REASONS FOR THE TRUTH AND RECONCILIATION COMMISSION (TRC)

- After wars and civil wars around the world, the winning side often takes action against the losing side, and in particular against its leaders.

- In many cases, key figures on the losing side have been executed without a trial, some have been tried in court according to a system of justice and then sentenced, and some have been allowed to continue their lives undisturbed (usually because they have retained some of their power).

- In other cases large groups have been killed, sometimes so that the winning side can occupy their land, sometimes to remove all possibility of rebellion, and sometimes to revenge past injustices according to the concept of 'collective guilt'.

- In other cases a general amnesty was declared.

- In South Africa, the popular sentiment was that the human-rights violations that occurred under apartheid should not be ignored, and that reparations needed to be made to victims. Tutu later explained this perspective, writing, 'Unfortunately bygones don't in fact become bygones. We don't have the power to say: 'Bygones be gone!' They don't go. They return almost always to haunt us...' (TRC. 2008. Truth Justice Memory.)

> Unrighted wrongs can lead to forms of continued oppression, continued anger, violence and exclusive nationalism.

- In addition the 1993 interim constitution had stated that:

  ... amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law ... providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with ...

Therefore South Africa had committed itself to granting amnesty for political crimes under some, unspecified, conditions. To ignore this part of the negotiated settlement could fan the flames of racial tension that existed in post-apartheid South Africa, possibly causing it to backslide towards civil war.
In order to allow for the granting of conditional amnesty, while also not ignoring the gross human rights violations that had occurred, South Africa considered what kind of justice could be implemented.

Two extreme positions regarding how to deal with people accused of war crimes

DIFFERENT TYPES OF JUSTICE

- **Justice** is the administration of laws regarding people’s fair and reasonable treatment.

- There are two main types of justice: retributive justice and restorative justice.
  - Under a system of retributive justice, people who break the law are punished. Serious crimes are sometimes punished with death or life imprisonment.
  - Under a system of restorative justice, people who have been victims of crime are heard and an attempt at reparations are made, while the perpetrators of a crime have the opportunity to address the suffering of the victims.

Ways of dealing with people accused of war crimes, including two different types of justice
The Nuremburg Trials: an example of retributive justice

- At the end of World War II, the Nuremburg Trials for Crimes against Humanity and Waging Aggressive War were held in the city of Nuremburg, in Germany.
- During these trials, the International Military Tribunal examined accusations of gross human-rights violations against the surviving leaders of Nazi Germany. (Hitler had already committed suicide.)
- The tribunal decided whether the accused were guilty or not.
- If they were found guilty, the tribunal decided what the retribution would be.
- Some people were sentenced to death and executed.
- The military leader Hermann Göring was found to be 'the leading war aggressor, 'the director of the slave labour programme', and 'the creator of the oppressive programme against the Jews and other races'. He was sentenced to death, although he committed suicide before he was executed.

Restorative justice is often seen as the most constructive approach to dealing with the aftermath of a civil war, because people from both sides have to live together in the same country afterwards.

Chile's National Commission for Truth and Reconciliation: an attempt at restorative justice that disappointed many people

- Augusto Pinochet was a military leader that led an oppressive regime in Chile in South America.
- During their time controlling the government, his supporters passed an amnesty law that would protect them from prosecution for gross human-rights abuses if Pinochet's regime was overthrown.
- In 1990 Pinochet lost control of Chile's government, although he retained a lot of support among the military leaders.
- A national commission was established to document abuses under his regime, and ongoing reparations were paid to the families of victims who had been killed by the regime or who had disappeared.
- However, protected by the amnesty law and enjoying some continuing support, Pinochet continued to live well on state money for years after he was replaced as president.
- When he died, Pinochet was not given a state funeral, but the military gave him a dignified funeral.
- Many people felt that he had not been held sufficiently accountable for his actions.
THE TRUTH AND RECONCILIATION COMMISSION

- In 1992 the NP tried to prevent retributive justice occurring in the 'New South Africa' (which was still being created) by passing an amnesty law.
- Amnesty was also a part of the 1993 interim constitution, although on what grounds it would be granted was not specified.
- However, the ANC did not want perpetrators of apartheid crimes to be granted amnesty without the perpetrators confessing what they had done.
- Accountability was seen as necessary for a culture of human rights in the 'New South Africa'.
- The ANC Minister for Justice, Dullah Omar, suggested that South Africa follow a process of restorative justice in the period after apartheid.
- The government decided to follow this path of restorative justice first, and to incorporate the granting of amnesty subject to certain conditions.
- However retributive justice could still be employed later against those people who had not received amnesty for the crimes of which they were accused.
- In April 1995, South Africa passed the Promotion of National Unity and Reconciliation Act, forming the Truth and Reconciliation Commission (TRC).
- The TRC could:
  - record and investigate reported violations of gross human-rights abuses
  - recommend reparations be paid to certain victims, and
  - grant amnesty to perpetrators who had met certain criteria.
- The TRC had the right to subpoena witnesses, and most agreed to appear.
- Perpetrators of political crimes who did not co-operate with the process would not get amnesty and could later be prosecuted under a system of retributive justice.
- Mandela appointed Archbishop Desmond Tutu as the chairperson of this Truth and Reconciliation Commission (TRC).
- Tutu hoped that the TRC would bring about understanding and peace.
- The TRC conducted its proceedings in view of the general public, and encouraged people to take part in a traditional cultural cycle of confession, rehabilitation and forgiveness.
- The hearings were fully recorded, and were broadcast on radio and television, and reported in newspapers. In this way they became entrenched in the national consciousness of all South Africans.
- Amnesty applications were made not only by officials of the apartheid regime, but also members of the liberation organisations, such as the ANC, PAC and AZAPO.
The Committee on Human Rights Violations

- Victims, families of victims and perpetrators had to come forward voluntarily to tell their stories.
- Nearly 21,300 people came forward to present their experiences of about over 38,000 gross abuses of human rights.
- The Committee on Human Rights Violations documented what these people said.
- This allowed all South Africans and the world to know more about the atrocities committed during the period 1960 to 1994.

At the end of 1996, Mandela extended the amnesty cut-off date to 10 May 1994, which was the date of Mandela’s inauguration. This benefitted those people who had been involved in the many instances of political violence during the first part of 1994.

The Committee on Reparation and Rehabilitation

- This committee set into motion an investigation of all the stories told, and gave financial, legal and social support where possible.
- In a number of cases some kind of financial or material reparations were awarded for the suffering and loss of victims and their families.

The Committee on Amnesty

- This committee could grant amnesty from prosecution to perpetrators of gross human-rights violations:
  - if they could prove that their crimes were committed for political reasons, and
  - if they told the full truth, regarding these crimes, and
  - if their actions were proportional to the perceived danger/threat.

Remorse and apologies were encouraged, but not required for amnesty to be granted.
THE DEBATES CONCERNING THE TRC

Were human-rights violations fully recorded by the TRC's Committee on Human Rights Violations?

- It was beyond the TRC's ability to fully record all the institutional violence that occurred in South Africa between 1960 and 1994. It therefore only dealt with gross human-rights violations.

- It had the right to subpoena people, and many did testify.

- However, some key figures from the apartheid era refused to appear before the TRC, in particular PW Botha of the NP. This limited the TRC's ability to record all the gross human-rights violations that occurred during the period under review, and to determine all the people who were responsible.

- Many others who did appear did not disclose the full extent of their involvement in gross human-rights abuses.

- For example, Adriaan Vlok, who had served as Minister of Law and Order during apartheid, submitted an application for ordering the 1988 bombing of Khotso House. However, he did not submit an application for his role in the attempted murder of Reverend Frank Chicane (through the use of chemicals on Chicane's underwear), and only confessed to this years later of his own accord.

- However, the TRC process showed that the South African security forces arrested, tortured, executed and assassinated activists and civilians with impunity, particularly during the 1980s.

- The most revealing submission came from Eugene de Kock, the SAP colonel, who, during the mid-1980s, took charge of the C10 counterinsurgency unit at Vlakplaas outside Pretoria. He confessed to killing and/or torturing hundreds of people, and named those above him in the SAP hierarchy on whose orders he had acted. He also stated that a South African agent assassinated Olaf Palme, the anti-apartheid Swedish prime minister, in 1986.

- Craig Williamson, a SAP major, also appeared before the TRC and received amnesty for a number of political crimes, including the assassination of Ruth First.
- Some ANC leaders made a submission of collective responsibility for the gross human-rights violations that occurred during their leadership of the movement, and received amnesty for this. However, others, including Thabo Mbeki, felt that the TRC unfairly equated the gross human-rights violations of the apartheid regime with the gross human-rights of the liberation organisations.
- But the TRC committed itself to investigating both.
- It took the view that 'a just war' did not include acts of war against civilians, nor the torture and killing of prisoners of war (by either side).
- The TRC found conscription to be immoral, and ruled that the state's use of conscripts in the townships and outside of South Africa was a gross violation of human rights.
- It stated that some churches had created the climate for gross human-rights abuses by supporting conscription.
- The TRC made it clear that the vigilante executions of Black people who were perceived as collaborators were gross violations of human rights.
- The TRC also recorded gross human-rights violations by members of the liberation organisations, such as those that occurred at the ANC's Quatro Camp in Angola.

**Were the reparations recommended by the Committee on Reparation and Rehabilitation sufficient, and sufficiently implemented?**

- The TRC did not claim to provide full redress for victims.
- It made recommendations to the government regarding what financial compensation should be made. However, victims only received approximately 30% of the recommended reparations because the government failed to act on these recommendations.
- Nevertheless, the fact that reparations were recommended and, to an extent, implemented, did show a certain amount of respect for the victims.

**Was the amnesty that was granted by the Committee on Amnesty appropriate?**

There are differing views on whether the granting of amnesty was appropriate, and whether there was fairness regarding who received amnesty. On the whole, people have not been satisfied.

- Some of the victims, or the victims' families, did not want amnesty to be granted to the people who had violated their human rights and instead wanted retributive justice to be dispensed by the South African legal system.
- Some people thought that amnesty should only be granted to offenders who showed remorse.
- Others felt that the criteria used to grant amnesty were appropriate.

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Was the TRC an instrument of reconciliation?

Sometimes, but sometimes not.

• Some reconciliation between victims and offenders did occur.

• One of the notable instances of reconciliation occurred when Ginn Fourie, mother of one of the victims of the Heidelberg Massacre, forgave the perpetrators of this massacre, and later the commander who had ordered it, Letlapa Mphahlele. They now work together to encourage forgiveness rather than revenge.

• However, other victims, and families of victims, have not forgiven those who perpetrated gross human-rights violations against them.

• Some people have criticised the TRC for creating a climate where victims and their families felt pressured to forgive the perpetrators, when they were already the ones who had suffered and were experiencing a justified anger.

• Limpopo Hani, the widow of the assassinated Chris Hani, did not forgive his assassin, Janusz Walus. In addition, she felt that the assassination could have been ordered by someone with more power, and was disappointed that the National Prosecuting Authority did not further investigate Hani's murder.

• The fact that PW Botha and other high-ranking state officials were not forced to appear before the TRC, and were not punished when they did not appear, made people feel that double standards had been applied and only the 'foot soldiers' had been held accountable.

• Members of the ANC, NP and IFP accused the TRC of a lack of evenhandedness, while the PAC did not accept the validity of the TRC.

• Years later, some people were also outraged when those who had not received amnesty for all their crimes, but were later convicted under South Africa's regular system of retributive justice:
  > did not actually serve any time in jail (such as Vlok), or
  > served a fraction of their sentence before receiving parole (such as De Kock, who served 20 years of his 212 year sentence).

In both of these cases the judicial system noted that the perpetrator showed remorse, and was influenced by this.

Vlok used the Christian tradition of washing the feet of others to show his repentance to those who had suffered or lost loved ones as a consequence of his orders.
Some positive aspects of the TRC process

- The revelations encouraged a deeper understanding of how South Africa became so dysfunctional.
- An awareness of victims' suffering made many offenders take more responsibility for their actions.
- The process discouraged violence.
- It also helped to stabilise the economy so that it could be developed for the benefit of all South Africans.
- In some cases reconciliation and forgiveness occurred and helped people overcome grief or guilt.
- Even if this did not happen, the families of victims could achieve a sense of closure.
- The published report meant that no-one could effectively deny the abuses that were recorded.

RESPONSES OF POLITICAL PARTIES

The response of the NP

- The NP felt that the TRC was biased against the NP, and claimed it was a 'witch hunt'.
- De Klerk claimed that the report emphasised revenge and not reconciliation.
- However, De Klerk apologised for the suffering caused by apartheid.

The response of the IFP

- The IFP felt that the TRC was biased against the IFP.
- The IFP wanted the ANC to apologise for the violence in Natal in the lead-up to the 1994 national elections.

The response of the ANC

- The ANC was unhappy that the TRC did not distinguish between the actions of the apartheid government and the liberation movement.
- The ANC wanted the TRC to censure the NP government for 'Third Force' activities.
- There was resentment that the gross human-rights violations committed by the SADF in South West Africa (now Namibia) between 1967 and 1989 were not dealt with.

During this period, Holomisa was criticised for not consulting with the ANC leaders regarding his TRC submission, and expelled from the party. (www.anc.org.za/show.php?id=2660)

The response of the PAC

- The PAC did not accept that members of the liberation organisations should be treated as guilty at all, and called the TRC a 'circus'.

The response of the SACP

- On the whole, the SACP accepted the decisions of the TRC.
How has South Africa chosen to remember the past?

The Truth and Reconciliation Commission

In the negotiations leading to the 1994 elections, the ANC and National Party agreed on the creation of a commission to investigate apartheid-era crimes. In 1995, the Government of National Unity established the Truth and Reconciliation Commission (TRC), after passing the Promotion of National Unity and Reconciliation Act (No. 34 of 1995), under the chairmanship of Archbishop Desmond Tutu.

Reasons for the Truth and Reconciliation Commission

The overall aim of the TRC was to investigate politically motivated violations of human rights during the apartheid era. Its underlying purpose was to uncover the truth about what had happened and, in this way, to make everyone aware of the past so that they could start the process of national reconciliation.

More specifically, the aims of the TRC were:
- to investigate the causes and extent of human rights violations under apartheid (between 1960 and 1994)
- to recommend compensation for victims
- to grant amnesty to perpetrators under certain conditions. In return for this amnesty, individuals or political parties had to give a full and public testimony of their actions.

Various forms of justice

There are different ways of dealing with crimes against humanity. One way focuses on justice and punishment and is called ‘retributive justice’ (retribution means revenge). The Nuremberg Trials, which were held in Germany after the Second World War, were based on retributive justice. After the defeat of Nazi Germany, the Allies set up military courts in Nuremberg to put on trial people accused of war crimes. These included Nazi political and military leaders, as well as the people...
who had actually carried out atrocities. Some of them were sentenced to death for their part in these crimes; many others were given prison sentences. Even engineers, business men and judges were tried for their role in carrying out Nazi policies. The Allies wanted to show the world that no government had the right or power to carry out laws that systematically violate human rights.

However, the TRC did not function like this. It was based on the principle of 'restorative justice' (restorative means healing), where the emphasis was on forgiveness and reconciliation. It was not a court of law. It could not prosecute people or hand out judgments. The function of the TRC was to create a process for uncovering the truth about what had happened. It was hoped that knowledge of this truth would help promote national reconciliation. Archbishop Desmond Tutu emphasised that only after knowing the truth about such activities could full reconciliation be achieved in the country.

The decision to opt for a Truth and Reconciliation Commission was an important compromise. If the ANC had insisted on Nuremberg-style trials for the leaders of the former apartheid government, there would have been no peaceful transition to democracy, and if the former government had insisted on a blanket amnesty then, similarly, the negotiations would have broken down. A bloody revolution sooner rather than later would have been inevitable. The Truth and Reconciliation Commission is a bridge from the old to the new.

*Source A* This view of Justice Richard Goldstone is quoted by [Author] in *Africa Since 1990* [Publisher] on page 212. He explains how the creation of a truth commission, including the aspect of amnesty, was agreed to during the negotiation process.

*New word*

**blanket amnesty**
a pardon for everyone involved

*Source B* This cartoon shows Dullah Omar explaining why the TRC was necessary. Omar was the Minister of Justice at the time who initiated the establishment of the TRC by Parliament. It was drawn by Zapiro and published in *The Sowetan* in 1995.

*Source C* An extract from an interview with Archbishop Desmond Tutu in which he explains why restorative justice is appropriate in an African context. (From the Mail and Guardian newspaper, 17 March 1996)
The work of the TRC

The TRC began its work in 1996, and for two years it held hearings around the country. These hearings were broadcast live on radio and television. Over 22,000 victims told their stories at these hearings or made statements to the TRC. The Commission hearings were chaired by people who were chosen by President Mandela. These were people who had a history of promoting human rights and social justice; they were racially diverse and came from a range of political backgrounds.

Three separate committees were involved in the TRC:

- First, people came to the Committee on Human Rights Violations to tell their stories. The public testimonies and national coverage of them helped South Africans to know more about the atrocities of the past.
- Second, the Committee on Reparation and Rehabilitation investigated the stories told by victims and gave them support where possible. In some cases, they were given reparations for their suffering and loss.
- Third, the Committee on Amnesty could grant amnesty from prosecution to perpetrators of political violence, if they could prove that their crimes were done for a political motive and not for personal malice or gain. Importantly, they also had to tell the whole truth and to acknowledge what they had done.

The TRC did not only investigate the actions of those who had worked for the apartheid government. It also dealt with the actions of the liberation movements, as well as those of politicians and their supporters in the pre-election violence.

The public testimony, both from those who had fought for or against apartheid, revealed just how much violence had been carried out in the previous decades. These ranged from well-publicised events, such as the murder of the Cradock Four and the Bisho massacre, to thousands of cases of ordinary South Africans who were caught up in the violence. Some people who told their stories wanted revenge; others wanted compensation. Some, like Phila Ndwindwe's family, simply wanted to find out the truth about what had happened to their family members who had simply disappeared.


For the 21,000 victims and their families, who submitted their stories in writing or told them in public, it was generally a healing experience. Not everyone experienced it positively, but it was those who returned home disappointed and frustrated. But for the great majority, it was a cathartic experience, even though it was not easy to take the stand, to relive the past. Those who flowed freely were usually tearful. A middle-aged Xhosa woman who in East London told the terrible story of her 14-year-old child who was beaten and killed, spoke on behalf of her community. Yes, Sir. It was worth it. We talk of immediate reparations for what has taken place in the past, but yes, it was worth it.
Activity 1: Understand the aims and structure of the TRC [38]

1. Use the text to describe the purpose and aims of the TRC. (6)
2. How does Source A justify why a Nuremberg-style of justice was not used? (3)
3. Decide whether and in what ways Sources A, B and C substantiate the idea that the intention of the TRC was to promote reconciliation. Explain your answer with reference to each source. (9)
4. Explain what each of the three committees of the TRC did. (8)
5. Use the text and Sources D and E to explain how this process involved the whole nation and why it was so emotional. (12)

Debates concerning the TRC

Even before the TRC started its work there were debates and differences of opinion about it. Some people believed that there should be war crimes tribunals instead, like the Nuremberg Trials. Others opposed the whole idea of a truth commission, believing that it would re-open old wounds that were beginning to heal. But Mandela and many others firmly believed that it was essential to uncover the injustices of the past so that South Africa could move forwards.

While the TRC hearings were being held, opinions about the TRC differed sharply. Some whites tried to ignore the proceedings and thought that the past should be left alone; others denounced it as a witch-hunt; other embraced it and many were shocked by the revelations. Many blacks believed that justice had not been done and that too many murderers were able to walk free. Some families of victims were critical of the whole process, notably the families of the murdered Black Consciousness leader, Steve Biko, and others who applied unsuccessfully to the Constitutional Court for the whole TRC process to be stopped.

Source E Mathatha
Tsedu, writing in the Sowetan, 1998

witch-hunt

an investigation to uncover people suspected of a crime, but often used as a means of undermining those with opposing views
The TRC as an instrument of reconciliation

One of the aims of the TRC was to overcome the past through confession and forgiveness, so that South Africans could start to be reconciled with each other and work together more effectively to build a new nation. The new Constitution supported the idea of national unity based on reconciliation and the reconstruction of society. Many people believed that there was a strong link between the TRC and nation-building.

There were certainly many examples of this. Televised sessions showed perpetrators asking for forgiveness and victims granting forgiveness in scenes which promoted the positive advantages of reconciliation for creating a better nation. The appointment of Archbishop Tutu as Chairman also gave an emphasis to the Christian principle of granting forgiveness to those who were truly repentant in order to live a better life in the future. However, some people were critical of the Christian emphasis of the rhetoric and style of the TRC.

Some people questioned whether it was possible to build a single South African nation in this way. They questioned whether the TRC had brought about reconciliation or simply created further divisions. Not all victims or their families were willing to forgive; they wanted justice rather than merely truth.

Activity 2: Examine the TRC as an instrument of reconciliation [28]

1. Study Source F and answer these questions:
   a) Explain the two main symbols that are used in this cartoon. (6)
   b) Explain to what Boraine is referring. (3)
   c) What answer do you think Tutu would give? (3)

2. a) Explain the difference between restorative and retributive justice. (6)
    b) Explain why choosing the restorative path was controversial. (3)

3. a) Discuss what kind of national identity the new democratic government wanted to create and why. (3)
    b) Evaluate how the TRC was meant to facilitate this. (4)
THINK AND DISCUSS whether the TRC process was enough to bring about reconciliation. Evaluate what the role of ordinary citizens in South Africa is in bringing about reconciliation.

The issue of amnesty

The whole issue of amnesty was controversial. Some of the victims or their families were angry that the perpetrators of gross human rights violations escaped punishment. They believed that they should have been tried in a court of law and sentenced for their crimes. For example, the Biko and Mxenge families took the TRC to the Constitutional Court to challenge amnesty provisions on the grounds that this removed their constitutional right to seek redress in the criminal courts. They lost their case.

Many victims found it difficult to accept that people who were guilty of appalling crimes should be allowed to walk free simply because they had made a public confession. Also, not that many applicants came forward and often they were people who had already been convicted of the crime in court and now were using the amnesty process to get out of jail. Another factor that angered many people was that not all of those who applied for amnesty expressed any remorse for their actions. However, amnesty was by no means automatic: of the 7 116 applications for amnesty only 1 167 were granted.

Granting amnesty was a political compromise but for the victims and perpetrators directly involved, it was meeting each other face-to-face and hearing the story of the other that helped them to move forward.

More importantly, having the testimony of perpetrators enabled the Commission to carry out further investigations. In this way much more of the truth about the period was uncovered through their testimonies than would have been the case if only victims had been allowed to testify.

A further problem was that those who did not apply for amnesty should have faced prosecution, but this did not happen. Leading apartheid politicians such as PW Botha refused to admit to any wrongdoing or to apply for amnesty. They escaped any kind of punishment. Magnus Malan, the former Minister of Defence, was put on trial but because of uncertainties over how far he was directly responsible for actions carried out by members of the security forces, he was not convicted.

The issue of selective focus

Because the TRC focused on the human rights abuses that had taken place during the 1980s, it ignored many other injustices that had taken place during the apartheid era. For example, it did not investigate the wider human rights abuses of the earlier phases of apartheid, such as the imprisonment of millions of pass law offenders, detention without trial, and the forced removal of over 4 million people.

The TRC had the power to subpoena (force by law) people to appear before it. However in the interests of reconciliation, it sometimes failed to do this. For example the TRC decided not to subpoena the Inkatha leader, Chief Mangosuthu
Buthelezi because it was feared that forcing him to appear might lead to further violence between Inkatha and ANC supporters. As a result the underlying causes of the institutionalised violence between Inkatha and the ANC in the late 1980s and early 1990s were not fully investigated.

A further issue was the limited investigation of institutions as perpetrators of injustice since most of the TRC’s focus was on individuals. Special hearings were held with testimonies from business and labour organisations, faith communities, the legal community, health sector, the media and political parties, and former military conscripts. However there was no compulsion to give evidence or acknowledge wrong doing. Many believed that key institutions which had supported apartheid, such the mining companies, were left untouched by proceedings which focused on individual human rights abuses.

**Activity 3: Analyse the amnesty process [21]**

Use the information in the text to answer these questions:

1. Why the Biko family challenge the amnesty provisions at the Constitutional Court? (3)

2. a) Blanket amnesty was not accepted during the negotiation process between 1990 and 1994. (See Source A.) Define what the term ‘blanket amnesty’ means. (2)

   b) Assess why the National Party originally wanted this to be part of the negotiated settlement. (2)

3. At the TRC, explain what an applicant had to do to be granted amnesty. (3)

4. Explain why, to be granted amnesty, perpetrators did not have to show remorse for their crimes. (3)

5. a) Examine the ways in which the special hearings increased people’s understanding of the period. (3)

   b) Explain why the special hearings were also criticised. (2)

**THINK AND DISCUSS:** Why is the telling of personal accounts of ordinary people so important in the historical record of any country, but particularly in capturing the truth in the TRC process in South Africa?

**The issue of reparations**

The issue of reparations was also controversial. Some people, including some victims and their families, thought that the idea of a monetary payment was wrong in principle as this was not why they had come forward to give evidence. They believed that the suffering of people could not be compensated for in this way. Others, such as Hlengiwe Mkhize, the senior commissioner on the Reparations Committee, argued that reparations were necessary for the victims to balance the generosity that amnesty provided for perpetrators.

At the time of the closing of the TRC in 1998, only 1 000 reparation claims had been approved, while more than 25 000 remained unprocessed. However many of the victims who were awarded reparations received little compensation, partly because the government could not afford it. Attempts to get business companies to contribute were not very successful. Some believed that the perpetrators, rather than the government, should provide compensation to victims, but there were no provisions for this in the Act.

Some reparations took the form of non-financial benefits. For example, death certificates were issued, details were given of burial places and tombstones were
erected, which enabled families to appropriately commemorate their dead. This gave many people emotional closure around their loss.

The responses of political parties to the TRC

Some people refused to appear before the TRC. The most prominent of these was FW Botha, the former president, whose government had allowed the use of death squads to kill its opponents. FW de Klerk appeared before the TRC and made a formal apology for apartheid, but insisted that he had never authorised or been aware of the excesses of the brutal actions of the security forces. He later took legal action to prevent the publication of a paragraph in the final report which held him responsible for the activities of a ‘third force’ between 1990 and 1994.

When the draft report of the TRC was published, De Klerk expressed the view that the TRC had conducted a witch-hunt against people who had worked for the National Party government.

Some agents of the apartheid government claimed that they had been carrying out the orders of those in authority. One of these was Eugene de Kock, nicknamed ‘Prime Evil’, who was the commander of a notorious prison farm, Vilikazi. Here many anti-apartheid activists were tortured, turned into askaris (agents for the state), or killed. At the time of the TRC hearings he was in jail, serving two life sentences for his role in these murders. His actions were considered too appalling and therefore he was not allowed to apply for amnesty. He did give evidence to the TRC however and in it he implicated cabinet members, generals in the army and police, as well as Botha and De Klerk, for either authorising, being involved in, or knowing about the ‘dirty tricks’ used by the apartheid government. Some regarded him and others like him as scapegoats for those who had given the orders, and who now walked free.

The ANC and the PAC were angered by the fact that the TRC made no distinction between the crimes committed by agents of the apartheid state and those committed by the liberation movements. Thabo Mbeki, who represented the ANC at the hearings, felt very strongly about this. It was only when Tutu threatened to resign, that members of the ANC agreed to apply for amnesty for deeds committed. The ANC later tried, unsuccessfully, to block the publication of the whole TRC report because human rights abuses that took place in ANC training camps were criticised in the report.

Dov Fedler’s cartoon, published in The Star newspaper in 1997, shows Mbeki representing the ANC, Eugene de Kock who testified at the TRC and was a state operative (he did not apply for amnesty and is still serving two life sentences in jail) and FW de Klerk who claimed not to know about hit squads and covert operations. Above the men, we see Tutu’s thoughts about each one. (Fedler is playing with the word ‘Amnesty’ in this cartoon.)
The IFP also had major problems working with the TRC, which it believed was biased towards the ANC. However just before the deadline for submissions, the IFP advised its members to submit statements, possibly because otherwise they would not be entitled to reparations. Over 5 000 Inkatha members did so, flooding the TRC’s Durban office with statements. Nonetheless Buthelezi, the Inkatha leader, was critical of the final report because it played down the violence that had taken place between Africans and focused instead on the actions of the apartheid state.

Certain prominent individuals such as Winnie Mandela testified at the hearings, but refused to accept personal accountability for the human rights abuses carried out. They claimed that the situation at the time warranted their decisions and behaviour.

The findings of the TRC

The TRC presented its interim report to President Mandela in October 1998. A final report which included outstanding amnesty application decisions was presented in April 2003. In its report, the TRC concluded that the National Party government under PW Botha was responsible for torture, arson, abduction and sabotage. The report also criticised De Klerk for the activities of the ‘third force’ which had tried to disrupt negotiations.

The TRC was also critical of some actions of those who were fighting apartheid. These included the torture and executions that had taken place in ANC training camps in exile, the attacks by APLA guerrillas which had resulted in civilian casualties, and the necklace executions that supporters of the UDF had carried out in the 1980s.

When the TRC formally presented its report to President Mandela in October 1998, he stated his belief that the report had laid the foundation for reconciliation. But other key figures disagreed: Mbeki (who had represented the ANC before the TRC) insisted that it had been wrong to judge the violence used by the liberation struggle to fight against apartheid in the same way as the violence used by the police and state operatives to uphold the system. De Klerk accused the TRC of seeking revenge rather than reconciliation. Buthelezi believed it had favoured the ANC’s version of events over that of Inkatha.

Did the TRC establish either truth or reconciliation? Archbishop Tutu argued that although truth might not lead to reconciliation, there could be no genuine reconciliation unless there was truth. He said: ‘Reconciliation based on falsehood, on not facing up to reality, is not true reconciliation and will not last.’ While reconciliation was difficult to achieve, certainly much had been brought to light which ensured the past could not be forgotten. The TRC did not set out to achieve reconciliation but to start the process.
The achievements of the TRC were considerable. It had established beyond doubt that death squads had operated not as aberrations but as part and parcel of the system of government oppression; that torture had been used systematically and in effect condoned as official practice; and that violence between rival black factions had been officially encouraged, supported and financed. It had established the chain of command leading to the highest levels of government.

It had confronted the liberation movements with their own crimes of murder, torture and necklacing, refusing to judge these crimes any differently from government crimes.

It had helped solve many of the murders and disappearances that for so long had troubled so many families. It had also provided a hearing for thousands of victims and their families, affording many people relief from their suffering and grief for the first time.

**Source G**

Meredith, The State of Africa, Jonathan Ball, 2005, page 659-660 sums up the findings of the TRC.

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**Source H**

This extract of an article by Graeme Simpson is called ‘Tell no lies, claim no easy victories – a brief evaluation of South Africa’s TRC’. He points out how we should not oversimplify or romanticise the successes of the TRC and that we must apply its lessons in moving forward as a nation. (Simpson is the Executive Director of the Centre for the Study of Violence and Reconciliation in Johannesburg)

There is a temptation to romanticise the South African transition and assume its completed achievements – many of which are already accredited to the TRC process – without looking critically enough at our future and the problems which may present themselves a little further down the line ... The challenges therefore are not only to restore law, justice and rule of law, but to rebuild the integrity of legal institutions. The challenge of the South African transition is not only to build a Constitution with paper rights, but we have to go far beyond that – after the life of the TRC – in translating the lessons and understandings which the TRC has given us into a popular culture which deals with sustained violence and with sustained race and gender prejudice in our society ... all as part of building an embryonic human rights culture which will underpin the Constitution and the paper rights.

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**Activity 4: Explain criticisms and support of the TRC [24]**

1. a) According to the text, identify the complaints each political party had about the TRC. (6)
   b) Assess why their dissatisfaction was inevitable. (3)

2. a) Read the Skills Support information on ‘How to prepare for source-based questions in the examination’. Use the sources in this unit and set one of each type of question. (N/A)
   b) Discuss your questions with other groups. (N/A)

3. Compare the different analyses of the significance of the TRC given in Sources G and H. (8)

4. a) Many people felt that the Reparations Committee was the least successful of the three TRC committees. Assess why this was so. (3)
   b) Explain how this would affect the reconciliation process. (2)

5. Assess whether the fact that all political parties criticised the TRC shows that it was impartial. (2)