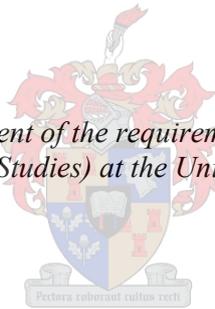


**“Achieving sustainable peace in post conflict societies:
An evaluation of South Africa’s Truth and
Reconciliation Commission.”**

by
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*Thesis presented in fulfilment of the requirements for the degree Master
of Arts (International Studies) at the University of Stellenbosch*



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Declaration

By submitting this thesis/dissertation electronically, I declare that the entirety of the work contained therein is my own, original work, and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

December 2010

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Abstract

This thesis explores whether sustainable peace can be achieved in post-conflict societies using the transitional justice approach. In particular, the truth commission is investigated as a mechanism of transitional justice. The South African Truth and Reconciliation Commission (TRC) was selected as a case study to investigate the relationship between sustainable peace and transitional justice. This thesis analyses whether the TRC Commission followed its mandate, and whether there are any specific definitions, conclusions or recommendations that the TRC through its Final Report undertakes in order to fulfill a specific part of the mandate, namely “to ensure that there would be no repetition of the past” (TRC vol. 5, chap. 8, paragraph 14). This is done through a textual analysis of the Final Report of the South African TRC, where inherent weaknesses of the Final Report in its aim of achieving sustainable peace are read critically and deconstructively. It is further analysed through linking the issue of sustainable peace to the field of transitional justice and the study of political development on how future TRCs can deal with the issue of sustainable peace.

This thesis comes to the conclusion that the South African TRC failed to contribute to a significant analysis of how to prevent the repetition of the past. It is argued that this is based on a lack of a coherent theoretical framework, as the Final Report mixes two different truth finding mechanisms: micro-truth finding and macro-truth finding, together with the just war theory. By analysing the TRC’s theoretical framework through textual analysis, it becomes clear that micro- and macro-truth finding is difficult to combine in one report, and that in the South African case the micro-truth finding part is prioritised. However, the macro-truth finding mechanism would have provided a more in depth analysis towards sustainable peace – which in this thesis is read as Galtung’s positive peace and Lederach’s structural peace – and is a necessary prerequisite in order to achieve sustainable peace. Also the use of a traditional reading of the just war theory

contributes to an individualisation of the truth finding process and does not sufficiently support the macro-truths. Finally, by deconstructing the term *never again* it is shown that this approach should not be used in the TRCs or in the wider field of transitional justice.

Opsomming

Hierdie tesis ondersoek of volhoubare vrede in postkonfliktsamelewings met behulp van die oorgangsgeregtighedsbenadering bereik kan word. Meer bepaald word die soeklig gewerp op die waarheidskommissie as meganisme van oorgangsgeregtigheid. Die Suid-Afrikaanse Waarheids-en-Versoeningskommissie (WVK) dien as gevallestudie om die verwantskap tussen volhoubare vrede en oorgangsgeregtigheid te bestudeer. Die tesis probeer vasstel of die WVK sy mandaat uitgevoer het, en of die Kommissie se finale verslag enige bepaalde omskrywings, gevolgtrekkings of aanbevelings bevat “om te verseker dat die verlede hom nie herhaal nie” (paragraaf 14, hoofstuk 8, volume 5 van die WVK-verslag). Dit vind plaas deur middel van ’n tekstuele ontleding van die finale WVK-verslag wat die inherente swakpunte van dié dokument in sy strewe na volhoubare vrede krities en dekonstruktief benader. Die verslag word voorts ontleed deur die kwessie van volhoubare vrede te verbind met die gebied van oorgangsgeregtigheid sowel as ontwikkelingstudies oor hoe toekomstige WVK’s die kwessie van volhoubare vrede kan hanteer.

Die tesis kom tot die gevolgtrekking dat die Suid-Afrikaanse WVK nie ’n bydrae gelewer het tot ’n sinvolle ontleding van presies hoe om ’n herhaling van die verlede te voorkom nie. Daar word aangevoer dat dit te wyte is aan die gebrek aan ’n samehangende teoretiese raamwerk, aangesien die finale verslag twee verskillende waarheidsoekende meganismes vermeng – die mikrowaarheidsoeke en die makrowaarheidsoeke – en ook van die geregverdigde-oorlog-teorie gebruik maak. Deur die tekstuele ontleding van die teoretiese raamwerk van die WVK-verslag word dit duidelik dat ’n mikro- en makrowaarheidsoeke moeilik in een verslag te kombineer is, en dat, in die Suid-Afrikaanse geval, die mikro-waarheidsoeke voorkeur geniet. Tog sou die makrowaarheidsoeke ’n grondiger ontleding bied vir die suksesvolle verwesenliking van volhoubare vrede, wat in hierdie tesis as Galtung se ‘positiewe vrede’ en Lederach se ‘strukturele vrede’

verstaan word. Trouens, die makrowaarheidsoeke is 'n voorvereiste om volhoubare vrede te bereik. 'n Tradisionele lesing van die geregverdigde-oorlogteorie dra ook by tot 'n individualisering van die waarheidsoekende proses, en bied nie voldoende ondersteuning vir die makrowaarhede nie. Laastens word daar deur die dekonstruksie van die uitdrukking *nooit weer nie* getoon dat hierdie benadering nie in WVK's of op die groter gebied van oorgangsgeregtigheid tuishoort nie.

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However, the responsibility for the content of the following thesis lies wholly and fully with me.

List of Abbreviations

ANC	- African National Congress
ANCYL	- ANC Youth League
ASGISA	- Accelerated and Shared Growth South Africa
AZAPO	- Azanian People's Organisation
CODESA	- Convention for a Democratic South Africa
CONADEP	- Comision nacional para los desaparecidos
COSATU	- Congress of South African Trade Unions
CP	- Conservative Party
CPSA	- Communist Party of South Africa
CSVR	- Center for the Study of Violence and Reconciliation
DA	- Democratic Alliance
DP	- Democratic Party
FF	- Freedom Front
GEAR	- Growth, employment and redistribution
GNU	- Government of National Unity
IBRD	- International Bank for Reconstruction and Development
ICC	- International Criminal Court
IDASA	- Institute for a Democratic Alternative for South Africa
IFP	- Inkatha Freedom Party
IMF	- International Monetary Fond
ISS	- Institute for Security Studies
MK	- Umkhonto we Sizwe
NEC	- National Executive Council
NGO	- Non Governmental Organisations
NP	- National Party
NPA	- National Prosecuting Authority
PAC	- Pan African Congress
PRIO	- Peace Research Institute of Oslo
RDP	- Reconstruction and Development Programme
SACP	- South African Communist Party
SACTU	- South African Congress of Trade Unions
SADF	- South African Defence Force
SAP	- South African Police
SIRPRI	- Stockholm Institute of Peace Research
TRC	- Truth and Reconciliation Commission
UDF	- United Democratic Front
UN	- United Nations
UNDP	- United Nations Development Programme
UIR	- Urgent Interim Reparations

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Chapter One: Introduction

1.1 General Introduction

In the age of human rights interventions, transitional justice has become a buzzword and means for post-conflict societies of how to deal with a violent past. Where until the 1990s transitional justice measures were almost unheard of, with the exception of Argentina¹, which has been one of the forerunners in this field, it is now common for governments, human rights groups and international negotiators to ask for a transitional justice process in the aftermath of violent conflicts. Naomi Roht-Arriaza defines transitional justice as “that set of practices, mechanisms, and concerns that are aimed at confronting and dealing with the legacies of past violations of human rights and humanitarian law” (as cited in Van der Merwe, Baxter & Chapman, 2009: vii). The origins of transitional justice can be linked to the acts perpetrated during the Holocaust, with crimes so heinous that they were defined as ‘against humanity’; genocide, mass murder and systemic torture, and atrocious acts of warfare and terror. These atrocities demanded to call to justice those commanders, organisers and abettors of these crimes. The Nuremberg² legacy gave way to the establishment of international institutions of justice with power to end impunity (Robertson, 2006: ix), with the adoption of the Rome statute in 1998 and with this the creation of the International Criminal Court (ICC) as its foremost example.

Another and usually less legally binding transitional justice mechanism is the truth commission, which seeks to deal with the legacy of systemic abuses, but with a more victim-centred basis. Its mandate usually contains first and foremost “the establishing of an authoritative record of the past in order to overcome communal

¹ The Argentinean TRC or as it was called: the National Commission on the Disappeared (CONADEP) was active in 1984, right after the country’s return to civilian rule in 1983.

² The trial of the Nazi leaders in Nuremberg commenced in 1943 and changed the development of international law. Its charter defined crimes against humanity, and its procedures followed acceptable and credible evidence, a choice taken by the Allies.

and official denial of the atrocity, violence, or abuses and to get official and public acknowledgement” (Van der Merwe *et al.*, 2009: 3). However, the mandates vary widely from country to country and usually include a wide range of goals such as restoring dignity to victims, creating a collective memory and promoting reconciliation across social divisions, to name a few.

Another of these goals is one that occurs in almost every truth commission: the goal that a truth commission should be able to contribute towards ending violence and human rights abuses and prevent them from happening again. The final report of the Argentinean Commission on the Disappeared was called ‘Nunca Mas’, which translates into ‘Never Again’. In the South African Truth and Reconciliation Commission’s (TRC’s) mandate this essential goal was formulated in this way: “compiling a report ... which contains recommendations of measures to prevent the future violations of human rights” (TRC, vol. 1, chap. 4, p. 55, paragraph 31d). It is this aspect of the South African TRC, which is the subject of this study. The following study will explore the various aspects of achieving sustainable peace in post-conflict societies. An in-depth study will be done of the South African TRC concerning its ability to achieve sustainable peace.

1.2 Background

When the African National Congress (ANC) and the National Party (NP) came to the negotiation table, they had to deal with a country that already had emerged into profound changes through the process of globalisation. New patterns of investment, trade, and financial flows had been introduced both locally and globally, and even though the ANC could have chosen to reverse the patterns of globalisation, it chose to reinterpret the original goals of implementing a socialist-type economic and social system and thus to change their original political platform (Allen, 2006: 91). This is in brief the economic context into which the TRC was born. It occurred in a very classical setting of political compromise: the new regime was interested in justice and establishing the truth, at the same time as the regime was afraid to upset the old regime too much so as to endanger the young regime undergoing transition - which was seen as a realistic threat. “Old generals

were still in a position to threaten credibly to make violent reprisals for any prosecutions for war crimes or human rights abuses, and in fact, did so,” writes Allen (2006: 157). The TRC was a balancing act between victims’ needs for justice and the possibility of reprisals from the perpetrators if this justice indeed was pursued. Thus, Mamdani (2002: 33), beyond others, argues that the “Truth and Reconciliation Commission of South Africa was the fruit of a political compromise whose terms both made possible the Commission and set the limits within which it would work”. The TRC was determined to address victims as well as perpetrators, not just one or the other. The interim constitution that paved way for the legislation of the TRC contained this double determination by subscribing to a conditional amnesty: forcing every perpetrator to apply individually for amnesty, while it also required every victim, who is so acknowledged, to restrain from prosecution of the perpetrator. The final report of the South African TRC was presented to then President Nelson Mandela on 29 October 1998.

1.3 Literature Survey

Concerning the literature review of this specific study, we have to distinguish between the theoretical approaches in the fields of transitional justice, peace research and studies of political development on the one hand, and the specific case study of this thesis, which is the TRC of South Africa. This literature survey uses both primary and secondary sources to look at the theoretical framework, while also dealing specifically with literature about the TRC.

With regards to the theoretical approach and in order to have a working tool for this study, it is important to establish how to define sustainable peace. In “Violence, Peace and Peace Research”, Galtung (1969) explains his highly acknowledged division of the definition of peace; namely the division into positive and negative peace. Negative peace would be defined as the absence of violence, while positive peace would take into account the presence of both structural and cultural forms of violence. This is because the absence of violence does not necessarily mean that a society is peaceful and that there is no conflict. Socio-economic inequality, unequal gender relations, racism and political exclusion are

just some issues that have to be regarded when looking at achieving peace. Galtung's research is located within the field of peace research, but has had great influence on the field of transitional justice. The divide between negative and positive peace refers to the fact that there is more to a society than being either at war or in peace. It refers to social justice mechanisms and how a society is built up. This theoretical approach is central in this study.

According to Lederach (1997: 3), Peace Research and conflict studies began in the early part of the 21st century. In the 1970s and 1980s organisations such as the Peace Research Institute of Oslo (PRIO) and the Stockholm Institute of Peace Research (SIRPRI) were established. One of their focuses was to build up a consistent databank or database of conflict in order to statistically assess data for descriptive and comparative purposes. Another new field of research emerged in the beginning of the late 1980s: the field of 'transitional justice'. It has its origins in the response to events in Latin America and is closely linked to the human rights field. This field has been criticised for viewing transitions in one lens: "that of transition to democracy" (Arthur, 2009: 19). We will come back to this issue during the course of this study.

This study will follow Lederach's suggestion of an integrated and complex peacebuilding process, with special emphasis on the continuing maintenance of peace. Lederach (1997: 20) states that:

peacebuilding is more than postaccord reconstruction. Here, peacebuilding is understood as a comprehensive concept that encompasses, generates and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships. The term thus involves a wide range of activities and functions that both precede and follow formal peace accords. Metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct. Such a conceptualization requires a process of building, involving investment and materials, architectural design and coordination of labour, laying of

a foundation, and detailed finish work, as well as continuing maintenance.

Both Galtung and Lederach are central in the field of peace research. Lederach (1997: 75) links sustainability, which he defines as concern to “create a proactive process that is capable of regenerating itself over time - a spiral of peace and development instead of a spiral of violence and destruction” to the field of political development as necessary for peace. This study focuses on political development as a specific task set forth by the field of development studies.

To link peace research, political development and the study of transitional justice into one academic field of interest, this study looks at some of the central scholars in the field of transitional justice. Kritz (2002) gives an overview of the developments in transitional justice and through his work it is possible to place South Africa in this field of study. Teitel (1997) focuses on the important aspect of the role of law in the field of Transitional Justice. This discussion is vital for the accountability of the field of Transitional Justice. Laplante (2008: 1) focuses on the question “what more transitional justice can do to promote the aims of reconciliation and sustainable peace”. She suggests that truth commissions should expand their mandate and include socio-economic and cultural rights in order to sustain peace. The notion of socio-economic and cultural justice enjoys growing interest and is considered a pressing need by many scholars and practitioners within the transitional justice movement (Mani, 2008: 253).

When it comes to political development, Huyse in Harris & Reilly’s “Democracy and Deep-Rooted Conflict: Options for Negotiations” indicates that part of peacebuilding is the different policies of coping with the past (Huyse in Harris *et al.*, 1998: 273). Huyse carefully analyses amnesty, truth commission, lustration, criminal prosecution and compensation. Habib & Bentley (2008) bring forth important research concerning citizenship, nationbuilding and democratization. They investigate into answering the following: “The single biggest question of the 21st century is how to build the bridges of solidarity that enable the emergence of a common citizenship and a cohesive human community” (Habib & Bentley., 2008:

xi), what they call “the national question” (*ibid*: 5). By raising this question they simultaneously point out that the South African Constitution supports a non-racial, cosmopolitan³ citizenship that might be undergoing severe change in the future since this can be observed as an international trend (*ibid.*: 9).

In order to approach the specific case study of the South African TRC, we need to consider De Lange (2000) and Boraine (2000) who give an account of the origins of the South African TRC. A TRC is a political tool manifested in its mandate: the definition of how broad or narrow a mandate is set, who the commissioners are and by whom they are appointed, whether it allows or invites recommendations and how they are linked to the judicial system and its question of amnesty. These decisions are taken before the TRC starts its work. Very seldom is a mandate changed during the work of a TRC. In South Africa the mandate guided the work of the TRC throughout the whole process.

Gibson (2004), Jeffrey (1999), Mamdani (2002), Simpson (2002), Stanley (2001), and Van der Merwe & Chapman (2008), beyond others, evaluate the South African TRC and give valuable criticism of what has been achieved and what could have been achieved. This study will refer to most of the authors mentioned above throughout the findings, but most specifically in chapter 4. Therefore it will just shortly list their findings here; Gibson (2004) analyses whether truth actually contributes to reconciliation in South Africa. He links the search for ‘the truth’ with the effort of creating a collective memory and concludes that some sort of reconciliation exists in South Africa today. However, he could not show that truth inevitably led to reconciliation – a finding that supports the recommendation not to use the *never agains*, as shown in this study. He furthermore links reconciliation to democratic reform and shows that “reconciliation both helps and hinders the practice of democratic politics” (*ibid.*: 151). Jeffrey (1999) is concerned with the findings of the TRC and the methods used to reach these. She concludes with the allegations that the commission was biased both in their composition and their

³ Habib *et al.* define cosmopolitanism through a three point definition: common humanitarianism combined with tolerance for difference and a belief in universalism.

findings. Mamdani (2002) focuses on the commissions' individualization of guilt and the consequences this has for the final report of the TRC in its totality. Also Simpson (2002) points out that the choices how to specify the different categories of victims and perpetrators are political, and he criticises the Commission for unpredictability and arbitrariness when it comes to the decisions of the amnesty process. He goes as far as to state that "[i]ndeed, there is a real possibility that the TRC, by granting amnesty to confessed killers, may actually have contributed to the sense of impunity that fuels the burgeoning rate of violent crime" (Simpson, 2002: 247). Stanley (2001) further contributes towards painting a picture of doubt whether the TRC can aid in "building a 'reconciliatory bridge'" (*ibid.*: 525), since the government is reticent to provide for a climate of development and change. Finally, Van der Merwe *et al.* (2008) question explicitly whether truth commissions are "appropriate vehicles for promoting reconciliation and forgiveness, especially in a society with deep structural divisions" (*ibid.*: 277), Their findings show beyond others that there exists a lack of reconciliation on the basis of the work of the TRC in South Africa.

The above mentioned authors have all established their research methods in how to reach their conclusions. Through their findings and choice of research methods, their research will give important input to the seeking of criteria for sustainable peace and to the answer to the question whether South Africa's TRC has been successful in terms of achieving sustainable peace. In fact, their precision in using research methods has encouraged this study to seek similar precision in the work of the South African TRC.

Accordingly, this study will rely heavily on the analysis of the Final Report of the Truth and Reconciliation Commission of South Africa. This reliance on this primary source is crucial in order to answer the question: what does it imply "to ensure that there would be no repetition of the past" (TRC vol. 5, chap. 8, 14)? It will be decisive for this study to analyse how the TRC itself has implemented the quest for sustainable peace. In order to do so, this study will be using the research method of textual analysis as outlined by Mouton (2001) and Balkin (1994). Section 1.6

provides a detailed description of textual analysis; its criteria, and how it was executed.

Finally, this study will lean towards secondary literature that can support this study with historical information on the political development of South Africa after the transition in 1994. These sources focus mainly on the history, and include: Allen (2006), Butler (2004), Dubow (2000), Marais (2001), Makgetla (2004), Muiu (2008) and Thornton (1998).

1.4 Research Problem

Through a textual analysis of the Final Report of the South African TRC, this study has as its goal to analyse and discuss inherent weaknesses of the Final Report in its aim of achieving sustainable peace. The methods of analysis used by the TRC (a mixture of micro- and macro- truth findings in combination with a traditional reading of just war theory), had and still have consequences for how South Africans perceive themselves, which furthermore has an impact on sustainable peace, as for example shown by Gibson (2004) through his systematic evaluation of the truth and reconciliation process. Gibson (2004) evaluates in his study whether the truth has contributed to reconciliation in South Africa. He offers a systematic analysis of the correlation between truth and reconciliation and concludes that truth does not inevitably lead to reconciliation. This brings us to the question what the truth in the final report of the South African TRC has thus led to. Telling the truth has been equivalent to contributing to a more peaceful and democratic future. However, as has been shown by many scholars beyond others Simpson (2002), Stanley (2001), Van der Merwe *et al.* (2008) and Habib *et al.* (2008), the South African future⁴ cannot be called peaceful and democratic. According to Laplante (2008), there is a need for new research and new approaches to the field of transitional justice, especially when it comes to socio-economic and cultural issues, which would in fact bring the field of transitional justice, the study of political development and the field of peace study closer to

⁴ The future – from the perspective of the TRC – is now; to use a slogan from the World Economic Forum in Davos, Switzerland, 2007.

each other, since it addresses a wider political agenda than the quest for the guilty. There is moreover a need to discuss what the notion of sustainable peace implies; an issue like the time aspect in sustainable peace and in the TRC is a problematic issue which has to be discussed. Lederach (1997: 75) states that “while achieving a cease-fire is an immediate necessity, this goal must not be mistaken for, or replace, the broader framework of peacebuilding activity. Rather, a sustainable transformative approach suggests that the key lies in the relationship of the involved parties, with all that term encompasses at the psychological, spiritual, social, economic, political, and military levels.” Further, Lederach explains: “The process of peace building must rely on and operate within a framework and a time frame defined by sustainable transformation” (*ibid.*). Contrary to this, the TRC was a very time limited endeavour, inaugurated in December of 1996 with the Commission’s five-volume report released in October 1998.

Thus, from the analysis in this section, the main research problem to be investigated in the study is whether TRCs are useful in achieving sustainable peace in post-conflict societies. In order to do this, the study will focus on an evaluation of the South African TRC through a textual analysis of the Final Report.

1.5 Objectives and Relevance of the Thesis

The purpose of this study is to evaluate how effective the South African TRC was in attaining sustainable peace. As a mechanism of transitional justice, was South Africa’s TRC able to achieve sustainable peace? To answer this question, the thesis analyses whether the TRC followed its mandate, and whether there are any specific definitions, conclusions or recommendations that the TRC undertakes in order to fulfill this specific part of the mandate, namely “to ensure that there would be no repetition of the past” (TRC vol. 5, chap. 8, paragraph 14). The study further asks the question, what more can transitional justice do to promote the aim of sustainable peace, in particular by redressing economic, social and cultural rights of its citizens? The thesis aims to give some recommendations concerning developing the work of the TRC in collaboration with the three different fields of

research addressed in this paper: peace research, studies of political development and transitional justice.

This study is relevant in the field of transitional justice on different levels. On the one hand it will give a rigorous textual analysis of a central topic and by this enhance the critical voices already existing in the field of transitional justice. However, these critical voices need support, since the field without doubt is conservative in its praxis. There is the possibility of being regarded as over-idealistic and that recommendations are too costly and difficult to implement, and thus not realistic and hence that they will not be considered of value to the field of transitional justice (Robertson, 2006: 313). There is furthermore the fear of being non-scientific and non-objective, which would enhance the impression that TRCs are not dealing with hard facts. The danger is that this negative reputation will in the long run destroy the goodwill this justice mechanism has built up.

On the other hand, this thesis contributes towards the theoretical framework on sustainable peace as it seeks to compare and combine findings from three different theoretical areas of peace building, studies of political development and transitional justice.

1.6 Research Design and Research Methods

The research design of this study is a case study; the evaluation of South Africa's TRC as an example of a transitional justice mechanism. It is a qualitative study using both primary and secondary data. The secondary data was retrieved from academic books and journals, and on the primary source side it looked at the material produced through the South African TRC, in particular the Final Report of the TRC. This study is micro in its scope, since it focuses on the South African TRC and on a very limited part of its mandate. However, it has theoretical ambitions as it tries to contribute towards the theoretical framework of transitional justice.

Chapters Two and Three are based on secondary data, relying on extracting knowledge about theory and history out of already published and presented

material. Chapter Four is mainly based on a primary source; the analysis of the Final Report of the South African TRC. This makes this study explorative in its attempt to find new answers with innovative questions, descriptive in that it is eager to embed the findings into existing theory, and explanatory in its seeking of causalities (Babbie & Mouton, 2005: 81) between the different events and choices that the TRC made during its two years of existence. The unit of analysis is the South African TRC. The research instrument in this study is textual analysis. Textual analysis is chosen in order to understand a text, in this case the Final Report of the TRC on theoretical grounds. This is done through an inductive, or *verstehende*, mode of reasoning, while it is further expanded to “test, reject or validate existing analyses and interpretations” (Mouton, 2001: 167), as it is done by looking at secondary literature that has evaluated the South African TRC. This mode of reasoning would be deductive in nature. The text analysis is executed through a two step analysis: On the one hand it conducts a statistical analysis, through the simplest form of observing mathematical transformations: namely giving a frequency list of certain words the researcher believes to be important for this study. In the case of this study it focused on the *never agains* and the two related words “sustainable” and “sustainability”. The statistical analysis is thereafter linked with a content analysis, which is a qualitative analysis that comments on the context in which these words are used from a critical evaluative point of view. Finally, this textual analysis looks further to other authors and their literature on the TRC in order to strengthen its findings. Additionally this study engages with the analytical tool that is used in the South African TRC, namely the just war theory. It offers a discourse explanation analysis, since it rather than merely describing discourse structures, tries to explain them in terms of social structures. Thus the focus is on explaining and interpreting the different concepts that are used in the final report of the South African TRC.

This study leans furthermore towards a deconstructive reading of the primary text. Deconstruction can here be understood as a “pursuit of justice [that] is neverending, ... [but] form part of a critical theory of law and society” (Balkin, 1994: 13). This understanding goes well together with the postmodern position in

constructivism which is adapted in this study and explained in the following section.

1.6.1 The postmodern position in constructivism

Social constructivism became a popular alternative in many social sciences and has also manifested itself in the field of transitional justice, the study of political development and peace research. While realists would predict anarchy in the international system, in the absence of a superior and centralized authority, they would conclude that international justice is not able to restore normality that is the rule of law and stability. Liberalism, on the other hand, would propagate human rights norms as consistent with key liberal values. Some constructivists, finally, would see justice after transition as part of a normative development. This development will change behavioural patterns over time and will by this be able to contribute to sustainable peace. Normative development would thus be to formulate laws, treaties and activities that point towards the unacceptability of severe violations of rights and the necessity of a punitive response.

At this point it has to be clarified that constructivism is not one theory, but rather a set of theories. While one part of constructivism can be normative, other parts are not. Actually it would be more correct to call it the field constructivism-s, since there are numerous positions in the field of social constructivism. This makes constructivism much more of an approach than a fully-fledged theory, embracing a variety of perspectives that pursue quite different agendas.

This study is guided by a postmodernist constructivist approach. Postmodernists deny the *a priori* understandings of the material world - as do the middle ground constructivists, but the postmodernists go one step further. Rather than accepting the predominant social construction of symbols, postmodernism engages in their deconstruction. Deconstruction exposes the hollowness of false claims. Reality cannot be understood outside of our contexts, that is, outside of human interpretations, and it is out of a need to free us from the burden of responsibility that the independent reality is constructed. “[T]he assertion of an independently

existing reality, which in itself cannot be proved and seems to demand no proof, works to support particular political positions and to exclude others from consideration” (Zehfuss, 2002: 245). Zehfuss reminds us of one thing explicitly, that agents do have agendas and that methodological choices are never innocent, but deeply political. For the purpose of this study, the postmodern position of constructivism is used to question and deconstruct the ideas, beliefs and attitudes scholars have developed towards the field of transitional justice and TRCs more specifically. Accordingly, this study is encouraged to be critical and engaging towards the subject of this study. As it will use textual analysis as a deconstructive practice, this study will rely on a postmodern constructivist reading of the South African TRC.

1.7 Limitations and Delimitations of the Thesis

There were few limitations concerning the accessibility of the main sources, since these are readily available both on the Internet, through libraries and in the research environment I work in. However, there is one serious limitation in the fact, and as previously mentioned, that the field of research in which my study is part of is highly conservative. This influences my argumentations and analysis, since I will not be able to avoid self-censorship. A discussion of the subject of ‘Ethics of Research’ is given in Mouton (2001: 238), where objectivity and integrity of the research ranks high on the list of ethics. My constraints (or strengths as it also could be phrased) are that I come from a radical constructivist tradition, which differs from the generally accepted approach to transitional justice. I will make it clear that my aim is to redefine the impact of the concept of *never again* - as much as my findings will allow for it, and thereby guide future use of *never again* and its broader socio-political impact on justice. This study is guided by the general rules of research ethics.

The time-span specifically of the case study in chapter four is from 1994 up to recent years of published material, as late as 2010. However, chapter two and three will go further back in time, so as to give as much and as relevant

information as possible, which is necessary to establish a good overview of the issue discussed.

As mentioned earlier, this study will use the Final Report of the TRC and secondary data sources. Because of time constraints, no further primary data has been collected, even though this would clearly have been beneficial to this study. As the field of transitional justice is still very young, there is a lack of conceptual literature and furthermore there is a lack of empirical literature (Van der Merwe *et al.*, 2009: 127). This study will contribute to both areas.

1.8 Outline of the Remainder of the Thesis

This study contains five chapters aiming to give a thorough analysis of the issue discussed: achieving sustainable peace in post-conflict societies through an evaluation of the final report of South Africa's Truth and Reconciliation Commission. Chapter two provides the theoretical framework of this study – pointing towards definitions and mechanisms of Transitional Justice, the study of political development and the field of peace research, as well as its history and theory. It discusses the field of peace research and the study of political development and its connotation to Transitional Justice, and conceptualises two key terms: *the never agains* and sustainable peace. Chapter three focuses on the historical background of the South African TRC. It introduces the reader to a short history of segregation and follows the segregation towards the Apartheid state. It gives a picture of 'high Apartheid' and the resistance against it and then shortly explains the negotiated settlement and more explicitly the role of the TRC in the negotiations. Thereafter it focuses on the TRC: its mandate, operationalisation, outcome and recommendations, before it introduces some of the Achilles heels of the TRC.

Chapter four presents the textual analysis of the Final Report of the TRC. Additionally, it focuses on the choice of the just war theory taken by the Commission. Thereafter it analyses the *never agains*, the notion of sustainable peace and the depiction of institutional and structural violence in the Final Report.

Finally it looks at the recommendations given by the TRC before it gives space to several other researchers who have been evaluating the South African TRC.

Chapter five is solely dedicated to give a summary of the findings and to present some of the conclusions reached through this study. Furthermore, it provides recommendations for future studies and outlines where this study came short.

1.9 Conclusion

This first chapter had three goals. Firstly, to offer a general introduction into the study and to provide the reader with some background information. This first information given is further deepened and broadened throughout this thesis. For the second, it gives the technical outline of the study, its objectives and relevance, its methodology and research design and not least its limitations and delimitations. This is done according to both academic and ethical rules and should clarify for the reader how this study has been undertaken and which sources have been used. For the third, this first chapter is designed to make the aim of this research clear, namely to investigate into sustainable peace in post-conflict societies with the goal to give an evaluation of South Africa's TRC.

The following chapter investigates the theoretical perspective of the research study. It conceptualises sustainable peace in three different fields of study: peace research, political development and transitional justice. This is done for several reasons. First of all, because transitional justice is a very young field of study and leans towards previously established fields. On the other hand, it also had the urge to break away from these areas, and it is vital for this research to understand why transitional justice has established its own field of research rather than to join either the peace research area or the field of political development. Secondly, the in-depth analysis will be able to formulate similarities and differences in these three approaches. Finally, it will be able to subtract the key aspects of sustainable peace and the *never agains* and provide the study with the necessary tools to accomplish the research proposed.

Chapter Two: Theoretical Framework

2.1 Introduction

The theoretical framework of this study borrows its foundation from different sources and different theoretical approaches. On the one hand, this study will explore the field of transitional justice and its neighboring fields: peace studies and the study of political development – always connected to the issue of sustainable peace. All three areas have developed differently, but seem to converge in recent years. This study investigates these fields by looking at the definitions used, but also through investigating the history and theory connected to the field of transitional justice. This is done in order to be able to predict the development of the field of transitional justice in the near future and to evaluate how effective the South African TRC was in attaining sustainable peace.

On the other hand it is necessary to look into the two key terms: firstly, the concept of 'never again' and its theoretical implications. By this, the study touches upon Holocaust research and its connected study of Zionism combined with post-colonialism in order to see the relevance of the phrase *never again* for this study, and concerning South Africa specifically. Secondly, the term 'sustainable peace' is discussed. Finally, a fusion of these approaches is given in the conclusion in order to clarify the theoretical framework of this study.

2.2 Definitions and Mechanisms of Transitional Justice

The definition of transitional justice is dependent on which focus the researcher has, and on what mechanisms the researcher is looking at. Kritz gave a very general idea of transitional justice by stating his approach to the concept or area of transitional justice as more specifically looking at the transformation from minority rule to democracy, as is shown in the title of his four-volume compendium *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* from 1995. Piccone, as quoted in Arthur (2009: 12), repeats and transforms his

approach in stating that the area of transitional justice addresses “how new democracies have attempted to strike a balance between redressing the abuses of the former governments and integrating victims and perpetrators in a post-conflict society”. Both engage very uncritically with the democracy - transitional justice nexus⁵.

Later on, Kritz (2009: 13) summarises four basic objectives of any transitional justice programme, rather than giving a definition of the term. His four objectives consist of:

1. Determining of the truth by establishing a human rights abuse record.
2. Justice.
3. Meaningful democratic reform, entrenchment of the rule of law within society, and building a society with institutions that ensure that the kinds of abuses being dealt with will not recur.
4. Durable peace.

Backer (2009: 28), on the other hand, focuses rather on the approaches to transitional justice stating that to confine the discussion of transitional justice to a prosecution-pardon discourse is too limiting since the options in practice are more extensive. He includes in the transitional justice mechanisms the following six areas:

1. Criminal prosecution by existing or ad hoc courts;
2. Other formal sanctions, such as lustration, purges, and bannings of political parties;
3. Reparations, which can be financial, material, or symbolic;
4. Investigations conducted by truth commissions or independent inquiries;
5. Institutional reform, including the establishment of formal human rights oversight (for example commission, ombudsman, public protector, special

⁵ Please view the section 2.2.1 on transitional justice and section 2.2.2 on the study of political development for a discussion of this issue.

parliamentary committee), and the introduction, amendment, or restoration of a constitution, and

6. Immunity through amnesties, pardons, and other limits on accountability and punishment.

Van der Merwe *et al.* (2009) admit that there are no definite answers for how the need for justice, truth, reconciliation, and healing can be addressed, and they also suggest a list of transitional justice mechanisms rather than a definition. Their list emphasises that mechanisms used in different national contexts vary widely, including:

- establishing an authoritative record of the past in order to overcome communal and official denial of the atrocity, violence, or abuses and to get official and public acknowledgment;
- restoring dignity to victims and promoting psychological healing;
- ending violence and human rights abuses and preventing them in the future;
- creating a 'collective memory' or common history for a new future not determined by the past;
- forging the basis for a democratic political order that respects and protects human rights;
- identifying the architects of the past violence and excluding, shaming, and diminishing perpetrators for their offenses;
- legitimating and promoting the stability of the new regime;
- promoting reconciliation across social divisions;
- educating the population about the past; and
- recommending ways to deter future violations and atrocities.

All of the above mentioned scholars promote democracy as one of the key elements for transitional justice. It goes beyond the task of this study to examine

whether the predisposition towards democratic rule is a necessity for transitional justice. However, there are scholars who exclude the necessity of a democratic political order from their definition/list of transitional mechanisms. Roht-Arriaza (2009: vii) has given a comprehensive and open definition that does not limit transitional justice to democratic mechanisms and includes all attempts from prosecution to pardon. As quoted already in chapter 1, she defines transitional justice as “that set of practices, mechanisms, and concerns that are aimed at confronting and dealing with the legacies of past violations of human rights and humanitarian law.” This research will use Roht-Arriaza’s definition as a basis for its study.

2.2.1 Transitional Justice – History and Theory

According to Ruti Teitel (2003), the field of transitional justice has a three-phased historical evolution: while the origins of transitional justice can be traced back to World War I with its fragile beginnings, Teitel suggests to start her genealogy in 1945, strongly connected to the Nuremberg tribunal, because first at this point in history it became “extraordinary and international” (Teitel, 2003: 70); the second phase Teitel traces to the late 20th century, with the collapse of the Soviet Union and with it the change of the power structure in the world, but more explicitly in Latin America and Eastern Europe. Teitel describes this as a “wave of democratic transitions and modernization that began in 1989” (Teitel, 2003: 70); and finally the contemporary phase where transitional justice moves from the exception to the norm, a “*fin de siècle* acceleration of transitional justice phenomena associated with globalization and typified by conditions of heightened political instability and violence” (Teitel, 2003: 71). It is important to mention here that other scholars, like John Elster (2004), would treat transitional justice as a recurrent historical problem, from ancient Athens to the present, and not as a recent phenomenon, as Teitel suggests.

However, Arthur traces the written origins of the term transitional justice to an “article about the Charter 77 Foundation’s 1992 conference in Salzburg, ‘Justice in Times of Transition’” (2009: 10) in the Boston Herald, while he states that Neil

Kritz's four-volume compendium *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* in 1995 cemented the use of 'Transitional Justice' rather than the former used term 'Justice in Transition'. Arthur (2009: 19) questions the term transition and furthermore the use of the phrase transitional justice. He asks what would be the typology of 'transition' and answers:

[P]erhaps some countries experienced 'revolutions' others 'transfers of power,' others 'regime change,' others 'restorations,' others 'independence,' others 'modernization,' others 'political development,' and still others 'transition' of one sort or another: from capitalism to socialism, from military dictatorship to civilian rule, from authoritarianism to democracy, from communism to liberal democracy, from communism to a market economy, etc. The varieties of change are in fact quite staggering.

Arthur questions furthermore why 'transition to democracy' came to be the dominant interpretation of change in the 1980s, while in the 1960s liberal Western policy makers would rather speak of "socioeconomic modernization as a precondition of an evolutionary process of political development" (Arthur, 2009: 20)? He gives a four-point explanation: first of all, because countries in transition choose democracy over other possibilities. Secondly, because modernisation theory lost its followers; thirdly, because the Marxist discourse of transformation/transition would be replaced by a more technocratic approach to engineering political change (from socioeconomic transformation to legal-institutional reform); fourth and connected to the latter, the global decline of the radical 'Left' during the 1970s supported a change from ideology (class) to human rights. Carothers (2002: 9) shows, however, that the transition-democracy paradigm has not been successful:

[o]f the nearly 100 countries considered as "transitional" in recent years, only a relatively small number – probably fewer than 20 – are clearly en route to become successful, well-functioning democracies or at least have made some democratic progress and still enjoy a positive

dynamic of democratization. The leaders of the group are found primarily in Central Europe and the Baltic region – Poland, Hungary, the Czech Republic, Estonia, and Slovenia – though there are a few in South America and East Asia, notably Chile, Uruguay, and Taiwan. Those that have made somewhat less progress but appear to be still advancing include Slovakia, Romania, Bulgaria, Mexico, Brazil, Ghana, the Philippines, and South Korea.

When it comes to South Africa, two conferences were important in order to agree on an intellectual framework for transitional justice: the 1992 Charter 77 Foundation conference and the 1994 Institute for a Democratic Alternative for South Africa (IDASA)-sponsored conference on dealing with the past. Here, two normative goals were expressed: “First, the goal of providing some measure of justice to those who suffered under repressive state regimes and second, the goal of facilitating an exit from authoritarianism and shoring up a fragile democracy” (Arthur, 2009: 41).

In addition, South Africa clearly benefited from the experiences several countries had with transitional justice. Visits of South Africans to Latin American countries in particular, to gather comparative material, and the participation of international experts in the South African conferences brought about a deep transnational impact on the South African search for justice and reconciliation. Beyond these comparative exchanges, Kritz (2002: 24) points towards contemporary standards that were relevant to the transitional justice endeavours in South Africa:

The protections guaranteed to criminal defendants enshrined in the 1948 Universal Declaration of Human Rights, and elaborated in the 1966 International Covenant on Civil and Political Rights, have been supplemented by such UN standards as the Standard Minimum Rules for the Treatment of Prisoners (1957), the Basic Principles on the Independence of the Judiciary (1985); the Standard Minimum Rules for the Administration of Juvenile Justice (1985), the Basic Principles on the Role of Lawyers (1990); the Basic Principles for the Treatment of

Prisoners (1990); Guidelines on the Role of Prosecutors (1990), and the Standard Minimum Rules for Non-Custodial Rules (1990).

Kritz furthermore emphasises the importance of the United Nations (UN) Human Rights Commission and UN Human Rights Committee for developing international standards as well as the European Court and Commission on Human Rights, the Inter-American Court and Commission on Human Rights, the 1990 Copenhagen Document and 1991 Moscow Documents produced through the 'Helsinki process' as well as the work of UN rapporteurs, the writings of many legal scholars, and the work of human rights organisations.

There is a trend towards trials (international, national and mixed), but there is equally a trend away from trials, focusing on a victim-centred approach. South Africa took the victim-centred approach by establishing its TRC and by introducing a new approach towards amnesty. It offered a conditional amnesty, where perpetrators would apply for amnesty on an individual basis and through full disclosure of their crimes and through collaboration with the TRC investigators (Kritz, 2002: 34). This issue is dealt with more thoroughly in chapter three.

2.2.2 The Study of political development

The theoretical approach of Transitional Justice is complemented by the theory of political development. Development studies have undergone major changes since the 1960s, and 'development' has become a buzzword in politics, as it is closely linked to the study of democracy. In the 1960s there was a widely acknowledged positive correlation between development and democracy. For two decades thereafter it was largely absent from academia, while after the end of the Cold War, it worked its way back into the academic and political spheres. Today, as Elgström & Hyden (2002: 191) state that the "positive, causal relationship between development and democracy is an accepted scientific finding". Elgström *et al.* cite several references like Lerner (1958); Lipset (1959); Huntington (1991); Ingelhart (1997); Vanhanen (1997) and empirical studies like Doorenspleet (2001).

Many analysts, however, question the assumption that with the introduction of liberal democracy, all countries necessarily 'stabilise' and 'develop' (see Galtung; Good, 2002; Southall, 2003; Muiu, 2008). These scholars contend that liberal democracies reflect the narrow interests of elites and the supremacy of the constitution and the notion of democracy represented by Western governments and the Bretton Woods institutions⁶. There exist different models and definitions of democracies, as democracies have varied in different times and different places. Several scholars, notably Ake (1991), have introduced the idea of 'social democracy' (also called the 'Scandinavian model') which, according to Cawthra, Pisani & Omari (2007: 7), "demands material betterment, equality, social justice, the upliftment of citizens, and concrete rights". Good (2002) on the other hand, propagates participatory democracy, as seen in Athens between 508-322 BC.

The transitions into democracy in the late 1980s, however, produced a broad acceptance, throughout much of the Southern African region, of the values and norms of liberal democracy, with regular transparent elections, constitutional rule, and adherence to human rights. The development discourse at that time seemed to "entitle the North to develop and democratize the South in its image" (Muiu, 2008: 152).

Development in the modern world is generally equated with modernisation connected to economic growth and technological progress. To be developed is often identified with the idea of industrialisation and the use of advanced technology; to be underdeveloped means the opposite, a lack of industrialisation and the prominence of subsistence agriculture over mechanised agriculture. The study of political development has undergone extreme changes, and in Abdul Rahman's (2006: 1) words:

After its heyday in the 1960s and 1970s with the development agenda being high on the list and the state playing a developmentalist role, the idea of development - together with development studies as its corpus of

⁶ The Bretton Woods institutions consist of the International Monetary Fund (IMF) and the World Bank Group, including the International Bank for Reconstruction and Development (IBRD). It constitutes an international monetary regime going back to the end of the World War II.

knowledge and intellectual soul - came under the ferocious onslaught of neoliberal globalisation since the 1980s. The resulting 'big push' towards liberalisation, deregulation and privatisation in policy and the pervasive influence of the neoliberal ideology on scholarship with its thesis of the minimalist role and the retreat of the state, has resulted in the undermining of the development agenda and in pushing development studies into a cul-de-sac.

For this evolution, Hettne (1990: 9) gives the following explanation:

During the 1980s, development studies faced external and internal challenges. Externally, it was challenged by a fundamentalist, mono-disciplinary trend in the academic world, and a neoconservative trend in politics. Both trends reduce the 'development problem' in a highly simplistic way, thus neglecting the insights achieved in the field during three decades of empirical and theoretical explorations into previously unknown territories. To this should be added persistent suspicions in Third World academic communities about the relevance of Western development research, suspicions that can only be reinforced by the trends just mentioned.

The 'Washington Consensus'⁷ has forced the development discourse into a very narrow economic growth path, but increasingly, and since the 1980s, it has included the goal of 'improving the standard of living for all people in poor countries,'⁸ and also the term human development, which the UN Development Programme (UNDP) (1990) defines as:

⁷ The 'Washington Consensus' described a reform package promoted for crisis-ridden developing countries by institutions such as the World Bank, the International Monetary Fund (IMF) and the United States Treasury Department. According to Rodrik (2006: 973) "[s]tabilize, privatize, and liberalize" became the mantra of a generation of technocrats who cut their teeth in the developing world and of the political leaders they counseled".

⁸ Gerd Junne and Willemijn Verkoren, 'The Challenge of Postconflict Development,' in *Postconflict Development: Meeting New Challenges*, ed. Gerd Junne and Willemijn Verkoren. Boulder, CO: Lynne Rienner, 2005, 3.

A process of enlarging people's choices. The most critical ones are to lead a long and healthy life, to be educated, and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights and self-respect.

In order to link the study of political development and transitional justice, this broader understanding of development gives way to Duthie's (2008: 294) conclusion that,

it is unlikely that transitional justice efforts lead directly or in any measurable way to macro-level economic growth. [However], a broad understanding of development - including its economic, political and social elements - allows one to draw links between long-term goals that may be shared by the two different types of initiative, including the rule of law, respect for human rights, democratization, good governance and peace.

He continues by giving four examples of how transitional justice and development can relate to each other. Firstly, he brings up the issue of complementarity, where long-term goals can be shared and where rather than restoring the conditions that led to the conflict, there should be a mechanism of transformation involved. Secondly, development might have an inadvertent affect on transitional justice, as poorer countries might struggle to afford justice. This does not, however, determine the choice of justice. Thirdly, there are advantages in coordinating transitional justice and development efforts in order to create synergies. Duthie (2008: 301) gives examples of reparations, memorials and restitution programmes (originally transitional justice tools) that all might work hand-in-hand with development programmes. Finally, both efforts might intentionally address or engage each other "including the violation of economic and social rights, as well as the root causes of conflict and the structural and distributional inequalities that may have facilitated civil and political abuses, related to such issues as conflict resources, land, corruption, civil society, education and health" (*ibid.*). This has

been addressed in different truth commissions such as the ones in South Africa, Sierra Leone, Peru, Liberia and East Timor.

2.3 Key terms – conceptualisation

This study revolves around two key terms that are embedded in the mandate of the South African TRC. It is the promise of *never again*, which can academically be transcribed into the notion of sustainable peace. In the following section we will look at the concept of *never again* and give a survey of its origins and how it found its way into transitional justice, peace research and political development. The second key term that this study will engage with is ‘sustainable peace’. It will explore what sustainable peace is and how it is used in the field of transitional justice, and the relationship between these two concepts.

2.3.1 *Never again* - an attempt at a genealogy

One of the key terms of this study is the slogan *never again*. This phrase has prominently made its way into the truth commissions’ language and into the field of transitional justice through the decision of the Argentina Commission of Historical Clarification to call their final report of their truth commission ‘Nunca mas’ – or ‘Never Again’. However, an earlier precedent can be traced to the UN and its 1948 Convention which was the first truly universal, codified statement on genocide, and enshrined within it was the promise of *never again*. *Never again* has been dismissed by some scholars as a hollow slogan, and praised by others as the ultimate way of reminding coming generations of historical atrocities. However, there have been repeated attempts to show that there is a need to go ‘beyond the *never agains*’⁹ in order to promote sustainable peace further and more efficiently.

It has been difficult to assess where the expression *never again* actually derives from¹⁰. There seems to be a certain consensus that the origin lies in the

⁹ The Stockholm International Forum Conferences (2000-2004) which culminated with the publication “Beyond the never agains” published by the Swedish Government in 2006.

¹⁰ This study will not give an unpacking of the semantic inclination of *never again*, as this goes beyond its task. However, it highly recommends further research in this area.

afterthoughts of the Holocaust at the end of World War II, manifested in the Dachau Concentration Camp Memorial Site of 'Nie wieder Dachau' – '*never again* Dachau' (Edkins, 2001). This assumption seems insufficient as we can trace it as far back as to "the biblical imperative of memory, *Zakhor*¹¹, derived from the crucial order in Deuteronomy¹² 5:15: 'And remember that thou wast a servant in the land of Egypt, and that the Lord thy God brought thee out thence through a mighty hand and by a stretched out arm' (Kellner, 1994: 128)". This directive to commemorate the past as a notion of 'again and again', symbolised in the repetition of the Sabbath, creates the tension between historical remembrance (a repetition by definition) and the historical representation of the Holocaust in terms of *never again* (a repetition by urgency).

Never again becomes thus a militant slogan that engages in a certain pattern of revenge, "ready to head off any new Holocaust with arms if needed" (Aronson, 1980: 64). However, this slogan becomes naive in light of the genocides that have occurred both after and before the Holocaust. Aronson (*ibid.*: 65) explains,

It becomes clear that optimism is an illusion [and that] none of us can wake up innocently any more to a pristine world, react childlike to the singing of birds, blue skies, or the promise of happiness. Whatever its source, these centuries, especially the twentieth, have demonstrated a deep-seated human capacity for radical evil whatever the social system, whatever the technological level. This is the meaning of Adorno's remark that poetry is impossible after Auschwitz¹³.

Simultaneously it also positions the Holocaust into something unique, something that marks the end of naivety; one can say it transforms the Holocaust into the

¹¹ The Torah refers to two requirements concerning the Sabbath, i.e. to "keep it" (*shamor*) and to "remember it" (*zakhor*).

¹² The Deuteronomy is the fifth book of the Hebrew Bible and the fifth of five books of the Jewish Torah/Pentateuch.

¹³ Adorno wrote in 1949 "To write a poem after Auschwitz is barbaric", published in "An Essay on Cultural Criticism and Society," in *Prisms*, p. 34.

cradle of horror. Consequently, it blurs the fact that there have occurred mass atrocities before the Holocaust. This assumption forms the backdrop of the *Historikerstreit*, where the uniqueness and the moral meaning of the Holocaust was bitterly debated. The debate was initiated by Jürgen Habermas, who in 1986 published *‘Eine Art Schadensabwicklung: Die apologetischen Tendenzen in der deutschen Zeitgeschichtsschreibung’* where he criticised several German historians, among others Andreas Hillgruber, Ernst Nolte and Michael Stürmer, for being apologetic about the German past. The debate brought to light difficult questions about whose identity should be studied, through which methods and for which purposes.

The debate gave rise to a wider debate about the political use of history, how both poles of the political spectrum seek to instrumentalise historical consciousness to support very different models of identity in the present. Hillgruber (1987, pp. 66-67) would bring forward that the Holocaust did not differ significantly from other genocides, and even had common origins to other genocides. This statement in itself did not trouble Habermas – and it is also found in Hanna Arendt’s (1948) thesis on the imperialism of racism as a ‘greenhouse’ of totalitarianism. What troubles Habermas is the political consequences that come with this statement and how through this revisionism, Hillgruber seeks to nullify Germany’s responsibility for its own past.

A continuation of the *Historikerstreit* can currently be found in literature that seeks to engage in connecting the Holocaust with colonialism, as for example the article by Gerwarth and Malinowski *‘Der Holocaust als ‘kolonialer Genozid’?’* which discusses the similarities between European colonialism and German National Socialism, and the question of whether there was a direct continuity between ‘Windhoek and Auschwitz’.

The slogan *never again* – with its use in ‘Never again Dachau, Auschwitz, Buchenwald’, ‘*Never again* Holocaust’, ‘*Never again* war’, has thus become closely linked to political power struggles in the different camps of history-writing which gives an important theoretical reminder to everybody who studies this area, but

particularly the field of transitional justice that “theory is always for someone and for some purpose” (Cox, 1981: 128).

Thus, the urge for the *never again* in the final report of the South African TRC becomes problematic. It either writes itself into the apologetic tendency of and an uncritical praxis within history writing, or it can be criticized for consciously instrumentalising historical consciousness to support a certain political development in the present. In the case of the the TRC, the Commission has been criticised for being biased (Jeffrey, 1999: 101). The TRC has also being criticised for promising too much and by this failing to achieve their promised goals (Simpson, 2002). For further discussion of this issue, see chapter four.

2.3.2. Sustainable Peace

In “Peace by Peaceful Means”, Galtung (1996) focuses solely on peace, leaving sustainability to be merely a time factor, rather than a variable that needs specific consideration. Since then there has been a shift in attitude towards sustainability, since it is in the interest of all actors involved to sustain peace and it is no longer divided from the time factor. Galtung’s distinction between negative and positive peace, which derives from an article in 1969, has received increasing recognition. According to Galtung (1996: 9), there are two compatible definitions of peace: “Peace is the absence/reduction of violence of all kinds” and “Peace is nonviolent and creative conflict transformation.” Both follow the assumptions that “[p]eace work is work to reduce violence by peaceful means” and “[p]eace studies is the study of the conditions of peace work” (*ibid.*). This study argues that Galtung’s structural or positive peace leans in its foundation towards sustainability.

Lederach (1997: 75) suggests “*sustainability* indicates a concern not only to initiate [a change from one status to another] but also to create a proactive process that is capable of regenerating itself over time – a spiral of peace and development instead of a spiral of violence and destruction.” There is, in other words more to sustainability than the time factor, overcoming short-term crisis response and leading to long-term structural transformation. To quote Lederach (*ibid.*) again, “...

the key lies in the *relationship* of the involved parties, with all that term encompasses at the psycho-logical, spiritual, social, economic, political, and military levels.” Lederach propagates long-term peace through the peace building of local people and their cultures. Therefore he finds a need for “practical mechanisms by which our vision of a desired future can be used to define our response to the crisis; otherwise, the crisis and its dynamics will define the future” (Lederach, *ibid.*: 79). In his chapter on resources, Lederach is very clear about making it understood for the donor community that the primary goal is “to find ways to support, implement, and sustain the building of an infrastructure for peace over the long term” (Lederach, *ibid.*: 87). This “vision of a desired future” (Lederach, *ibid.*: 79) and the question about the role of the donor community is exactly where the study of political development contributes to peace research, where it changes the singular use of vision into the plural use of the term, and simultaneously and critically discusses the role of the donor community – as is done beyond others such as Hanlon (2004) and Andersen (2000).

The challenge is to find out how the success of sustainable peace can be grasped theoretically. Pankhurst (1999: 244) states “[t]here is no established normative or deductive theory of the chances of success of post-conflict justice and reconciliation.” There is not quite an agreement on what ‘success’ actually means. However, in this study, success of post-conflict justice and reconciliation does manifest itself as ‘sustainable peace’. Pankhurst (*ibid.*) proposes that post-conflict situations are located between the following scenarios:

1. A minimal peace settlement with no addressing of social justice; minimal rule of law and personal security; no allocation of blame for war crimes and complete impunity; ‘low intensity’ democracy and fragile protection of human rights.
2. A complex peace accord with international support and local political agreement for longer-term provision of: processes of truth revelation, prosecution, amnesty and reconciliation; rule of law; ensuring

absolute standards of human rights; facilitating widespread participation in associational life and democratic political structures.

However, Pankhurst's two point scenario has been argued against, since it is exactly the international community that has been accused of supporting 'low intensity' democracy or "democratic minimalism" as used by Ostheimer (2001).

According to Samuels (2005: 728), in order to build sustainable peace three interrelated transformations are required:

(a) transformation of the society from one that resorts to violence to one that resorts to political means to resolve conflict, requiring that the elites negotiate and that there should be widespread social dialogue and reconciliation; (b) reform of the governance framework to seek to ensure both that a negotiated governance arrangement between parties prevents future conflict and the adoption of basic democratic governance; and (c) the creation of meaningful institutions that will be sustainable after the mission leaves. These institutions cannot be imposed from outside, but must be bodies that are able to perform their core function and are committed to doing so.

However, Samuels' and Pankhurst's angles are linked to peacebuilding missions; that is why the focus of their work is on the 'mission' and on 'international support'. In other words, their starting point is a force coming from the outside, instigating reform. However, they agree with Lederach in that institutions and structures cannot be imposed from the outside.

Sustainable peace is thus left to each scholars own definition – even though there are certain common premises. This study incorporates Galtung's structural positive peace supported by Lederach and reminded by Pankhurst that there is a lack of theory when it comes to the question of sustainability in the field of peace studies.

When it comes to sustainable peace and political development, the two issues have been closely linked. In the criticism of the TRC it has been frequently pointed

out that the lack of political will to implement the recommendations brought about by the final report of the TRC is one of the major setbacks to achieve sustainable peace (Teitel, 1997; Stanley, 2001).

2.4 Conclusion

Transitional justice manifests itself as a broad field with possibility to find local solutions to complex and complicated problems. However, it also reveals itself as dominated by politically-motivated discourses, be they historical or contemporaneous questions that surround transitional justice; there can additionally be found an influence of theories within peace studies. Its link to the discussion of democracy should not be underrated, and has been openly criticised. It seems that the broader field of transitional justice has uncritically adopted the connection between democracy and development as earlier propagated by academics within development studies. Thus, as has been shown, development studies are in a crisis and have openly reconsidered the democracy-development nexus that lies at the foundation of the field.

There seems to be a trend towards an analytical-descriptive approach to the study of the transitional justice-peace-development relationship, which is contrasted to a normative approach. However, a constructivist tendency can be found – highly embedded in the middle ground position of constructivism – which keeps the normative approach alive, and which is hereby suggested to be combined into one theory rather than separated into different approaches.

For the remainder of this study, the findings of the section 2.3.1. on the origins of the slogan *never again* and 2.3.2. on the issue of *sustainable peace* will be important since the study focuses in the next chapter on the South African TRC and its origins. These two sections have shown that the slogan *never again* cannot be as easily applied to the South African setting as it has been done uncritically in the Argentinean case, for example. This chapter has also shown that sustainable peace needs some further definition, and this will be discussed by focusing primarily on the *never again* and the sustainability of peace efforts undertaken by

the South African TRC, which will be discussed in chapter 4. Sustainable peace is here understood as closely linked to Galtung's and Lederach's idea of structural peace, which means that sustainable peace, is more than the absence of war (Galtung's negative peace). The goal is to find ways to encourage, implement, and continue the building of an infrastructure for peace over the long term, through structural transformation embedded in local solutions through local peoples and their cultures.

Chapter Three: Background of South Africa's TRC

3.1 Introduction

This chapter will provide background information on the South African TRC. It will first introduce historical events that are important in order to understand the climate in which the TRC was established. By this it will briefly touch upon the history of segregation and how it developed into the Apartheid state with the two stages of Apartheid, first 1948, then 1960. It will then introduce the most important players who were involved in the turn from segregation to resistance. Thereafter it will provide an overview of the context of negotiated settlement, in which the TRC is located. This will then lead to looking specifically at the South African TRC and its wider role in the negotiated settlement. This information comprises the historical background of the TRC, which is an important starting point for the rest of this thesis, since many of the conclusions drawn during this analysis will involve references to the historical deprivation of human rights as put forward in this chapter.

From establishing a picture of the historical context of South Africa, the study focuses on the wider role of truth commissions within historical transitions in general, by focusing on the South African TRC, giving its background, explaining its mandate and operationalisation, its outcome as well as its recommendations. It is necessary to give this background of the TRC, as chapter four will give an analysis of how the TRC established whether it achieved sustainable peace. Finally, to prepare for the subsequent chapter, this chapter provides the reader with some of the relevant shortcomings of the TRC.

3.1.1 Short history of Segregation

In 1700, a largely economically independent African peasantry remained organised within their own social and political systems, while British and Dutch colonial rule established commercial and agricultural centres in the coastal

regions. Through the discovery of diamonds in 1867 and gold in 1886 (Marais, 2001: 8), this independence was destroyed, as the farmers were needed as cheap labor for the mines and for the emerging capitalist agriculture. According to Marais (*ibid.*), it is here the definite origins of South Africa's status as a 'Two Nation' society occurred.

The rise of an urban African population gave hope that a multiracial educated elite could challenge the system. In January 1912 the South African Native National Congress (SANNC) was formed, which a decade later would change its name to the African National Congress (ANC). National in its effort, it was "dedicated to overcoming inter-African ethnic divisions and to extending citizenship and franchise rights to all South Africans on a non-racial basis" (Dubow, 2000: 3). The 1913 Natives Land Act was the first major challenge to the newly founded party; it prohibited Africans from buying land outside their native reserves, which was only 7,3 percent of the South African land area (Marais, 2001: 9). The SANNC reacted by sending two delegations to England in 1914 and 1919 to emphasise the "loyalty displayed by blacks to the British cause during the South African and the First World Wars, and remind the King of his obligations to uphold colour-blind principles throughout the Empire" (Dubow, 2000: 6). Even though the SANNC was not successful in defeating the Land and Union Acts, in fact it was later on accused of being "overly deferential, naïve, and elitist" (*ibid.*), it positioned itself successfully as a liberal-minded and centrist organisation, and was to play a significant role in the history of South Africa.

During industrialisation, two different developments can be observed: Many Africans were urbanised – this group was basically comprised of black African men – and simultaneously they were racially divided both in labour and skills. The second development was that many Africans were barricaded by law into 'native reserves'.

By 1939 the African proletariat had grown to reach 800 000 and workers had become increasingly combative and organised into workers unions (Marais, 2001: 11). The government responded by giving white workers a bigger stake in the

system¹⁴ and the privileges it offered, and by these actions hardened the 'Two Nation' society. Alex Hepple (1966) states:

It was a struggle of white men, striving for a higher standard of life and imbued with a fiery belief in their cause which carried them into bloody strikes, violence and rebellion. Their main enemy was the Chamber of Mines, a body of men who owned the rich gold mines. The quarrel revolved around the Chamber's low-wage policy. This conflict greatly influenced the pattern and direction of trade unionism in South Africa. It introduced the race factor into labour economics and steered white workers into support of an industrial colour bar, with all its damaging effects on workers' solidarity.

Strong economic growth after 1933 enhanced industrialisation; however, the decision to take South Africa into World War II in 1939 had severe consequences for the population: living costs went up and the government reacted to workers strikes with extreme repression. Marais (2001: 13) points out that state repression had a crushing effect on the resistance on both black and white trade unions. The number of union members went down dramatically, and by 1935 the ANC was 'literally dead'¹⁵.

3.1.2 From Segregation to Apartheid State

South Africa's 'Two Nations' further hardened after the surprising victory of the white supremacist National Party (NP) in the 1948 election. The NP's 'Apartheid' system¹⁶ enforced structures already commenced by colonialism and the emergence of capitalism (Marais, 2001: 16). Apartheid is an Afrikaans word

¹⁴ The Pact Government (1924-1934) imposed a restriction on the electoral power of non-Whites and kept the white voters happy which earned them a re-election in 1929.

¹⁵ Stated by J.B. Marks, a prominent member of the Communist Party of South Africa (CPSA). Throughout the 1920s the CPSA focused on organising African workers around issues of trade union rights and national liberation demands, and by 1925 the party had a majority of Black members and in 1928, the CPSA called for Black majority rule. It was also during this period that the CPSA and the African National Congress (ANC) began a close working relationship.

¹⁶ Racial discrimination was institutionalized through the enactment of apartheid laws in 1948.

meaning 'separateness', where a legal system classified South Africans into racial groups – White, Black, Indian, Chinese and Coloured, among other categories, with Apartheid laws regulating segregation in literally all areas of life. A welfare state was built up for the white elite, while the exploitation of cheap African labour increased. It has to be mentioned that alongside Apartheid, the 'homelands' system was built on and safeguarded by a black elite. Composed mainly of local chiefs and administrators, and a minute bourgeoisie consisting of local businessmen and civil servants, this elite benefited from Apartheid policies. Local chiefs to govern the 'homelands' were often directly put in place by the government and usually not accountable to the community. This system, described as 'decentralised despotism' (Mamdani as quoted in Thornton, 1996) created a minority of people who had a stake in the upholding of Apartheid and, hence, could act as a bulwark against radicalism and progressive political movements. This constellation – a small administrative and political elite coupled with a small economic elite – enabled the apartheid government to control the 'homelands' without having to intervene directly. The homeland policy created divided communities and nepotism, and was able to contain political resistance to a certain degree.

Parallel to the homeland policy, the NP regime enhanced capitalism through the change from a labour tenant system to a contract labour system. Millions of Africans were forcibly removed from white-owned farms and from the urban areas declared 'white'. Additionally the pass law system was expanded and tightened (Marais, 2001: 20). Organisations that would support the African majority (like trade unions and the CPISA) came under repeated attack.

The ANC Youth League (ANCYL) was formed in 1949 with strong resistance fighters like Nelson Mandela, Oliver Tambo, Walter Sisulu and Joe Matthews. Though with radical ideas, they all were ascending from the African middle class. The South African Communist Party (SACP) criticised the ANC for its roots in the black bourgeoisie. The South African Congress of Trade Unions (SACTU) was launched in 1955, and the number of strikes increased. The ANCYL campaigned

for a Freedom Charter of 1958¹⁷, which was supported by the ANC, the South African Indian Congress, the South African Coloured People's Congress, the South African Congress of Democrats and SACTU. The Freedom Charter presented a democratic alternative to Apartheid.

The Apartheid system functioned through a severe penalty system, which included prohibition of political protests, even non-violent protests. Thousands of citizens were tortured, died in custody, sentenced to death, banished or imprisoned for life. The South African Communist Party (SACP) was banned and worked underground and in exile from the 1950s.

3.1.3 'High Apartheid' and Resistance

Apartheid's second phase in the 1960s was characterised by the move away from the segregationist doctrine and towards a more dangerous policy which Butler (2004: 19) calls "separate development". The NP's move towards ethnic segregation was a reaction to the decolonisation movements elsewhere in Africa (*ibid.*) and led to the creation of 10 Bantustans and a re-tribalisation of the bureaucratic elites of the Bantustans. Ultimately, between 1960 and 1970, the population of the Bantustans grew by almost a million, whilst the African population in White urban areas fell by over 200 000 (*ibid.*: 22). While African political rights were confined to customary rule in the Bantustans, the NP elaborated the centralisation of state power under the pretence of white, 'democratic' elections.

The Pan African Congress (PAC) was formed in April 1959 as a politically experienced and strong splinter group from the ANC, and announced the start of its anti-pass campaign on 21 March, 1960, a week before ANC's planned demonstration. The gathering ended up with thousands of protesters gathering at the Sharpeville police station, and the police opening fire on the unarmed protesters, killing 69 and wounding more than 180 people. "Most people were shot in the back", writes Dubow (2000: 62). The Sharpeville massacre intensified the

¹⁷ See Appendix 1

unrest and the anti-pass campaigns in other parts of the country. However, the police crushed the resistance, and by 8 April 1960, both the PAC and the ANC were banned (*ibid*: 63) and went into exile or worked underground. These factors led to the ANC's decision to turn to armed struggle in 1961 and launch Umkhonto we Sizwe (MK), while the PAC embarked on their armed wing, known as Poqo, which means 'Standing Alone' or 'Pure' (*ibid*: 66).

The hardships, racial segregation and struggle continued until the early 1990s. In the 1980s there was a shift in the resistance movements, which Marais describes as a development from resistance to 'revolution'. The establishment of the United Democratic Front (UDF) helped to overcome the vast multiplicity of organisations in favour of a broad popular front. The years before negotiations started were characterised by Marais (2001: 62) as "perhaps the heyday of South African civil society. [...] a flowering of autonomous activities, linked laterally and not subjugated to hierarchical ideological and strategic conformity." Marais (*ibid*.: 63) states further:

Fighting escalated between rival factions (sometimes even within organizations) as resistance became increasingly violent, disorganized and alienated. The 'comtsotsi' phenomenon (lumpen township elements combining politics with crime), the use of young gangsters as political shock troops, the remorseless and sometimes violent intolerance shown towards dissent and heterodoxy within the popular movement combined with the brutal methods used by the security apparatus to exploit these dynamics and sap resistance of direction and discipline.

It has to be noted that between the release of Mandela in February 1990 and April 1994, when South Africa effected its first free election, 14 800 people were killed (Marais, 2001).

3.1.4 Negotiated Settlement

The ANC had managed to achieve hegemony among the popular masses, and led the transition talks with the National Party (NP). The 'revolution' never really

happened (Marais, 2001) because of a dysfunction of the movement combined with the fact that MK never was a real threat to white rule (Marais, 2001). The political climate was marked by a “global and local recession, a crisis of order in the country typified by extensive political violence, declining confidence of foreign and South African investors alike, expressed as lack of fixed investment and actual capital outflows” (Allen, 2006: 46). The ANC was powerful enough to threaten with continued financial sanctions unless negotiation moved forward, and elections were held¹⁸. The ANC was also able to show that they had won the support of foreign economic partners through the ‘Convention for A Democratic South Africa’ (CODESA) talks¹⁹. From 1989, the two players were in a stalemate, with both the NP and the ANC pushing for negotiations.

Another factor came in the period leading up to negotiation, as the power struggle within the NP was shifted when Botha suffered a mild stroke in 1989, leaving the scene to de Klerk, who would move to the political centre and towards negotiations. As remarked in de Klerk’s famous speech of February 2, 1990: “Serious reforms were set in train, among them the unbanning of the ANC, the release of Mandela, and the appearance of cooperation with the UN and other international bodies to facilitate a transitional process in the country” (Allen, *ibid.*: 55). This paved the way for a short-lived Government of National Unity (GNU) consisting of the ANC, NP and the Inkatha Freedom Party (IFP), which stayed dependent on many of the former regime’s civil service institutions and personnel. On May 8, 1996, the final Constitution was adopted by the National Assembly, and a day later de Klerk and his National Party withdrew from the GNU, with effect from June 30, 1996.

¹⁸ This threat was weakened but not limited through such scandals as the Dutch and German non compliance in respect of steel imports or the British continued unofficial trade in monetary gold with South Africa.

¹⁹ CODESA was established by the end of 1991 as a negotiating forum where all political parties could be represented. Several parties including the Conservative Party (CP), Azanian People’s Organisation (AZAPO), the PAC and far-right groups decided not to participate.

3.1.5 The TRC in the Negotiation

Simpson (2002: 225) is very clear about depicting the TRC as a significant victory for the country. He states: "Instead of pursuing the convenient, politically expedient path of collective amnesia, the opposing parties were able to agree that public space should be made available to victims and survivors, and to the country as a whole, to look back on the past and recount the horrors of the apartheid system." How did this settlement come about? According to Van der Merwe, Dewhirst & Hamber (1999: 56), "the development of the TRC in South Africa was crystallised by two specific political events, namely the Motsuenyane Report and the post-amble to the South African Constitution". The Motsuenyane Report was an ANC commissioned report aiming at investigating human rights abuses within ANC detention camps. While accepting the findings of the report, the ANC urged for a commission to investigate all abuses. Particularly Kader Asmal, a key ANC negotiator during the transition, promoted this stance:

We must take the past seriously as it holds the key to the future. The issues of structural violence, of unjust and inequitable economic social arrangements, of balanced development in the future cannot be properly dealt with unless there is a conscious understanding of the past (Asmal, 1992, as quoted in the TRC vol. 1, chap. 4, 6).

Decidingly, however, was the finalisation of the Interim Constitution. Here the question of amnesty was crucial as the NP was not prepared to sign any agreement that did not provide for amnesty. A compromise was reached in order to secure the transition to democracy, and it was written into the Interim Constitution²⁰ that amnesty would be granted to those who had committed abuses. No implementation mechanisms were at that point decided upon.

²⁰ **National Unity and Reconciliation (Act 200 of 1993) as quoted in the Constitution of the Republic of South Africa Act 200 of 1993:**

This Constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of

Thus the TRC was not a result of a broader grass roots movement, but was a product of party-political concerns combined with an international trend in how to deal with the past. However, civil society engaged afterwards on the input towards the draft legislation of the TRC. Dr. Alex Boraine, the former Director of Justice in Transition, who was to become a central facilitator of the discussions around the establishment of the TRC, and later on becoming one of the commissioners of the TRC, was commissioned to lead the draft of the legislation. The raw materials for these drafts were mainly gathered at conferences and workshops held by Justice in Transition. However, the NP, military and police representatives declined invitations to participate in the workshops.

The final draft was then approved to be presented to Parliament, which engaged in an excessive second round of public input and discussion. At the end the bill was passed with ANC, NP, Democratic Party (DP – now called Democratic Alliance, or DA) and PAC supporting it, the IFP abstaining, and solely the Volksfront voting against it.

Importantly, as Hayner (2001: 41) points out, “[o]nly later was the amnesty linked to a truth-seeking process.” At this point it is important to stress that Asmal’s political stance, declaring the importance of a fellow history for the development of South Africa, has little support in academia.

South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences 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 determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

Nkosi sikelel' iAfrika. God seën Suid-Afrika

Morena boloka sechaba sa heso. May God bless our country

Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika

3.2 Mandate of the South African TRC

The mandate of the South African TRC is complex and consists of several pages. However, the main emphasis lies on 4 points that are quoted below:

OBJECTIVES AND FUNCTIONS AS PRESCRIBED IN THE ACT

The Act identified the following objectives and functions:

3. (1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by

a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;

b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;

c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights (TRC, vol. 1, chap. 4, 31).

For this study and its aim, it is notable that in paragraph 32 of the same TRC final report vol. 1, chap. 4, the authors of the final report put forward the tasks in brief, and the prevention of future violations of human rights is mentioned as no. 2:

- a) analysing and describing the “causes, nature and extent” of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations;
- b) making recommendations to the President on measures to prevent future violations of human rights;
- c) the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;
- d) granting amnesty to persons who made full disclosure of relevant facts relating to acts associated with a political objective.

The TRC is asked to work through an inductive (understanding) reasoning, meaning that it moves from specific observations of the gross human rights observations (establishing micro truths) to a broader generalization of the injustice done in order to give recommendations and granting amnesty (establishing macro truths). This broader generalization is partially done through the help of just war theory. We will come back to all three approaches in chapter 4 of this study.

3.3 Operationalisation of the South African TRC

The South African TRC consisted of 17 commissioners, with Archbishop Desmond Tutu as chair. It was inaugurated in December 1995, but hearings and investigations did not start before April 1996. The commissioners headed a staff of three hundred, a budget of around \$18 million each year of its two-and-a-half years of existence (from 1995 to 1998) and worked from four large offices around the country. According to Hayner (2001: 41), it “dwarfed previous truth commissions in its size and reach.”

The Commission worked in three committees: 1. The Human Rights Violations Committee, responsible for collecting statements from victims and witnesses and recording the extent of gross human rights violations which occurred from 1 March 1960 to 10 May 1994; 2. The Amnesty Committee, responsible for processing the individual applications for amnesty; 3. The Reparations and Rehabilitation Committee, which, as the name indicates, was responsible for the formulation of recommendations and the architects behind the reparation programs.

The Commission decided to host institutional hearings, which included: “the media, business, prisons, the faith community, the legal system and the health sector. All these sectors had, over the years, come under attack for what was seen to by some as their complicity with the apartheid system” (TRC, vol. 4, chap. 1, p. 6). Additionally it held special hearings on three issues: compulsory military service, children and youth and finally women.

The Commission had to produce a final report, which was released in October 1998 in the form of a five-volume report – and which is the primary source of this thesis. The Amnesty Committee continued its hearings for almost two years after the release of the final report.

Again, it has to be mentioned that choices taken throughout the process of the TRC had consequences for the rest of the proceedings. By this operationalisation it also entailed every definition that the Truth Commission agreed upon. Part of the operationalisation would be how the TRC announced its work and how it got victims and perpetrators to testify, including an evaluation of the work done. This, however, goes beyond the task of the current study.

3.4 Outcome of the South African TRC

22 000 victims of the Apartheid system gave statements to the TRC, whereof around ten percent gave testimony in public hearings. The Human Rights Violation Committee found that, “... gross violations of human rights were perpetrated in the conflicts of the mandate era. These include: The state and its security, intelligence and law-enforcement agencies, the SAP, the SADF and the NIS ...”

(TRC 1998, vol. 6, chap. 2, paragraph 2 – 6). The Commission endorsed the international position that “apartheid was a crime against humanity” (*ibid.*) with one important finding: namely, that “the former state was the major violator” (*ibid.*).

Furthermore, three main parties were identified: The state, the ANC and the IFP. When it comes to the ANC, the commission concluded the following:

The commission noted that, of the three main parties to the conflict, only the ANC committed itself to observing the tenets of the Geneva Protocols and, in the main, conducting the armed struggle in accordance with international humanitarian law. ... However, the Commission drew a distinction between the conduct of a ‘just war’ and the question of ‘just means’. The Commission found that, whilst its struggle was just, the ANC had, in the course of the conflict, contravened the Geneva Protocols and was responsible for the commission of gross human rights violations. For this reason the Commission held that the ANC and its organs – the National Executive Council (NEC), the Secretariat and its armed wing Umkhonto we Sizwe (MK) – had, in the course of their political activities and in the conduct of the armed struggle, committed gross human rights violations for which they are morally and politically accountable” (TRC, 1998, vol. 6, chap. 3, section 3 and 4).

Here the Commission takes into use the just war theory which will be explicitly dealt with in chapter four of this thesis. At this point it is important to observe that the ANC was made accountable for gross human rights violations specifically because of the Commission’s traditional use of this specific theory. This has major consequences for the outcome of the TRC since it practices the approach of shared guilt.

Concerning the IFP, the Commission stated the following:

The IFP was responsible for the commission of gross violations of human rights in the former Transvaal, Natal and KwaZulu, against persons who were perceived to be leaders, members or supporters of

the UDF, the ANC or its alliance partners. Such violations formed part of a systematic pattern of abuse which entailed deliberate planning on the part of the organization (TRC, 1998, vol. 6, chap. 5, p. 673, paragraph 1).

The IFP was included in the list of perpetrators, which by now contained most parts of the South African political society.

Concerning the amnesty process, the Amnesty Committee had legal powers of enforcement, which meant that

the applicant was released from all criminal and civil liability arising from the incident, and indemnification that also extended to all institutions or persons who incurred vicarious liability for the incident. Successful applicants serving prison sentences in respect of an incident were, therefore, entitled to immediate release and the expunging of any relevant criminal record (TRC, 1998, vol. 6, sec. 1, chap. 1, 4).

Important to mention is that the Amnesty Committee had legally binding power, while the Reparations and Rehabilitation Committee only had power to make recommendations to the president. There exists ample literature dealing with and criticising the South African amnesty process.

It is impossible here to list all the findings of the Amnesty Committee. Most research concludes that it was a major benefit that there was no blanket amnesty, and that the amnesty was linked to full disclosure and therefore a conditional amnesty. "A total of 7116 individuals applied for amnesty, of which 1167 were granted. Of the 7116 applications, 5143 were refused administratively without a hearing" (Sarkin, 2008: 94). Sarkin (*ibid.*: 114) comments that it was surprising that so few individuals applied for amnesty, and concludes that:

[h]ad there been a parallel criminal process to provide backup to the TRC's amnesty process, many more perpetrators would have not doubted the political will and ability of the state to pursue them. A

dedicated prosecuting unit would have provided a greater incentive to those waiting to decide whether to apply for amnesty to do so.

The lack of will of perpetrators to come forth, and especially of perpetrators in the rank of senior officials, raises many practical, constitutional, and legal issues, especially since the commission had “unprecedented authority to call witnesses and alleged perpetrators to testify, and the ability to enter premises to locate documents related to its mandate” (Chapman & van der Merwe, 2008: 12).

It has been mentioned from very different sources that the South African mandate was part of a political compromise. This is on the one hand manifested in the amnesty proposal, which has been discussed before. On the other hand, the political compromise is to be found in the definitions of what is to be seen as “gross violations of human rights” and the tendency of individualisation of responsibility. Mamdani (2002: 35) puts it as follows:

The big finding, one that led to a public split in the Commission and appeared as a minority view in the Report, was that apartheid was indeed “a crime against humanity” [TRC 1: 70-71, 78]. At the same time, the Commission acknowledged 20,000+ “victims” of apartheid for whom it recommended reparations [TRC vol. 5, chap.2]. Could a “crime against humanity” that involved a racial and ethnic cleansing of the bulk of its population have only 20,000+ victims?

This decision of individualising victims has severe consequences for both the victims and perpetrators. In this concern, Mamdani (2002: 34) points out that through personalising crimes against humanity, the Commission chose to focus exclusively on the civil regime, meaning the white so-called democratic Apartheid system, and ignored the customary regime, that is the black Bantustans’ administration working according to tribal rules, which “disaggregated the native population into tribal groups – each to be administered under a separate set of laws – in the name of enforcing custom” (*ibid.*). This choice will later have consequences on how to rebuild the legal system in South Africa. Simpson (2002: 220) questions the possibility for attaining reconciliation and preventing the re-

emergence of human rights violations, since with this mandate, the TRC's work has been "significantly constrained by a representation of past conflict premised on politically defined cleavages, which are construed as neatly separable analytically from broader patterns of criminal and community violence in South African society." As Bruce & Kirsten (2009) point out in their report, the legacy of apartheid and colonialism continues to be relevant to understanding violence in South Africa today. The question is thus whether the work of the TRC participated in enforcing a violent South African culture. We will come back to this in chapter 4 of this study.

3.5 Recommendations of the TRC

One of the objectives of the Commission was to provide for:

The taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity, of victims of violations of human rights. Pursuant thereto, section 4(f) states that one of the functions of the Commission shall be to make recommendations to the President with regard to the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims: measures which should be taken to grant Urgent Interim Reparation to victims. ... the State President, in consultation with the Ministers of Justice and Finance, will establish a President's Fund. All money payable to victims in terms of regulations promulgated by the President shall be disbursed from this fund (TRC, vol. 5, chap. 5, pp. 171-172).

There is no legal power behind the Committee on Rehabilitations and Recommendations (CRR). However, the Committee divided the reparations into five sections: 1. Urgent Interim Reparations (UIR), 2. Individual Reparation Grants, 3. Symbolic Reparations, 4. Community Rehabilitation and 5. Institutional Reform.

Overall they recommended that “each of the 22,000 victims registered should receive between ZAR 17,000 and ZAR 23,000 with the total budget amounting to some ZAR 2.8 billion over six years”, while the UIR was intended to provide immediate financial assistance to victims to access services that they needed. Those who qualified under this recommendation included “victims or their relatives and dependants who have urgent medical, emotional, educational, material and/or symbolic needs” (Colvin, 2006: 188). The South African government was presented with the recommendations in October 1998. Then in April 2003, President Thabo Mbeki stated that “the victims who had testified before the Commission were to be given a once off payment of ZAR 30,000 each” in which the president focused not on financial gains, but “issues of symbolic reparation and community restitution” that would facilitate healing among South Africans (Naidu, 2004: 2). However, just over 16,000 recognised victims received this amount (Naidu, 2004: 4).

3.6 The Achilles Heel of the TRC

One of the shortcomings of the TRC is the lack of results in terms of the intended consequences of the TRC. If sustainable peace is to be achieved there needs to be an active alleviation of the remaining large scale poverty, and improved service delivery for all. In other words, there has been little change in the structural problems which underlined apartheid. Thus, although negative peace has been established in South Africa, positive peace has not. Structural inequalities have not been adequately addressed. Unless these structural issues are properly dealt with there cannot be sustainable peace, as evidenced in the recent wide-spread service-delivery protests, or as Simpson (2002: 247) in his evaluation of the TRC concludes: “we will have to go beyond formal political and constitutional change to tackle the deep-seated social imbalances that underlie the culture of violence at the most fundamental, structural level”.

This has to be analysed through one distinctive feature, namely that South Africa’s political transition was interlinked with globalisation. The ANC’s emerging neo-liberal economic policies was certainly a deal to legitimise its black economic

empowerment and some affirmative action. Ballard, Habib, Valodia & Zuern (2005) call this process “a globalization process tinged by colour.” Politically it is manifested through the shift from the Reconstruction and Development Programme (RPD), introduced by the ANC in 1994, to the Growth, Employment and Redistribution (GEAR) approach introduced during the Mbeki presidency in 1996²¹.

This shift is largely due to the context in which large South African companies took advantage of the opportunities presented by the global market, and began to shape the policy debate in South Africa. Furthermore, the IMF and the World Bank started lobbying soon after it became clear that the ANC would form the first post-apartheid government. These efforts were merged into the neo-liberal economic strategy the government adopted in 1996 (Bassett, 2008: 192)²². The latest figures from the government’s *Development Index* of 2009 show that inequality between the rich and the poor is increasing, and there is no doubt that the net effect of coupling economic globalisation with democratic transition has been devastating. “Inequality,” according to Bruce *et al.* (2009: 8), “and in particular increasing levels of inequality in the black community, reinforces the psychological legacy of apartheid.”

²¹ In South Africa the economic policy discourse since 1994 has circled around the questions of relationship between growth, inequality and economic structure. Specifically two strategies have been forwarded: developmental strategies and competitiveness strategies. While the latter seeks to improve productivity without guiding investment, the first focuses on restructuring the economy to achieve greater equity and employment (Makgetla, 2004).

²² In 1994, the economy was dominated by six powerful interlocked conglomerates: Anglo-American, Rand Mines/SA, Mutual, Gencor/Sanlam, Anglo-Vaal, Standard/Liberty Life and Rembrandt/Gold Fields. These controlled more than 70 per cent of formal sector economic activities. Their core activities were the productive and distributive activities associated with the mining and energy sectors and related manufacturing sub-sectors like smelting and mineral processing, as well as banks and insurance companies. These companies exerted structural power in the economy, with their interests well represented throughout the state. Liberalisation and deregulation, coupled with opportunities created by global neo-liberalism, made it possible for these corporations to restructure (Makgetla, 2004: 275). In the name of globalisation, they eagerly bought mining, natural resource and other companies around the globe, and further expanded their banking and commercial interests (Bassett, 2008: 194). South Africans were soon the biggest foreign investors in Southern Africa, though little was investment in new businesses. A second trend in globalization was the ‘de-nationalization’ of several South African firms in the late 1990s, “Anglo American, South African Breweries, Liberty Life and Old Mutual, which moved their head offices and primary stock market listings to London” (Bond as quoted in Bassett, 2008: 194).

Even though subsidies helped to build 630 000 new homes²³, the housing backlog has continued to grow (Marais, 2001: 190-191) and the impoverished were expected to pay full market costs. Protests in 2004 were met with harsh state repression, arrests and bail conditions, which is a reminder of the Apartheid era. Government and business leaders were eager to demonise these protests. At the same time, there was a new emphasis on pro-poor spending through a new economic policy framework, the Accelerated and Shared Growth South Africa (ASGISA) from 2006²⁴.

Another shortcoming of the structural changes in the aftermath of the TRC is the increase of violence and crime in South Africa. Johan Burger (2009: 10) at the Institute for Security Studies (ISS) concludes in his analysis of the 2008/2009 South African Crime Statistics that, "Violent crimes ... are dangerously close to becoming out of control" and that "[w]hatever we are doing to combat these crimes is not working."

Finally, it is pivotal to mention that the protests against the lack of service delivery have sadly been instigating xenophobic attacks. The perceived/lived inequity has taken on the face of the immigrant.

Political development in South Africa is closely linked to the question of racial redress and citizenship (Habib *et al.*, 2008). The issue of race and citizenship can feed into certain forms of violence, including xenophobia and racially motivated hate crime. According to Rauch (2004: 1) the complexity of the issue "must be assessed in relation to the country's apartheid history, as well as the processes of reconciliation best captured by the Truth and Reconciliation Commission (TRC)."

Rauch (*ibid.*: 9) further states that

the degree to which the TRC used race as an explanatory variable in its understanding of the abuses it investigated remains questionable. In

²³ These numbers include both built houses and the transfer of title deeds for small serviced plots of land on which people were expected to build their own shacks.

²⁴ However, critics state that ASGISA is merely GEAR combined with more infrastructure spending with reservations concerning accomplished profit.

some cases, 'race' was generally collapsed into 'political motive', as exemplified by the amnesty decisions in the Amy Biehl, Chris Hani and St James' Massacre cases. However, this was done inconsistently and the relationship between race and politics was not clearly defined. Overall, the reconciliation process engaged less with 'black and white' issues than with inconsistent 'political' definitions of perpetrators and victims. This has had the after-effect of divorcing race, and racial identity, from the violence of the past".

By this, as a transitional justice mechanism, the TRC paved way for a certain acceptance and legitimation of the violence of the past, which plays a key role in how violence is perceived in the present. From a political development point of view, violence has been kept separate from understandings of violence during the Mandela era (1994-1999), which embraced the idea of national unity and rainbow nation. The Mbeki era (1999-2009) on the one hand embraced race through his idea of the African Renaissance as exemplified in his "I am an African" speech in 1996 on the occasion of the passing of the new Constitution in South Africa. On the other hand he reinserted an economic dualism as the predominant way of understanding South African society. Zuma's position in this regard is still too early for prognosis, but he seems not to differ too much from the position during the Mbeki era – combining machinegun-grassroot Africanism with a continuous economic dualism.

3.7 Conclusion

This chapter has given background information about the history of segregation in South Africa from 1700 until today, with a focus on the Apartheid system, the movement from segregation to resistance, the background of the negotiated settlement and the importance of the TRC and the provision of amnesty during the negotiations. This chapter has outlined the mandate of the TRC, including a short discussion of the political inclination of the fact that the mandate was highly motivated by the results of the negotiations. It described the operationalisation of

the TRC, some of its outcomes with the focus on the three committees formed within the TRC, and finally some of its recommendations.

This chapter finished with an outline of some of the problems that South Africa still faces after the TRC, focusing on the issue of poverty and the lack and crisis of service delivery; crime and xenophobia. With the lack of structural changes after the TRC, poverty and inequality remain in place with new challenges that rise out of these structural problems. These problems have their root in the Apartheid system and are closely linked to the question of sustainable peace and the *never agains*.

This background information leads the study further into chapter four, where it will provide for an in-depth study of the measures proposed by the TRC to prevent the recurrence of abuses of human rights. This will elaborate further on the issues presented in this chapter, in the light of sustainable peace and the *never agains*.

Chapter Four: Sustainable peace and South Africa's TRC

4.1 Introduction

This chapter will primarily focus on the analysis of the Final Report of the South African TRC, concerning how it deals with its mandate when it comes to the *never agains*, the notion of sustainability of peace and its depiction of institutional and structural violence. To do this analysis, it will initially comment on the TRC's theory of choice – namely just war theory – in order to address the Commission's own preference of theoretical background.

Finally, this study will comment on chosen secondary literature which has evaluated the South African TRC. This secondary literature ranges from response to the TRC immediately after the presentation of the final report on October 1998, to comments on research published ten years later after the release of the report. This chapter will lean heavily on a textual analysis as outlined in chapter one.

4.2 Just war theory in the Final Report

In the Final Report (TRC, vol. 1, chap. 4, p 66, paragraph 64), the TRC claims that

... the Commission was guided by criteria derived from just war theory (which was referred to in several submissions made to the Commission by political parties), international human rights principles and the democratic values inherent in the South African Constitution. By using these criteria, the Commission was able to take clear positions on the evils of apartheid, while also evaluating the actions of those who opposed it.

The just war theory can be summarised by the following: "The just war tradition is based on the paradox that killing may be necessary to save lives, that the devastation of war may be required to prevent the destruction of deeply held values" (Williams & Caldwell, 2006: 309). The Commission underwent an analysis

of both involved parties according to these criteria. Its findings accepted the argument of the NP and Freedom Front (FF) that argued, “many people had clearly believed that they were fighting against Communism and anarchy and not, in the first place, for apartheid” (TRC, vol. 1, chap. 4, p. 67, paragraph 69). On the other hand, concerning the liberation movement, the Commission defined apartheid as a crime against humanity, but emphasised that “[this] does not mean that all acts carried out in order to destroy apartheid were necessarily legal, moral and acceptable. The Commission concurred with the international consensus that those who were fighting for a just cause were under an obligation to employ just means in the conduct of this fight” (TRC, vol. 1, chap. 4, p. 69, paragraph 74).

The following quote indicates how the Commission defines the just war theory in its Final Report: “Over time, philosophers have divided just war thinking into two parts, *jus ad bellum* and *jus in bello* – the before and after considerations separated by the point of entry into the war” (Williams *et al.*, 2006: 310). With other words, the Final Report considers *jus ad bellum* – “the moral reasoning that justifies the resort to war” (*ibid.*) and *jus in bello*, which concerns the means with which the war is waged and what kind of methods are used to carry out the conflict. However, as Williams *et al.* point out, there should be added *jus post bellum* principles, as the outcome of wars are invariably evaluated both in political and moral terms. Wars should hence be judged by three separate standards. This additional lens of judgement, the *jus post bellum*, could have turned the table of the outcome of the final report and corrected the Commission’s efforts to make both sides responsible for violations committed during Apartheid. However, since the Commission adopted a very traditional way of looking at the just war theory, the Commission adopted “the view that human rights violations could be committed by any group or person inside or outside the state: by persons within the PAC, the IFP, the South African Police (SAP), the South African Defence Force (SADF), the ANC or any other organisation” (TRC, vol. 1, chap. 4, p. 69, paragraph 77). It has to be made clear that it was not incorrect of the TRC, according to the *jus in bello*, to hold responsible both those who supported Apartheid and those who supported the liberation movements for unjust means

during the period of Apartheid rule. However, when looking at the outcome of the TRC it is evident that there is an imbalance in the Final Report in terms of which groups or individuals carry the majority of responsibility, and this is due largely to the lack of consideration of the *jus post bellum*. *Jus post bellum* in general regulates the ending of wars, and prepares for the transition from war to peace. There are some proposed principles. For the first the principle that a peace agreement should be proportional and publicly proclaimed. For the second, it should ensure that the war had an improving affect. With this follows a rights vindication, such as the rights to life and liberty and community entitlements to territory and sovereignty. For the third, a distinction should be made between leaders, soldiers and civilians; this excludes any sweeping socio-economic sanctions. For the fourth and fifth, there is the question of punishment where leaders should face fair and public international trials for war crimes. Additionally soldiers from all sides of the conflict should be held accountable for committing war crimes. Here the transitional justice mechanisms come in to provide with either additional tools to trials or alternatives to trials. For the sixth, financial restitution should be mandated, allowing all parties of the war to begin their own reconstruction. Finally the *jus post bellum* entertains a rehabilitation process including deep structural transformation towards a more just society (The Stanford Encyclopaedia of Philosophy). A just peace should include these ethical components in order to achieve a balanced exit from war. Behind these principles lies the belief that only through a well accomplished *jus post bellum* can there be sustainable peace. However, these aspects are dependent on a political development perspective, since *jus post bellum* is about a political redress, be it the important discussion concerning human rights, democracy, citizenship and deep structural transformation. It is important to acknowledge that these issues are extremely complex. To take one example: while most perpetrators received their amnesty and walked away, victims did not receive justice as easily, as reparations were pending (Colvin, 2006). More importantly, the TRC was given power to implement amnesty, while it was not given power to implement reparations. The TRC could only make recommendations about reparations to the state. In this

case the TRC accepted a selective justice mechanism and defended this as restorative justice that was supposed to bring about healing and restoration to all involved. It has to be added that prosecution since the closing of the TRC has been slow. Only four cases concerning human right abuses during Apartheid have been pursued and,

[i]n 2004, the National Prosecuting Authority (NPA) placed a moratorium on prosecutions of apartheid-era political cases in response to political concerns about the consequences of pending cases ... Indications are that only about 15 cases will be actively pursued in the next few years, as the costs of such cases and the political sensitivity are considered too high (Chapman *et al.*, 2008: 285).

The liberation movement's Umkhonto we Sizwe (MK), to take another example, has not been given enough credit for the Motsuenyane Report, a report written exclusively to undertake investigations of human rights violations inside MK and instigated by the ANC. Had *jus post bellum* been taken into consideration by the Commission, chances are that the TRC and its outcome would be much more clear in appointing responsibility to the Apartheid system and consequently its prosecution or any other way of punishing the guilty. We can see that trials in the aftermath of for example the truth commissions in Argentina and Guatemala have been very common and there is a certain political will to prosecute the guilty, while there can be observed a lack of political will to prosecute in South Africa (Allen, 2006; van der Merwe (2008)).

The consequences of the choice of just war theory is also manifested in the way the Commission deals with its specific mandate to give "recommendations of measures to prevent the future violations of human rights" (TRC, vol. 1, chap. 4, 31), because a decision to call for a shared responsibility of the atrocities committed would have serious implications for how to prevent future violations. Instead of giving the people of South Africa the moral obligation to ensure that future atrocities will not take place (view section 4.3), there should have been an

analysis of how to efficiently prevent future human rights violations, and a prioritised list of suggested recommendations should have been provided, with an explanation of why they were given and who would be responsible for carrying them out. It was never in the interest of the TRC that it did not have enough power to make sure that its recommendations were implemented. Neither was it in the interest of the TRC that due to lack of clarity in the TRC and its choice of theory, a majority of the people who benefited from the Apartheid system never experienced repercussions for their acquiescence, nor was any campaign implemented to effectively educate the beneficiaries of Apartheid on questions of moral responsibility and broader social implications of this. This has clearly had implications for the reception of the Final Report, especially on the side of the ANC, that initially had threatened not to cooperate with the Commission because they argued that they were involved in a just war (TRC, vol. 1, chap. 1, paragraph 41).

4.3 The *never agains* in the Final Report

The term *never again* is used eight times in total within the Final Report, while the term “to prevent from”/“the prevention of” is used 53 times. In the mandate it was chosen to use “prevent” in preference to *never again*. However, as the two terms are used in a similar manner and not least because of limitations on length, this study will focus on the use of the term *never again*.

The term is first used in chapter one of the Final Report and is linked to the notion of historical accountability, truth finding and a culture of respect for human rights:

In our case, dealing with the past means knowing what happened. Who ordered that this person should be killed? Why did this gross violation of human rights take place? We also need to know about the past so that we can renew our resolve and commitment that ***never again*** [researcher’s emphasis] will such violations take place. We need to know about the past in order to establish a culture of respect for

human rights. It is only by accounting for the past that we can become accountable for the future (TRC, vol. 1, chap. 1, p. 7, paragraph 28).

It is furthermore connected to self-examination; that is, to assign guilt not to others but to understand the evil in ourselves, as expressed in the TRC, vol 1, chap. 5, p. 133, paragraph 108:

This focus on the outrageous has drawn the nation's attention away from the more commonplace violations. The result is that ordinary South Africans do not see themselves as represented by those the Commission defines as perpetrators, failing to recognize the 'little perpetrator' in each one of us. To understand the source of evil is not to condone it. It is only by recognizing the potential for evil in each one of us that we can take full responsibility for ensuring that such evil will **never** [researcher's emphasis] be repeated.

Subsequently the phrase is connected to a moral obligation to carry South Africa beyond its Apartheid past and towards a more democratic state, as a nation. This is expressed in the TRC, vol. 1, chap. 5, p. 133, paragraph 109:

A second reason for the insufficient focus on moral responsibility beyond the narrow, direct responsibility of specific perpetrators of gross human rights violations was the widespread failure fully to grasp the significance of individual victims' testimony before the Commission. Each story of suffering provided a penetrating window into the past, thereby contributing to a more complete picture of gross violations of human rights in South Africa. The nation must use these stories to sharpen its moral conscience and to ensure that, **never again** [researcher's emphasis], will it gradually atrophy to the point where personal responsibility is abdicated. The challenge is to develop public awareness, to keep the memories alive, not only of gross violations of human rights, but of everyday life under apartheid. Only in this way can South Africans ensure that they do not again become complicit in the banality that leads, step by step, to the kinds of outrageous deeds that

have left many 'good' South Africans feeling that they can never be expected, even indirectly, to accept responsibility for them. In the words of President Nelson Mandela: All of us, as a nation that has newly found itself, share in the shame at the capacity of human beings of any race or language group to be inhumane to other human beings. We should all share in the commitment to a South Africa in which that will **never** happen **again** [researcher's emphasis].²⁵

Later in the Final Report the *never again* is referred to in writing about the new South African Constitution, explaining that it is the new South Africa and its government that is responsible to prevent the *never again*. This is illustrated in the TRC, vol. 5, chap. 8, page 309, paragraph 14:

The rule of law – that principle which ensures that no edict of state may overrule the rights of citizens, is now specifically protected in the constitution. Even if conditions require the proclamation of a state of emergency, no one should be able to be held incommunicado and without being charged, or in circumstances where they are vulnerable to torture and severe ill treatment. In addition, government should **never again** [researcher's emphasis] pass legislation indemnifying the police or other security forces against prosecution or civil claims for illegal actions carried out in support of the state, even under a state emergency.

Where human relations are strained by war, meaningful human rights enforcement requires constant vigilance, and an unyielding commitment to sanctions – no matter how worthy the cause of which one is fighting²⁶

²⁵ Nelson Mandela's speech in the National Assembly, 15 April 1997.

²⁶ The report of the Motsuenyane Commission of Enquiry into certain allegations of cruelty and human rights abuses against ANC prisoners and detainees by African national Congress members, August 1993.

In TRC, vol. 5, chap. 9, p. 411, paragraph 111 the Commission connects the never again to contemporary developments in South Africa. The authors specifically mention the high level of violence that can be found in the country:

One of the things the Commission was mandated to do was to make recommendations on ways to ensure that things of this kind ***never again*** [researcher's emphasis] happen in South Africa.

We will be looking to see how we might be able to inculcate, instil in all of us in this land, a deep reverence for human life against the prevalent cheapness that we see, for instance, in the high level of criminal violence that is happening at the present time in our country. We hope that as we listen to those who are not statistics but human beings of flesh and blood, that you and I will be filled with a new commitment, a new resolve that our country will be a country where violations of this kind will not happen, that the context will be inhospitable for those who seek to treat others as if they were nothing.

It thereafter mentions institutional reform, including legal, administrative and institutional efforts that should secure the *never again* as outlined in the TRC, vol. 6, chap. 2, p. 95, paragraph 17:

Institutional reform included legal, administrative and institutional measures designed to prevent the recurrence of abuses of human rights. The Commission drew up a fairly substantial set of recommendations aimed at the creation and maintenance of a stable society – a society that would ***never again*** [researcher's emphasis] allow the kind of violations experienced during the Commission's mandate period. These included recommendations relating to judiciary, security forces and correctional services as well as other sectors in society such as education, business and media.

The last *never again* used in the Final Report goes back to a previously mentioned argument: namely the call for a “moral and spiritual renaissance” as formulated in the TRC, vol. 6, chap. 5, p. 592, paragraph 16:

There were those who were responsible for creating and maintaining the brutal system of apartheid, those who supported this brutal system and benefited from it, and those who benefited from the system simply by being born white and enjoying the privileges that flowed from that. Others occupied positions of power and status and enjoyed great influence in the apartheid system, even though they had no direct control over the security establishment and were not directly responsible for the commission of gross human rights violations. It is only by acknowledging this benefit and accepting this moral responsibility that a new South African society can be built. What is required is a moral and spiritual renaissance capable of transforming moral indifference, denial, paralyzing guilt and unacknowledged shame into personal and social responsibility. This acceptance of moral responsibility will allow all those who benefited from apartheid – including the business community and ordinary South Africans – to share in the commitment of ensuring that it *never* happens *again* [researcher's emphasis].

As is shown above, the Final Report does not give a clear definition of *never again*, neither how this objective should be achieved. The Report does not provide any answers concerning which theoretical framework should be used to find ways to achieve the objective of *never again*. A broader and more contextualised theoretical perspective on how to achieve an objective such as *never again* could for example easily be linked to the issue of sustainability of peace or to the prevention of institutional and structural violence; however, the Commission remains unclear about this point. This lack of addressing institutional and structural violence in its Final Report has serious consequences, since the Report never identifies who has the responsibility to ensure the TRC-defined *never again*; the TRC never decides whether it is the moral obligation of the population of South Africa or the obligation of the new government to initiate institutional reform. The TRC never says whether it is the work of this institution itself, through its truth finding, that will ensure the *never agains* and guarantee a sustainable peace in the

future. To rather use the term ‘sustainable peace’ than the *never again* is recommended (See chapter two, section 2.3.1 on this issue). The notion of sustainable peace will be addressed in the next section.

4.4 The notion of sustainable peace in the Final Report

Only three times is the word “sustainable”/”sustainability” used in the final report. It is surprising that the phrase ‘sustainable peace’ in itself never occurs in the Final Report. However, as shown in chapter two of this study, sustainable peace is a concept that underlies the slogan *never again*, and it is closely linked to Galtung’s notion of positive peace, as shown both in chapter two and in the following section. Finally, sustainable peace can indirectly be linked to sustainability and to sustainable development – as used in the Final Report.

The first time the word sustainable is used in the Final Report it is linked to the idea of a creation of a home for all South Africans. It is connected to reconciliation, to “growth and development of the spirit of ubuntu” that can only be created through “structural and institutional transformation” (please find these two quotes in the lengthy quotation below) and the promise that the past will not be repeated. This is expressed in TRC, vol. 1, chap. 5, pp. 109-110, paragraph 28:

Many years ago, Albert Luthuli, the first South African recipient of the Nobel Peace Prize, articulated a vision of South Africa as “a home for all her sons and daughters”. This concept is implicit in the interim Constitution. Thus, not only must we lay the foundation for a society in which physical needs will be met; we must also create a home for all South Africans. The road to reconciliation, therefore, means both material reconstruction and the restoration of dignity. It involves the redress of gross inequalities and the nurturing of respect for our common humanity. It entails **sustainable growth and development** [researcher’s emphasis] of the spirit of ubuntu It implies wide-ranging structural and institutional transformation and the healing of broken human relationships. It demands guarantees that the past will

not be repeated. It requires restitution and the restoration of our humanity – as individuals, as communities and as a nation.

In the TRC, vol. 5, chap. 5, p. 180, paragraph 50, there is a call for collaboration with the ministries in charge of strengthening community-based services and delivery “In consultation with appropriate ministries, community-based services and delivery should be strengthened and expanded to have a ***lasting and sustainable impact on communities*** [researcher’s emphasis]”.

Finally, in the TRC, vol. 5, chap. 5, p. 190, paragraph 95, sustainability is connected to rehabilitation programmes suggested by the TRC, but where the TRC transfers the responsibility to carry through this work to government ministries in consultation with other groups such as NGOs, religious communities, victim support groups or the business world:

Rehabilitation programmes should form part of a general initiative to transform the way in which services are provided in South Africa. Such programmes can also promote reconciliation within communities. The following possible rehabilitation programmes have been identified with reference to the needs expressed by deponents in their statements. For community rehabilitation programmes to have the desired effect and to be ***sustainable*** [researcher’s emphasis], relevant government ministries should facilitate their development, in consultation with other partners like representatives of organized businesses, victim support groups, NGOs faith communities and so on.

However, the TRC does not take responsibility for sustainable development, nor does it outline who should take responsibility for coming up with a concept of how to achieve it (both theoretically and practically). Again it is important to read this section in the light of the issue of sustainable peace; it is notable that the leading theoreticians of the notion of sustainable peace use sustainability and sustainable peace interchangeably, as the following quotation from chapter 2 in this study supports: Lederach (1997: 75) suggests “*sustainability* indicates a concern not only to initiate [a change from one status to another] but also to create a proactive

process that is capable of regenerating itself over time – a spiral of peace and development instead of a spiral of violence and destruction.” There is, in other words, more to sustainability than the time factor: overcoming short-term crisis response and leading way into long-term structural transformation are equally as important.

When the TRC vaguely delegates the responsibility for sustainable development to the newly elected South African government, it does not clarify who has the responsibility to follow up these recommendations and how this should be carried out. By doing this, the idea of sustainable development/sustainable peace remains vague and is never defined nor linked to the concept of *never again* or the issue of institutional or structural violence/positive peace.

4.5 Depiction of institutional and structural violence

The decision to include a section on institutional or structural violence in the analysis of how the TRC should enable sustainable peace derives from two different sources. On the one hand, Galtung's definition of positive peace would take into account both structural and cultural forms of violence (see chapter 1 and 2). On the other hand, the problems with choice of the just war theory made by the TRC calls for a different theoretical lens. Through the just war theory, “just peace” is linked to the increase of human rights, and the idea of war being waged in order to craft peace (Williams *et al.*, 2006: 311). However, the Final Report does not clarify what kind of peace they want to craft. This is a challenge for the TRC, which the Commission acknowledges.

In the TRC, vol. 1, chap. 2, page 40, paragraph 68 the Commission clearly shows that the Commission links South African political history to institutional and structural violence: “Violence has been the single most determining factor in South African political history. The reference, however, is not simply to physical or overt violence – the violence of the gun – but also to the violence of the law or what is often referred to as institutional or structural violence”.

Later, in the Final Report, it connected to human rights and the development of democracy (in cooperation with other instruments) as is shown in the following passage:

The Commission was conceived as part of the bridge-building process designed to help lead the nation away from a deeply divided past to a future founded on the recognition of human rights and democracy. Its purpose needs to be understood in the context of a number of other instruments aimed at the promotion of democracy, such as the Land Claims Court, the Constitutional Court and the Human Rights, Gender and Youth Commissions, all institutional 'tools' in the transformation of South African society (TRC, vol. 1, chap. 4, page 48, paragraph 2).

The Final Report furthermore points towards the new South African Constitution:

The mandate of the Commission was to focus on what might be termed 'bodily integrity rights', rights that are enshrined in the new South African Constitution and under international law. These include the right to life, the right to be free from torture, the right to be free from cruel, inhuman, or degrading treatment or punishment and the right to freedom and security of the person, including freedom from abduction and arbitrary and prolonged detention (TRC, vol. 1, chap. 4, page 64, paragraph 56).

However, the Commission admits that what they call "bodily integrity rights" is not enough to ensure the rights of a human being:

But bodily integrity rights are not the only fundamental rights. When a person has no food to eat, or when someone is dying because of an illness that access to basic health care could have prevented - that is, when subsistence rights are violated - rights to political participation and freedom of speech become meaningless (TRC, vol. 1, chap. 4, page 64, paragraph 57).

Thus the TRC concludes with the two following paragraphs:

Thus, a strong argument can be made that the violations of human rights caused by 'separate development' – for example, by migrant labour, forced removals, Bantustans, Bantu education and so on - had, and continue to have, the most negative possible impact on the lives of the majority of South Africans. The consequences of these violations cannot be measured only in the human lives lost through deaths, detentions, dirty tricks and disappearances, but in the human lives withered away through enforced poverty and other kinds of deprivation (TRC, vol. 1, chap. 4, page 64, paragraph 58) [and]

[h]ence, the Commission fully recognised that large-scale human rights violations were committed through legislation designed to enforce apartheid, through security legislation designed to criminalise resistance to the state, and through similar legislation passed by governments in the homelands. Its task, however, was limited to examining those 'gross violations of human rights' as defined in the Act. This should not be taken to mean, however, that those 'gross violations of human rights' (killing, torture, abduction and severe ill treatment) were the only very serious human rights violations that occurred (TRC, vol. 1, chap. 4, page 64, paragraph 59).

The Final Report hereby makes clear that the examination of structural and institutional violence is not in their mandate, even though the Commission admits that structural and institutional violence is a very serious human rights violation.

It is difficult to understand how the Commission can conclude with excluding positive peace from its mandate, since it is clearly in the mandate of the TRC to:

make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights (TRC, vol. 1, chap. 4, p. 57, paragraph 31h).

However, the TRC Final Report identifies those factors (institutional and cultural

factors) that are important for sustainable peace as outside the mandate of the TRC. At this point the confusion about the TRC's definition of what exactly will prevent "the commission of violations of human rights" in the future (*ibid.*) is complete, since it is clearly in the mandate of the TRC and by this is a mission given to the TRC, to investigate into the prevention of future violations of human rights and to make "recommendations of measures to prevent the future violations of human rights" (TRC, vol. 1, chap. 4, 31). Again, it has to be mentioned that the lack of a definition of the TRC's mandate when it comes to "prevent the future violations of human rights" (*ibid.*) is a prevailing flaw of the TRC. Consequently it has to be asked what the "very serious human rights violations that occurred" (TRC, vol. 1, chap. 4, page 64, paragraph 59) are, that so painfully fall outside of the mandate.

4.6 The recommendations of the Final Report

Although the Commission has rooted its analysis in the just war theory, the choice of theory does not seem to carry the theoretical framework necessary in order to justify the choices made in the Final Report: namely, to exclude the third evaluation of rules guiding war besides the *jus ad bellum* and *jus in bello* (the before and after considerations separated by the point of entry into the war) – which is the evaluation that is made when the outcome of the war is clear and moral and political terms are imposed on the *jus post bellum* situation. As shown above, there is a need for definitions and a need to systematically understand the idea of what "to prevent the future violations of human rights" (TRC, vol. 1, chap. 4, 31) means in a broader discussion of the mandate. With this weak theoretical framework, it is highly questionable how the Commission will be able to legitimise any recommendations; and rather, they choose to put responsibility for sustainable peace on fellow South Africans in their belief that "reconciliation is a process vital and necessary for enduring peace and stability" (TRC, vol. 5, chap. 8, p. 304, Recommendations). Behind the recommendations lurk insufficient theory and weak systematic research, which can be exemplified by the use of the word "belief", a term that is taken from a religious approach to peace. The term "belief"

appears frequently and is used as in the following example: “These are followed by a series of recommendations related to specific areas of the public and private sectors that the Commission **believes** [researcher’s emphasis] could assist in the consolidation of democracy and the building of a culture of human rights” (TRC, vol. 5, chapter 8, p. 305, paragraph 3).

The Commission admits that “[o]ne of the essential goals of the Commission was to ensure that there would be no repetition of the past” (TRC, vol. 5, chap. 8, p. 308, paragraph 14). The Commission gives one answer to this: that there should be developed a strong human rights culture. However, to achieve this, it lists numerous issues that the authors ‘believe’ are important prior to establishing the strong human rights culture. The Commission mentions the importance of making the TRC findings available for the public, the recognition and protection of socio-economic rights, job creation, economic justice through a fund for training, empowerment and opportunities for the disadvantaged and dispossessed, a wealth tax to strengthen the war against poverty, the need to overcome racism, community policing as a measure in the war against crime, a war against inefficiency, corruption and maladministration and respect for the rule of law in order to never again pass legislation indemnifying the police or other security forces. This list is a key to good governance. It could have been a very powerful tool in an explanation of how to achieve sustainable peace. Unfortunately, no explanation is given about how they arrived at this list, which priorities should be made and why, by whom and how the list should be implemented.

The whole section on prevention of gross human rights violations in the future occurs merely as a brainstorming list that is easy to acknowledge but forget. Something the new government to a certain degree has done, since few of the above-mentioned recommendations are in place in South Africa today. This is to a certain degree topic for the study of political development in South Africa, the continent and global political development.

The most important issue, however, is the Commission’s realisation that “a strong human rights culture” is the answer to sustainable peace, the *never agains* and the

notion of a positive peace. There is no explanation how the Commission has reached this conclusion and how, on the contrary, the Commission lacked a definition of the notion of a 'strong human rights culture'.

4.7 Evaluating the South African TRC

Other authors have commented that there exists an entire genre of literature about the TRC, and that it is not easy to say anything new about the institution and its processes and broader context. In this section, this study tries to support its own findings by looking at how other authors have commented on the lack of clarity when it comes to sustainable peace in the Final Report.

Stanley's evaluation of the TRC from 2001 gives a very negative picture of the promotion of a peaceful future. She does not go into the Final Report, but concludes that the TRC is a hopeful vision which has not been followed up by political will. By this she states that: "The lived experiences of those who bore the brunt of state brutality has not altered and with groups, such as women and young people, feeling excluded from developmental issues, prospects for future stability and equality in South Africa are bleak" (Stanley, 2001: p. 538); "Black communities remain characterized by poverty, poor housing, limited educational facilities, substandard health services and unemployment" (*ibid.*, p. 541). However, Stanley blames the judicial and political policies for this and not the TRC in itself, since she believes that the Commission established enough challenges for the 'perpetrators', the beneficiaries and for the structural conditions of Apartheid. Stanley states, with other words, that the TRC has done more than enough to contribute to the promotion of a peaceful future. Those that can be blamed for endangering a peaceful future, according to Stanley, are the juridical institutions and their ability and/or lack of ability to transform. This is something that also Teitel (1997) focuses on, together with the political policies, namely governmental decisions that rightfully sit with the responsibility to follow up the TRC.

Simpson (2002), on the other hand, claims that rather than the political will, it is the primary mandate itself that is too broad and too ambitious, and to evaluate the

outcome will therefore always measure it against an ideal. Simpson points out that the narrow definition of human rights violations constrains the TRC in its ability to understand the Apartheid system in a more complex and less predictable manner. By this, “the role of the TRC in building reconciliation and preventing the re-emergence of human rights violations in post-apartheid South Africa has been significantly constrained” (Simpson, 2002: 220). Simpson, however, does not criticise the Final Report in itself, since he states that “[t]he TRC was set a near impossible task from the outset” (*ibid.*: 225) and further:

[c]ertainly, it would be a grave mistake to judge the whole TRC by the obvious shortcomings of its final report, which simply cannot hope (and does not pretend) to reflect the full complexity of thirty-five years of history. The great value of the TRC lay in the process rather than the published end product (*ibid.*, 246).

However, it is difficult to focus on the process – especially the more time passes and the process slides more and more into oblivion. Having read the Final Report, it seems that the Commission does want to include the full complexity of thirty-five years of history, if not even more so, since it also discusses colonialism and acknowledges its impact on the Apartheid system. Going back to the Final Report is therefore a necessity, as for example Mamdani (2002) has done, to focus on the individualisation of violence and the legal aspects in the Final Report, or as Natrass (1999) has done, focusing on the economic beneficiaries of the Apartheid and the role of the business sector.

Another research tested the relationship between truth finding and reconciliation. Gibson (2004). By asking the question whether the South African TRC succeeded in its objectives, and further “has truth lead to reconciliation” (Gibson, 2004: 131), Gibson’s research evaluates systematically the performance of the Truth and Reconciliation *process*. Gibson (*ibid.*: 134) gives a definition of a ‘reconciled’ South African as someone who:

- Eschews racial stereotyping, treating people respectfully, as individuals, not as members of a racial group;

- Is tolerant of those with whom he or she disagrees;
- Subscribes to a set of beliefs about the universal application of human rights protections to all South African citizens;
- Recognizes the legitimacy of South Africa's political institutions and is predisposed to accept and acquiesce to their policy rulings (*ibid.*)

Through Gibson's definition, reconciliation becomes closely linked to rebuilding the culture of respect of human rights, which seems to be the overall answer of the Commission to the question of how to prevent further human rights violations. Gibson's overall conclusion is, however, that "truth [does not] inevitably lead[s] to reconciliation". By this he gives the goalpost further to future research.

Chapman *et al.* (2008) support this study's findings through their distinction between macro-truth goals, including beyond others the establishing of the "causes, nature and extent of the gross violations of human rights" (Chapman *et al.*, 2008: 274) and micro truths, for example "related to ascertaining whether individuals qualified as victims of abuse and so were eligible for reparations" (*ibid.*, 275). They conclude that it is difficult to conduct both macro-truth and micro-truth findings since they require very different methodological approaches. They also conclude by criticising the TRC for complicating its findings by not acknowledging its own limitations. When it comes to socio-economic issues, Chapman *et al.* (*ibid.*, 276) state clearly that the TRC "has failed to build the basis for a broader understanding of the need for socioeconomic sacrifices and compromises to correct the injustices committed against the majority of the population". Their term "broader understanding" can clearly be equated with this study's quest for a more coherent analytical approach to the issues discussed.

4.8 Conclusion

The South African TRC promised too much and defined too little and became confused by its lack of distinction between micro- and macro-level analysis. Due to these constraints, it is difficult to understand the conclusions the Commission draws throughout its Final Report and to keep an overview of the consequences of

its findings. The fact that a large portion of the general population actually has not read the Final Report additionally brings up the question: What does the Final Report actually mean to South Africans? Additionally, the fact that twelve years after its publication there still is no shorter and more adapted version available for the public might indicate that it is a difficult task to summarise the Final Report precisely because of its lack of coherence.

This chapter has shown that neither the *never agains*, the notion of sustainability/sustainable peace, the depiction of institutional and structural violence/positive peace, nor the recommendations of the TRC (as a tool for sustainable peace building) give a clear picture of how the Commission will avoid future gross human rights violations. It remains unclear throughout the Final Report what the Commission recommends and how recommendations should be implemented in the future political landscape of South Africa. It is in fact timely to ask the question: Is the TRC threatening to become a cold case?, as Carter does in Villa-Vicencio & du Toit (eds.) ask in their compilation on *Truth & Reconciliation in South Africa: 10 years on*.

Concerning this study, it can be concluded that if the Final Report had established a more in-depth analysis of its mandate and its choice of theory, it could have used Lederach's suggestion of an integrated and complex peace building process, with special emphasis on the continuing maintenance of peace. As a "dynamic social construct" (Lederach, 1997: 20) it would have been interesting to implement a time aspect in coherent recommendations and to prolong the importance of the findings of the TRC as much as possible. By this the TRC could have made an even stronger impact on the future development of its country.

Chapter Five: Conclusion

5.1 Introduction

There is an overwhelming amount of literature, books, papers and studies on the South African TRC, so much so that it was not possible in the limited time this study had at its disposal, to be able to read all of the work dealing with the TRC. However, this study has tried to grasp the most important works available. More importantly, the researcher took a step away from the huge amount of secondary literature and took her time to go back to the primary source. What, indeed, does the TRC, through its Final Report, bring across to its readers?

The research question for this thesis had to be limited, since it is impossible to review the entire seven volumes of the Final Report. This study has explored the various aspects of achieving sustainable peace in post-conflict societies. An in-depth study was carried out on the South African TRC concerning its ability to achieve sustainable peace. Therefore, this study focused only on one of the mandates of the TRC; namely, the section where the commissioners were supposed to work towards “compiling a report ... which contains recommendations of measures to prevent the future violations of human rights” (TRC, vol. 1, chap. 4, p. 55, paragraph 31d). A summary of the findings will be presented in the next section.

5.2 Summary of findings

How does one assess the mandate to make recommendations of “measures to prevent the future violations of human rights”? First of all, this study had to present a short background of the pertinent issues. Then it was necessary to present an outline of the research problem, followed by objectives and relevance of the research thesis together with its research design and methods. This is covered by chapter one of this thesis which gives a thorough background of how this study was conducted and what kind of literature is available in this field. It was clear from

the beginning that it would be necessary to establish a theoretical framework that would enable this thesis to critically analyse the challenges ahead. Because of the fact that the TRC is a mechanism of transitional justice, this study chose to give an in-depth picture of the definitions and mechanisms of Transitional Justice, as well as its history and theory. In this way the thesis provides an understanding of the larger picture of the TRC and how it is used as one of several mechanisms of Transitional Justice. With the aim of utilising a useful theoretical framework, this study looks at the field of political development and the links to transitional justice and the TRC. It is shown that the development discourse has been influential in the field of Transitional Justice. Furthermore, the theories and academic tradition within the area of peace building, and more precisely the issue of sustainable peace, has been crucial to this study. Included in this theoretical framework is also a deconstruction of the term and usage of the idea of *never again*. By linking this term, which is used as a slogan throughout the international TRC discourse, to the Holocaust and a very specific historical period, this work has provided a concrete recommendation not to use the term *never again*, but rather to incorporate the notion of 'sustainable peace' or related concepts into the theory and language of Transitional Justice.

Sustainable peace is linked to institutional and structural violence/positive peace which makes it necessary to establish an understanding of South Africa's history – an understanding that goes much further than the mandate of the TRC that was limited to 1960 until 1994²⁷. The root causes of the Apartheid system needed to be addressed, including the economic, social and cultural inequalities which are a result of both the colonial structure and the Apartheid system and its unequal distribution that has had severe consequences for South Africa; moreover, the land issue, education, health, crime and poverty have been mentioned as a result of these inequalities – covered in the third chapter.

²⁷ “The Commission was given four major tasks in order to achieve the overall objectives of promoting national unity and reconciliation. [Concerning the time frame these were:] analysing and describing the “causes, nature and extent” of gross violations of human rights that occurred between 1 March 1960 to 10 May 1994, including the identification of the individuals and organizations responsible for such violations” (TRC, vol. 1, chap. 4, p. 57, paragraph 32 a.).

In looking at the negotiated settlement, the findings of this thesis are clear that the TRC and its mandate was driven by political concerns in close relation to an international trend in how to deal with post-conflict societies – and how to construct transitional mechanisms in order to move towards post-conflict goals. In other words: the TRC mandate was part of a negotiated settlement that prioritised the issue of amnesty primarily as a political tool to ensure that the negotiations between the ANC and the ruling NP would not break down.

Chapter four finally explores the core of the research problem: What does it imply “to ensure that there would be no repetition of the past” (TRC vol. 5, chap. 8, 14)? How does the TRC define this part of the mandate, what are its findings and how does it phrase its recommendations? This study has come to the conclusion that the TRC failed to contribute to a significant analysis of how to prevent the repetition of the past. It has failed to come up with definitions of what is meant by *never agains*, by sustainability and by institutional and structural violence. They have, in this part of the mandate, failed to utilise a theoretical framework other than a traditional reading of the just war theory, which has been shown in this study, to have major difficulties in implementing a sustainable peace framework.

This thesis concludes that the final report was not able to provide for useful recommendations to prevent future gross human rights violations. Chapman *et al.* (2008) distinguish between two goals that are difficult to combine in one quest: macro- and micro- truth goals. While the prevention of future gross human rights violations would be part of an investigation into the causes of the gross violations of human rights – which is clearly a macro-truth goal and would contain all the issues discussed in connection to structural violence – the micro-truth goals would try to give answers on a more individual level: such as who is eligible for reparations and amnesty. By not distinguishing enough between the macro- and micro- truth goals, and by prioritising the micro-truth goals, it remains unclear how the Commission will avoid future gross human rights violations, and even though the Commission supplies a list of recommendations and manages to pinpoint who should be responsible for the implementation of the recommendations, it still continues to be unclear throughout the Final Report how the Commission actually

arrived at the list and how it chose its priorities. The overall conclusion is therefore that the Final Report lacks a coherent theoretical framework and investigation into the macro-truth goals. By this, the TRC has failed to build the basis for an understanding and implementation of sustainable peace.

5.3 Summary of contributions

There exist different works that have provided an in depth study of different aspects of the Final Report: Mamdani (2002) has looked at the problems with the definition of gross human rights violations and how this has affected how the TRC has dealt with definitions of the victim, the perpetrator and the legal aspects connected with it. Mamdani concludes with a criticism of the Final Report that, when it comes to the question of guilt, individualised the crimes and gross violations dealt with in the TRC. Natrass (1999) has analysed the role of the business sector and the problems with achieving corporate justice if one is to follow the Final Report. These critical analyses, which this thesis forms a part of, contribute to a broader understanding of the various issues the TRC has dealt with. Instead of dismissing the TRC Final Report as a vehicle that has had too little time to develop and is described broadly as a hastily written summary, this study – along with others – has taken the standpoint that the TRC Final Report deserves a critical in-depth analysis. This study chose to use the tool of textual analysis. Through this it is possible to improve further knowledge and methods to enhance the work of future TRCs – as much as it might provide a re-reading of the Final Report and hopefully an incentive to actually work on a shorter version that will be more available for a broader audience.

5.4 Theoretical implications of this thesis

Textual analysis, as a research tool, has proven to be highly effective in pinpointing shortcomings concerning the use of definitions, the inadequate utilisation of theoretical frameworks and the use of different research mechanisms that do not necessarily go well together. This has furthermore pointed out problems concerning the micro-level analysis that the Commission of the TRC has

chosen as their instrument of analysis. The TRC did not distinguish clearly between the levels of analyses and by this has not properly differentiated between micro- and macro-truth on the one hand, and just war theory on the other. Macro-truth reflects a broader understanding of the nature and structure of gross violations of human rights, while micro-truths delve into individual cases, individual reparations and reconciliation. These approaches should not be combined. It has also been shown that the use of just war theory cannot easily be transferred to the field of sustainable peace – as expressed in the TRC as the prevention of future gross human rights violations. The use of just war theory as it is applied in the TRC, prioritises the focus on *jus ad bellum* and *jus in bello* which has led to an individualisation of responsibility, and has resulted in a focus on micro-truth goals. The consequence is that broader issues of structural violence have been neglected. Something that would have been an important criteria if the TRC would have chosen a less traditional approach to the just war theory, namely the implementation of *jus post bellum*, which in its approach is very close connected to both transitional justice, peace research and the study of political development.

In summary, this study has built up a set of different theories which are useful tools of analysis instead of ones used by the TRC. This study suggests that the TRC would better achieve its goals by looking at the issue of sustainable peace as outlined by Lederach (1997). It also recommends looking at the combination of Transitional Justice, research on Sustainable Peace, studies of political development and research on institutional and structural violence in the body of work by Galtung (1969), among others.

5.5 The limitations of this thesis

The limitations of this study have been the time-frame for the study. The most salient issue is that this study, instead of looking at the total amount of times the issue of prevention of gross human rights violations is mentioned in the Final Report, it had to focus on the much less frequently used term *never again*. Thus, valuable information has not been investigated. However, this choice can be legitimised since the term *never again* is used in the same manner, and focusing

on the references to prevention would thus have given similar and repeating arguments.

Another limitation is the difficulty in studying how to prevent future gross human rights violations. This is often dependent from case to case, from country to country, from region to region and from situation to situation. The study of origins of violence of conflict has been a major issue for peace researchers for decades and following from this, prevention of future violence is all the more problematic. It is thus difficult to accuse the TRC and its Final Report of not providing a solution to a question that is universally not easy to answer. However, it is exactly this limitation that makes it so important to be more precise with the definitions and theory behind the investigation into macro-truth goals and the recommendations that the Commission brings forth. Only through systematic analysis is it possible to reveal some of the mechanisms and possible answers to the question of how to prevent future gross human rights violations in South Africa.

5.6 Recommendations

The recommendations have been made clear. Instead of using hollow slogans that are attached to specific historical events and discourses, as in the case of the *never agains*, future truth commissions should put more emphasis on establishing a theoretical framework that makes it more clear how to prevent future gross human rights violations. TRCs should take available research seriously and implement these findings into their report and their legitimation and argumentation for their choice of theory – and methods of analysis. Commissions should clearly distinguish between micro-truth goals and macro-truth goals and include this distinction into their theoretical framework. One can argue that the report would become more accessible and more transparent for the public as well as more coherent for governments and administration that have to deal with the recommendations after the Final Report is published. Moreover, the clearer the arguments, the easier it will be for governments and institutions to implement the suggestions made by commissions.

Another recommendation that follows from the above is that a clearer theoretical framework will make it easier to summarise the Final Report and publish a shorter version that is easy to comprehend and more accessible to a broader public. When looking at the South African TRC, the Commission frequently argued that the South African public would be the main change-maker in the new South Africa. In order to take this notion seriously, a publication should be made available that differs from the Final Report in both length (shorter) and intended audience (“all” South Africans).

5.7 Suggestions for future research

This study has shown that it is worthwhile to carry out a textual analysis of the Final Report. It both has implications for the reading of the Final Report and for a discussion of how to follow up the work of the TRC in South Africa today. It furthermore gives advice and new directions for other and new TRCs to follow. Therefore it is highly suggested that future research should engage in textual analysis in the different areas of the Final Report.

Additional research needs to be carried out concerning the issue of sustainable peace and what a TRC mechanism can do to prevent future gross human rights violations. As addressed in this thesis, the work on socio-economic issues needs to be strengthened (Laplante, 2008; Duthie, 2008) both within the Transitional Justice nexus and TRCs specifically.

In summary, there is an urgent need to investigate into different forms of analysis. The most prevailing form of research found within the field of Transitional Justice is still analytical descriptive research. Additionally there is a need for studies that involve both qualitative and quantitative research. Related to this research it could have been relevant, for example, to investigate into the role of the NGOs and to question how they have handled the implementation or lack of implementation of the TRC recommendations. This is a question for future research.

5.8 Conclusion

In conclusion, the result of this study provides implications to future TRCs – and also to the dichotomy of how the South African TRC has been viewed: critically from the inside, while from the outside there has been a tendency towards analysing the TRC less critically. This thesis adds to the critical voices that come from both the inside and outside. It is, however, important to mention that the South African TRC without doubt has had positive implications – concerning truth finding, forensic findings and opening up the long and harsh history and legacy of Apartheid.

In order to analyse the chosen research problem, it has been crucial to look at achieving sustainable peace in post conflict and transitional societies by focusing on an analysis of South Africa's Truth and Reconciliation Commission.

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