the most part, outweighed by reasons as to why the past should be investigated and uncovered by the people of any society coming out of violence. There are four primary reasons why strategies for dealing with the past should be considered.

Firstly, there is a basic psychological justification for undertaking a process of remembering the past. Psychologically, sleeping dogs do not lie; past traumas do not simply pass or disappear with the passage of time. The past can never just be ignored and past traumas can always be expected to have emotional consequences for an individual<sup>3</sup> and the society at some later stage. Psychological restoration and healing can only occur

through providing the space for survivors of violence to feel heard and for every detail of the traumatic event to be re-experienced in a safe environment.<sup>4</sup>

Secondly, it is probably true that ‘whoever controls the past controls the future’ as George Orwell asserted, and that the uncovering of the past allows for its manipulation to meet present political and social agendas and interests. As Thelen has said, ‘The struggle for possession and interpretation of memory is rooted among the conflict and interplay of social, political, and cultural interests and values in the present’.<sup>5</sup> Remembering and its use (and abuse) cannot be separated from the present social and political concerns, and could serve the interests of one sector of the society. It is for this very reason that as many voices as possible should engage in the process of remembering. Only through engaging in the process of remembering can we enter into the socially contested field of the past. In so doing, we open the only possibility of developing creative and constructive collective memories that are functional to as many people within the society as possible.

Thirdly, within the literature on truth commissions, many authors have asserted the importance of focusing on the past. The setting up of truth recovery processes and their ability to contribute to reconciliation with the past have been ubiquitously asserted.<sup>6</sup>

Hayner<sup>7</sup> is of the opinion that a truth commission (as one example of truth recovery process) can promote reconciliation, outline needed reform, allow victims to air their pain, provide acknowledgement of a long-suppressed past, and hopefully keep such horrors from being repeated. Drawing on the experience of Latin American efforts to recover from decades of military dictatorship, *Human Rights Watch* concludes:

If any country is to come to terms with its past and successfully turn its attention to the future, it is essential that the truth of the past be officially established. It is impossible to expect ‘reconciliation’ if part of the population refuses to accept that anything was ever wrong, and the other part has never received any acknowledgement of the suffering it has undergone or of the ultimate responsibility for that suffering.<sup>8</sup>

Finally, the importance of acknowledgement of wrongdoing and the uncovering of truth (and justice in most cases) is also commonly expressed as healing for victims or survivors. By creating a realistic perspective of past human rights abuses, individual and collective cognitive recovery could be aided by allowing survivors to accept what happened to them and deal with their resultant emotional responses. In Northern Ireland, the need for truth and its links to healing have also been made. Smyth comments:

For some people who have lost family members, there are strong feelings of injustice in cases where there are unresolved issues, missing bodies, unanswered questions, resolution or healing is often impossible in the absence of knowing more about the circumstances of what happened to their loved ones.<sup>9</sup>

Similarly, in South Africa, despite the existence of the TRC, many victims still feel that more truth (and justice in some cases) is necessary for reconciliation or healing to take place.<sup>10</sup>

### **How should we remember?**

The next section of the chapter focuses on several ways that countries could remember. It outlines broad guidelines and raises some debates within the field of collective and individual remembering. It does not delve into the pragmatics of strategies for remembering or advocate specific methods for dealing with the past, i.e. it does not debate whether countries coming out of violence should embark on a formal truth commission process, a commission of inquiry, a war crimes tribunal, a purging or ‘lustration’ process or grass-roots non-governmental processes. Rather the chapter

highlights some of the issues a country may need to consider prior to the establishment of any formal body or commission. This section draws heavily from the South African experience of the TRC and other countries coming out of conflict.

This section advocates five albeit not exhaustive maxims that may be useful when dealing with past or setting up structures such as commissions of inquiry. These are:

1. Remember in a contextual, creative and official way
2. Remember in a diverse and representative way
3. Remember in a legitimising way
4. Remember in a complex way
5. Remember in a forward-looking way

### **1. Remember in a contextual, creative and official way**

In the same way that we can only understand the past through the prism of the present, we need to be aware that the strategies that we adopt for dealing with past will inevitably be shaped by the current political and social context. In South Africa, the balance of forces at the time of transition played a significant role in shaping the remembering process that came afterwards. Given the nature of the negotiated settlement it was impossible to undertake large scale prosecutions. Within this context, amnesty can be seen as a necessary and unavoidable precondition to the negotiated peace settlement.<sup>11</sup> In turn, the amnesty 'deal' shaped, and gave birth to, the Truth and Reconciliation Commission. Within the South African context the ANC had insufficient power at the negotiations table to enforce prosecution, but had sufficient power to demand truth in exchange for amnesty<sup>12</sup> - this exchange, along with giving victims space to tell their stories, is the bare essence of the South African TRC.

The relative merits (and demerits) of the South African amnesty process are beyond the present focus, but some lessons are clear. Firstly, the context helped shape the final nature of South Africa's attempts to deal with the past. Secondly, those involved in the process managed to develop a new method for dealing with the past, i.e. to follow a middle-road between the polemics of prosecution and blanket amnesty. This creativity allowed debates and strategies for dealing with the past to be thrust forward both locally and internationally.

In light of this, South Africa did attempt to deal with the past in a creative way. However, it could also be said to have simply added a dimension to already established models. One argument is that this may have, in fact, made the TRC *acontextual* in its approach even if its origin was a particularly contextual one. The South African TRC is criticised for defining victims too narrowly. It is argued that South Africa borrowed from the Latin American experiences and as a result it weighed the notion of perpetrators and victims too heavily and ignored the unique structural issues related to victimisation in South Africa. The result was that there has been insufficient focus on the so-called beneficiaries of the apartheid system.<sup>13</sup>

Other commentators have made similar points. It has been argued<sup>14</sup> that the majority of victims or survivors who appeared before the TRC were victimised not only because of their political affiliation and activities, but because of their structural circumstances including: their gender, their poverty, their race and their general social marginalisation. It has similarly been argued that the construction of the truth from testimony of individual human rights victims and abusers, threatens to obscure a larger truth of systematic subjugation, enslavement, oppression and exploitation over the centuries.<sup>15</sup> From a gender perspective it is argued that the TRC's narrow interpretation of gross violations of human rights has meant that women who bore the brunt of oppression through forced removals, pass arrests and other acts of systematic apartheid violence have not been identified as victims.<sup>16</sup>

These criticisms of the TRC are debatable within the context of the mandate of the TRC, and perhaps focusing on the broader structural oppression of apartheid would have made the work of the TRC unmanageable. However, the arguments serve to

illustrate that processes which are billed as creative can have hidden social and political consequences. The so-called uncovering of *the truth* can, perhaps inevitably and even unconsciously, serve to obscure a number of *other truths*.

For this reason, it could be argued that it is important to embark on remembering processes that produce versions of *the truth* that are broadly accepted by as many people as possible. To this end to seek an official record (the official truth) is an important, albeit inevitably fraught, step. In this regard the South African attempts are important because they are thrust toward establishing an official record based on broad consensus and are sanctioned by a majority government.

Informal truth commissions and other investigations such as the documentation process carried out by the Archbishop's Human Rights Office in Guatemala are vital and essential to uncovering the truth. However, if these processes are made official and backed by the government (and its people) they are inevitably more effective. Brazil is a useful example in this regard.

In Brazil it could be argued that, primarily due to the publication of the book *Brazil: Nunca Mais*,<sup>17</sup> a large part of the truth is in fact known about the atrocities of the Brazilian dictatorship that spanned the years 1964-1985.<sup>18</sup> The book has received semi-official status through its extensive sales.<sup>19</sup> However, the argument could be made that, had Brazil had an official truth recovery process, demands for justice would not still reverberate through the society and the present day police would not be so brutal, and infringe upon human rights as much as they do.<sup>20</sup>

Equally it could be argued that it was not only the unofficial nature of the investigations into the past that resulted in a limited impact on institutional change in Brazil. Arguably the political trajectory taken by the country was already entrenched before the election of a civilian government in 1985 or the publication of the book.<sup>21</sup> This trajectory was typified by the granting of amnesty and an attitude that allowed those responsible for human rights abuses to continue to operate freely. In essence, as has been witnessed in so many countries, a context of impunity has continued to dominate the government after the transition to so-called democratic governance.

Clearly, to reveal the truth and make future recommendations about how to redress the past, and meet the needs of victims, is not enough. This process has to be integrated into strategies for institutional change. Truth for truth's sake can be pointless. In addition, creative initiatives are needed that grow out of the political context under consideration. It would be a mistake for any country to begin with the South African model (as that is the most contemporary) and structure their truth recovery process around that. Rather, one should first explore indigenous and contextual methods, which may or may not be built on other experiences. Differing methods for dealing with the past are in a constant state of flux and under experimentation. One method should not be heralded as an icon, although this does not negate the fact that important lessons can be learned through comparative study.

Dealing with the past needs to be done creatively. We need to be looking beyond testimony as the only way that victims can deal with trauma, and monetary and symbolic (e.g. monuments) forms of reparation as the only way we can make amends. We also need to study countries that have not undertaken truth recovery processes with as much scrutiny as those who have. However, above all else, extensive preparation and consultative workshops with all sectors of society who have an investment in the past and its reconstruction (particularly victims, but also including the so-called perpetrators) are essential before any strategy for dealing with past is undertaken.

## **2. Remember in a diverse and representative way**

One of the impacts of violence on a population is a high level of mistrust of those who are seen as 'the other', and particularly those who are seen as the aggressor. The impact of these perceptions cannot be underestimated and they infiltrate various sectors of the

For example, in South Africa, the credibility of the police was so undermined over the apartheid years that it would have been unthinkable and unacceptable, in the eyes of the black majority, for the National Party to have internally reformed the service. In fact, in South Africa today, despite extensive transformation in the police services and the careful scrutiny of the TRC, many victims of police violence still feel that 'police officials have not made any meaningful contribution to transforming their role from sustaining apartheid to becoming protectors of individuals' rights'.<sup>22</sup>

Similarly, for many Nationalists in Northern Ireland, the Royal Ulster Constabulary (RUC) is seen as the most visible line of defence of a State which they have difficulty accepting as legitimate.<sup>23</sup> In addition, the RUC is seen as an 'ethnic police force' due to its overwhelming Protestant membership, and within Republican consciousness the RUC is linked to a number of controversies in the 1980s such as the 'shoot to kill policy' and the 'supergrass trials'.<sup>24</sup> Given this it seems likely that, from a Nationalist perspective, anything short of a radical overhaul of the RUC would not suffice.<sup>25</sup>

These types of perceptions (that exist in almost all countries that are in transition) require careful cognisance when strategies or commissions for dealing with the past are being considered or conceptualised. Although it is fair criticism to point out that any truth recovery process, investigation or commission may serve political ends,<sup>26</sup> this is an insufficient reason to hold back the process. To counter perceptions that processes (and institutions) are biased, investigations or commissions should be encouraged. However, unlike so many other commissions around the world, it is critical that such bodies are widely representative and acceptable to the population under examination.

It is recommended that any appointment procedure be as public and diverse as possible.<sup>27</sup> This can ensure credibility for those selected and undermine political arguments that certain sectors' interests have been overlooked. In South Africa, the Promotion of National Unity and Reconciliation Act of 1995, that created the TRC, stipulated that the appointment of Truth Commissioners was to be made by President Mandela in consultation with his cabinet. The process for selecting Commissioners was an extremely consultative one that included public nominations and an invitation to the public to submit questions to be asked of the short-listed nominees. Each candidate was interviewed publicly. This process certainly won credibility for the Commissioners from the outset.

Although in South Africa accusations of partiality were levelled at the TRC by the National Party, it is likely that these may have been heightened, and, indeed, the entire TRC process undermined, if from the outset a sufficiently inclusive public process had not been adopted.

It is inevitable that a body like the TRC (or any structure that is set up to deal with past conflict whether about policing, victims or human rights) will be pressurised from different political groupings. Within this context, diversity and credibility of appointment is one method of ensuring that pressures and political posturing can be dealt with constructively and result in acceptable outcomes.

### **3. Remember in a legitimising way**

For relatives of the murdered and disappeared their loved ones can never be replaced. This creates a core problem that confronts any country, or commission, that attempts to deal with past violence. Although acknowledgement, apology, recognition and even compensation can be useful, these acts - no matter how well meaning - can never bring back the dead nor meet all the levels of psychological pain suffered by the families and victims. In essence, one is dealing with an intractable problem.

Furthermore, and perhaps obviously, it has to be realised that one is dealing with immeasurable amounts of distress and anger that the victims and survivors are struggling to come to terms with. Within this context, and if we are committed to addressing the needs of victims, we have to understand their sense of outrage at those they see as responsible. An extreme example is the *Madres of the Plaza de Mayo* in Argentina who

official investigations. They insist that 'you took them away alive we want them back alive'. Perhaps part of their refusal may involve wanting others to experience the frustration they have felt. They are determined to offer constant reminders that, in reality, there is nothing that can ever be done to replace their missing loved ones.

On a purely psychological level, to expect a person to react in any other way (e.g. to be overly forgiving, or to simply let bygones be bygones, etc.) would be highly problematic. This runs counter to most personal processes of coming to terms with traumatic events. It is critical that victims (no matter what the state of a peace process in a country) are not expected, either implicitly or explicitly, to forgive the perpetrators. The anger of family members, or other emotional responses such as refusing to participate in processes set up by the state (e.g. Commissions), has to be legitimised and space provided for people to express their feelings of sadness and rage.

The unfortunate reality of this process is that survivors' responses can often frustrate official government attempts to deal with past violence. It is not uncommon for survivors to refuse to participate in so-called victim orientated processes or for them to continually accuse most established processes of being biased and not serving their interests. Again it is worth mentioning the *Madres de la Plaza de Mayo* in Argentina who still refuse compensation.<sup>28</sup> Similarly, the Brazilian *Comissão de Familiares de Mortos e Desaparecidos Políticos* (Commission for the Family Members of the Persons Killed or Disappeared for Political Reasons) sees the 1995 attempts to compensate the families of the murdered and disappeared during the Brazilian dictatorship as the government's final attempt to buy their silence and close the book on the past without revealing the true facts of what happened.<sup>29</sup> In Northern Ireland some relatives of victims of state violence have accused the Northern Ireland Victims Commission that was established in October 1997 of being:

A cosmetic exercise, commissioned by a government whose human rights record is the worst in Western Europe. The only fitting monument that will serve to commemorate our loss and which will allow us to put the past behind us is truth and justice.<sup>30</sup>

In South Africa, despite the work of the TRC, *some* victims will accuse the TRC of undertaking a 'false reconciliation' process in which they were forced to reconcile or forgive the perpetrators.<sup>31</sup>

It is not the purpose of this paper to analyse the veracity of any of these claims, but the point is made to illustrate that there is a degree of consistency between victims' views of official bodies after societies have experienced large-scale political violence. If government commissions and official truth commissions are to take their role seriously then it is not only the claims of victims that need to be taken seriously, but their perceptions need to be treated as a critical and accepted reality of the situation. Whether their perceptions of government bodies, as not serving their interests, are incorrect or correct (and in most cases they are correct), policy makers need to take all victims' perceptions into account when claiming to be addressing victims' needs.

This means having to be hyper-vigilant about the appointment process of individuals who are going to have the responsibility of heading commissions or representing victims' needs. Similarly, the onus should fall on appointed government bodies to follow up victim cases, rather than waiting for survivors to approach them. In essence, commissions need to be seen to be bending over backwards to meet the needs of all victims.

These points are heavily weighed upon by the pragmatic nature of the task that may be at hand. For example, in South Africa the fact that over 20,000 statements were made by victims to the Truth and Reconciliation Commission (TRC) made it extremely difficult for the Commission to report back or to be seen to be following up each case individually. Nevertheless, one has to ask the question, whether it would have been a

victims' criticisms of the TRC if a more substantial reporting back process was set up (i.e. a routine report back to victims even if the report back was to say that no progress had been made thus far).

In sum, any commission set up to meet the needs of victims should firstly, continually and actively demonstrate its commitment to the needs of victims. This is how victims will assess its commitment and utility. Secondly, it needs to constantly remain vigilant to victims' perceptions of it. Thirdly, commissions need to address all victims' perceptions (and their legitimate claims) as real. Finally, bodies and commissions need to accept that their role is one which requires them to absorb the anger of those wronged in the past. Irrespective of political persuasion a victim's anger at their loss is always justified.

#### **4. Remember in a complex way**

When analysing the past in most countries it is apparent that conflict is generally more complex than it would first appear. South Africa, for example, witnessed a number of different types of violence. These included, amongst many others, pervasive structural violence<sup>32</sup> and oppression; extensive state abuses like torture, assassinations and detention without trial; the use of paid vigilantes and *third force* operatives to carry out assassinations and terror attacks; large-scale inter-community conflict; armed resistance from the so-called liberation forces; and abuses committed by the liberation forces against those within its own ranks who were suspected of being informers or traitors. The violence in South Africa, as in most countries, was multi-dimensional and diverse in nature.

For pragmatic reasons, the South Africa TRC's mandate was narrowed to what was termed the gross violations of human rights (i.e. torture or severe-ill treatment, murder, attempted murder and abduction or disappearance) that were committed between the periods March 1960 and May 1994. This mandate was broader than others. The Chilean Commission, for example, focused only on disappearances. However, it was narrower than others such as the El Salvadorean Commission that had a very broad mandate. The El Salvadorean Commission could investigate 'serious acts of violence... [whose] impact on society urgently demands that the public should know the truth'.<sup>33</sup>

These points are made not to debate the issue of the mandate of commissions and investigation bodies, but rather to highlight the fact that violence in most countries is generally a complex phenomenon. At the same time, certain types of violence (e.g. disappearances) may dominate and therefore require specific investigation. It has already been raised in this paper that focusing on gross violations in South Africa may have obscured the structural forms of violence in the country. However, equally so, commissions and strategies which investigate the past can be - if the issues are not approached sensitively - prone to emphasising or under-emphasising certain aspects of the conflict. Three main areas where this can occur have been identified.

Firstly, certain types of conflict or situations can be under-emphasised due to their nature and the political sensitivities attached to them. For example, in South Africa the 1990-1994 period was marked by unprecedented levels of inter and intra-community violence between the ANC and the Inkatha Freedom Party (IFP).<sup>34</sup> This conflict resulted in over 15,000 deaths but has been under-emphasised relative to state violence by the Truth and Reconciliation Commission. This is probably due to the fact that the wounds of the conflict are fresh and that all parties involved still hold sufficient power to re-start the violence. In this regard the TRC has been criticised in some quarters for being afraid to rock the boat.<sup>35</sup> A further reason for the under-emphasis may be that truth commissions were initially designed to explore vertical acts of violence (e.g. state repression) rather than the complex nature of horizontal conflict (e.g. inter-community conflict).

Under-emphases for political reasons is common when specific actors or groups in

orchestrate such cover-ups. For example, the term ‘terrorist’ is frequently used in Algeria to describe the Muslim Fundamentalists in the country. Although these groups have undoubtedly been involved in brutal terror attacks and in massacres, reports from Amnesty International<sup>36</sup> suggest that the security forces are also likely to be involved. As with so many conflicts in the world, the continual and vocal protests about ‘terrorists’ serve as a convenient smoke screen for state complicity. This was certainly the case in South Africa during the National Party government.

Secondly, certain types of violations or violence may be emphasised over others. It is easier to consider the number of deaths that took place during a period of conflict than the injuries, both psychological and physical, that have been endured by a community. Although deaths can be a reliable barometer of the amount of injury sustained by a community, they do not tell the intricate story of living in a repressive environment typified by extensive military patrols and constant surveillance. Similarly, deaths (particularly of so-called high profile individuals) tend to mask the victimisation of the families and children of those individuals. Thus, the world over, stories are told of the brutal assassination of individuals, but the violence meted out to their families, both directly and indirectly, is often overlooked. These would include, in most cases, the harassment (and sometimes torture) of family members, the invasion of their privacy through raids into the home and generally what are considered minor violations [*sic*] committed against family members like slapping, insulting or pushing them when security personnel or paramilitary groups are searching for their adversaries.

This obscuring often takes on a gendered perspective. The stories of the wives, mothers or partners of a victim of state or paramilitary attacks are seldom told.<sup>37</sup> Often these women (and their children) directly experience victimisation due to their association with certain individuals. However, because their experiences are considered minor and their male loved one is considered to be the primary actor (and due to the general marginalisation of women) their stories remain untold.

Finally, the role of the so-called victims and perpetrators is often emphasised or de-emphasised depending on the political context. However, as one delves deeper into most conflicts, what soon becomes apparent is that many actors in a conflict have long and variant histories in which they have had multiple roles. Simply put, they have been both victim and perpetrator. One of the sharpest lessons of the South African TRC has been that it was a mistake to narrowly define individuals. Many amnesty applicants, particularly those involved in paramilitary groups, like the ANC Self-Defence Units and the IFP Self-Protection Units, have revealed a complex web in which they have played the dual role of victim and perpetrator. If a country is to adequately explain and understand a violent past, then these complex stories have to be told.

However, these statements should not be taken to imply that *we are all victims* after a conflict. In all conflicts some parties are clearly more to blame for the suffering than others, but we should not fall into the trap (as countries do during times of war and violence) of seeing the picture in a purely linear fashion. In South Africa, for example, the argument has been made that the state was the most responsible for the violence committed during the ‘apartheid’ years because it had a moral duty to protect its citizens.<sup>38</sup>

Further, although the entire population who have lived through violence would have been affected or victimised in one way or another, the experience of direct victimisation and suffering is strikingly different across communities. In South Africa it would be absurd to equate the experience of most white South Africans being placed under the stress of acts of sabotage at the hands of the liberation movement, with the experiences of the majority of black South Africans who lived in dangerous, impoverished and tightly policed townships.

## **5. Remember in a forward-looking way**

Strategies for dealing with the past are, in essence, as much about peering into the past, as they are about shaping and looking into the future. If one analyses the aims of most official bodies and commissions that have been set up, the forward-looking nature of them is especially emphasised. Most will emphasise the importance of making



recommendations to protect human rights and/or address the needs of a specific constituency (e.g. victims of violence) and/or ensure social reform of a particular institution or body. To this end, strategies for dealing with the past (e.g. truth commissions, victims' commissions, etc.) can play a vital forward-looking role. They can symbolically represent a collective willingness to deal with and part from the past. Furthermore, if such a body also makes concrete recommendations and is able to implement such recommendations, then this can represent - both symbolically and concretely - a process of becoming something new. This can be essential for emerging democracies and countries coming out of conflict that are trying to shape a collective national identity.

At the same time real change is a difficult task and commissions and investigations are not the only strategy for achieving change. Transitional governments<sup>39</sup> and perhaps peace processes face the paradox of having to institute changes before they lose widespread credibility and are overwhelmed by intractable social and economic problems and so tend to turn to institutions that they can create from scratch. These would include investigatory commissions, ad-hoc groups and statutory commissions that require little extra infrastructure to begin functioning. The problem is that these bodies often fail to contribute to fundamental change or do not substantially guarantee the prevention of future violence. There is always the potential for such bodies to become little more than stability tools of the transitional government and to whitewash issues, or for them to become bureaucratically and politically defunct no matter how well intentioned they initially were. To prevent this, civil society vigilance is required, as well as large scale public participation.

It is simply not adequate to assume that disclosure of past human rights abuses, or the investigation into the reform of a specific institution, will necessarily result in a culture of transparency, accountability and the protection of human rights. Education programmes, human rights awareness campaigns, victim support and reconciliation work should be undertaken simultaneously with any investigation into the past, truth recovery process or commission. These should be run in sectors of society such as schools, civil society, security institutions, the judiciary and the military, to mention a few. There needs to be a pervasive focus on transformation across the society. Strong and vibrant civil organisations and groupings based at the community level are the key forward-looking structures that are necessary for building a human rights culture, and overcoming the ravages of violence.

## **Conclusion**

Dealing with the past is a difficult and long-term task. In conclusion it is wise to heed the sobering words of José Zalaquett:

The political stakes involved in settling accounts with the past are so extraordinarily high, that a fully satisfactory outcome can hardly be expected, and that the social tensions brought about by the legacy of human rights violations linger on for a long time.<sup>40</sup>

This paper has attempted to outline some ways to ease the process based on the experiences of different countries that have attempted to deal with the past. In sum, these include the establishment of official, socially recognised and creatively composed bodies for dealing with the past. It was also advocated that any attempt to deal with the past needs to learn from, but not be reliant upon, the experience of other countries. It was noted that any structure formed should also be as diverse as possible in its consultative process and composition. A warning was also issued that any structure, or recommendation, is only as good as its implementation strategy. The risk of commissions, truth recovery processes and investigations becoming a whitewash is always there.

The chapter dwelled at length on the needs of victims. It was noted that countries coming out of conflict need to accept that what has happened to victims is irreversible. The challenge for the society is not only to deal with the hurt in the most constructive way possible, but also learn to cope with, and accept as legitimate, the ongoing anger and even impossible demands of victims who will continue their struggle for an ever-elusive truth.

This process does not occur within a political vacuum and a danger exists that the needs of victims, and any process that is set up to deal with past, may be preyed upon by dominant political powers for their own ends. In this regard, the words of Marie Smyth should be noted:

It is of crucial importance that all discussions about victims or people affected is shifted onto a humanitarian basis, based on an inclusive concern about the human needs and resources required to meet them.<sup>41</sup>

However, when dealing with past violence we cannot escape the fact that victimisation was not random but political in its nature. Violence during times of political conflict is by definition a political action fraught with the hidden hands of political agendas and posturing. It is for this very reason that *consensual* strategies for dealing with past should be sought. It is only through taking control of the apparatus of memory and history that societies coming out of violence can begin to engage with and develop constructive collective memories of the conflict.

#### Notes

<sup>2</sup> cf. Sir Kenneth Bloomfield, *We Will Remember Them: Report of the Northern Ireland Victims Commissioner*, (Belfast: HMSO. The Stationery Office, April 1998).

<sup>3</sup> cf. Brandon Hamber, 'Dealing with the Past and the Psychology of Reconciliation: A psychological perspective of the Truth and Reconciliation Commission', Public address at the 4th International Conference on Psychology and Peace (Cape Town, June, 1995); Brandon Hamber, 'Do Sleeping Dogs Lie? The Psychological Implications of the Truth and Reconciliation Commission in South Africa', Occasional Paper (Johannesburg: The Centre for the Study of Violence & Reconciliation, 1995); Brandon Hamber, 'Sleeping Dogs Do Not Lie' *Recovery*, Vol. 1, No. 3 (1996), pp. 10-12; Brandon Hamber, 'The Burdens of Truth: An Evaluation of the Psychological Support Services and Initiatives Undertaken by the South African Truth and Reconciliation Commission', *American Imago*, Volume 55, No. 1 Spring (1998), pp. 9-28.

<sup>4</sup> Brandon Hamber, 'The Burdens of Truth'.

<sup>5</sup> D. Thelen, 'Memory and American History', *Journal of American History*, 75 (1989), p.1127.

<sup>6</sup> Kadar Asmal, Louise Asmal & R. S. Roberts, *Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance* (Cape Town: David Philip Publishers, 1996); A. Boraine, J. Levy & R. Scheffer, (eds) *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town: IDASA, 1994); Priscilla Hayner, 'Commissioning the Truth: Further Research Questions', *Third World Quarterly*, Vol. 17, No. 1 (1996), pp. 19-29; Bill Rolston, *Turning the Page without Closing the Book: The Right to Truth in the Irish Context* (Dublin: Irish Reporter Publications, 1996); Graeme Simpson & Paul van Zyl, 'South Africa's Truth and Reconciliation Commission', Occasional paper (Johannesburg: Centre for the Study of Violence and Reconciliation, 1995); José Zalaquett, 'Introduction to the Report of the Chilean National Commission on Truth and Reconciliation', in *The Report of the Chilean National Commission on Truth and Reconciliation*, Volume 1 (London: University of Notre Dame Press, 1993).

<sup>7</sup> Priscilla Hayner, 'Commissioning the Truth: Further Research Questions'.

<sup>8</sup> Africa Watch, 'South Africa Accounting for the Past: The Lessons for South Africa from Latin America', *NewsFrom AfricaWatch*4(11)(1992),p2

<sup>9</sup> Marie Smyth, 'Residual matters relating to victims of the Troubles in light of the Agreement document', Unpublished submission (Belfast: Cost of the Troubles Study, INCORE, The United Nations University / University of Ulster, 22 April 1998), p.3.

<sup>10</sup> cf. Brandon Hamber, Traggy Maepa, Tlhoki Mofokeng, Hugo van der Merwe & the Khulumani Support Group, 'Survivors' perceptions of the TRC and suggestions for the final report', Submission to the Truth and Reconciliation Commission (Johannesburg: Centre for the Study of Violence and Reconciliation and the Khulumani Support Group, 1998).

<sup>11</sup> Kadar Asmal, Louise Asmal & R.S. Roberts, *Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance* and Graeme Simpson & Paul van Zyl, 'South Africa's Truth and Reconciliation Commission'.

<sup>12</sup> It is important to note, that the decision to grant amnesty has to be considered in light of the motive of the person who committed the act, the context in which the act was committed, the legal and factual nature of the act (including the gravity of the offence), the object and objective of the act, and whether the act was carried out by order or approval of a political body, institution or individual. The relationship of the act to a political objective and the proportionality of the act also needs to be considered. In effect, this means that amnesty is not automatic in South Africa, but if the criteria for amnesty are met the TRC will substitute or trade retributive justice for the full truth. This process is also coupled with victim hearings and a reparation process for those, or their relatives, found to be victims' of murder, attempted murder, disappearance, torture or severe ill-treatment. It is intended that the information made available through this process will assist in leaving an undisputed account of history and document how violations occurred. This theoretically opens up the possibility to learn from the past and in so doing ensure that future violence does not occur. At the end of its full term of office the TRC will have to submit its findings to Parliament in a comprehensive report, hand over its reparations policy to government and make recommendations aimed at preventing such large scale abuse from ever occurring again.

<sup>13</sup> See M. Mamdani, 'Evaluating the Truth and Reconciliation Commission: A Respondent to Dr Boraine and Justice Langa', Minutes of the 'From Truth to Transformation Conference' (Johannesburg: Centre for the Study of Violence and Reconciliation, 1998).

<sup>14</sup> Brandon Hamber, 'Dr Jekyll and Mr Hyde: Problems of Violence Prevention and Reconciliation in South Africa's Transition to Democracy', in E. Bornman, R. van Eeden & M. Wentzel (eds), *Violence in South Africa* (Pretoria: Human Sciences and Research Council, 1998).

<sup>15</sup> Jim Statman, 'Exorcising the Ghosts of Apartheid: Memory, Identity and Trauma in the 'New' South Africa', Paper presented at the 18th Annual Meeting of International Society of Political Psychology (Washington D.C., 1995).

<sup>16</sup> Beth Goldblatt & Sheila Meintjies 'Gender and the Truth and Reconciliation Commission', Unpublished submission to the Truth and Reconciliation Commission (1996).

<sup>17</sup> This unofficial documentation of history and brutality in Brazil was the national best-seller and retained that position for twenty-five weeks. There are 200,000 copies of the book in circulation and it has become the single best-selling non-fiction book in Brazilian literary history. See Laurence Weschler, *A Miracle, A Universe: Settling Accounts with Torture* (USA: Penguin Books, 1990).

<sup>18</sup> cf. Brandon Hamber, 'Living with the Legacy of Impunity: Lessons for South Africa about truth, justice and crime in Brazil', *Unisa Latin American Report*, 13(2), July-December, (1997), pp. 4-16; Bill Rolston, *Turning the Page without Closing the Book*; Laurence Weschler, *A Miracle, A Universe: Settling Accounts with Torture*.

<sup>19</sup> Dan Bronkhorst argues this point in *Truth and Reconciliation: Obstacles and Opportunities for Human Rights*.

<sup>20</sup> cf. Brandon Hamber, 'Living with the Legacy of Impunity'.

<sup>21</sup> Laurence Weschler, *A Miracle, A Universe*.

<sup>22</sup> Brandon Hamber, Traggy Maepa, Tlhoki Mofokeng, Hugo van der Merwe & the Khulumani Support Group, 'Survivors' perceptions of the TRC and suggestions for the final report', p. 11.

<sup>23</sup> Roger MacGinty, 'Policing and the Northern Ireland Peace Process', in J. P. Harrington & E. Mitchell, *Politics and Performance in Contemporary Northern Ireland* (USA: University of Massachusetts Press, forthcoming).

<sup>24</sup> Roger MacGinty, 'Policing and the Northern Ireland Peace Process'.

<sup>25</sup> It should be noted that Nationalist and Unionist perceptions of policing are not monolithic, subgroups and varying attitudes do exist within each community (Weitzer, 1995 cited in Roger MacGinty, 'Policing and the Northern Ireland Peace Process').

<sup>26</sup> Within Northern Ireland an example of such a political argument, from a Unionist perspective, would be that a focus on reform in the RUC was a way of bowing to the Nationalist community and further undermining the security of the Union.

<sup>27</sup> If it is likely that consensus will not be reached inside the country, appointments from international bodies, as was the case in El Salvador Truth Commission (where Commissioners were from the United Nations) could be considered. International appointments are often necessary, especially when internal conflicts are particularly strained or levels of distrust high.

<sup>28</sup> The group is split into two. The *Madres de la Plaza de Mayo-Línea Fundadora* do accept government reparation.

<sup>29</sup> Brandon Hamber, 'Living with the Legacy of Impunity'.

<sup>30</sup> Press Statement, Relatives for Justice, 1 April 1998.

<sup>31</sup> Brandon Hamber, Traggy Maepa, Tlhoki Mofokeng, Hugo van der Merwe & the Khulumani

<sup>32</sup> Structural violence implies the violence perpetrated through the South African state by the use of structural forms of racism that amounted to inequalities of resource and life chances.

<sup>33</sup> Cited in Pricilla Hayner, 'Fifteen Truth Commissions - 1974 to 1994: A Comparative Study', *Human Rights Quarterly*, 16 (1994), pp. 597-655.

<sup>34</sup> It would be erroneous to portray the conflict as only between the ANC and IFP as community conflict was also often fanned by so-called *third force* activity sponsored by the state. For a more detailed analysis of the 1990-1994 violence in South Africa see Brandon Hamber, 'Dr Jekyll and Mr Hyde'; Graeme Simpson & Janine Rauch, 'Political Violence 1991', in N. Boister & K. Ferguson-Brown (eds), *Human Rights Yearbook* (Cape Town: Oxford University Press, 1991).

<sup>35</sup> Some broad comments to this effect were made at the 'From Truth to Transformation Conference'. See Minutes of the 'From Truth to Transformation Conference' (Johannesburg: Centre for the Study of Violence and Reconciliation, 1998).

<sup>36</sup> See 'Voices break the Silence', *Amnesty (Campaign Journal of Amnesty International United Kingdom)*, Issue 89, May-June (1998), pp.4-6. Also see copies of Amnesty International statements at [http://www.amnesty.org.uk/press/sep22\\_alg.html](http://www.amnesty.org.uk/press/sep22_alg.html) & <http://www.amnesty.org/news/1998/52802198.htm>

<sup>37</sup> This point is not made to imply that women do not play major roles as primary actors in many conflicts and struggles, for they do. These women's stories and hardships, for example, the experience of gender related crimes or being imprisoned are equally under-emphasised in most countries.

<sup>38</sup> Kadar Asmal, Louise Asmal & R. S. Roberts, *Reconciliation Through Truth*.

<sup>39</sup> N. Roht-Arriaza, 'Conclusion: Combating Impunity', in N. Roth-Arriaza (ed.), *Impunity and Human Rights in International Law and Practice* (New York: Oxford University Press, 1995).

<sup>40</sup> José Zalaquett, 'Introduction to the Report of the Chilean National Commission on Truth and Reconciliation', p. xxiii.

<sup>41</sup> Marie Smyth, 'Residual matters relating to victims of the Troubles in light of the Agreement document'.