

# BETWEEN PERPETRATOR AND VICTIM: APARTHEID'S ASKARIS AND THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION



Fig. 1. Desmond Tutu, Alex Boraine and Commissioners open the TRC at the first hearing on April 15 1996 in East London. Benny Gool-Oryx Media/Desmond Tutu Peace Centre.

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## **Abstract**

In 1994, South Africa entered a new era of peace and democracy with the election of Nelson Mandela, who became the country's first democratically elected president. With this, South Africa was closing the chapter on its violent past, which was marked by white supremacy, systematic racism and social engineering. However, Mandela's election alone was not enough to unite the deeply divided country, whose past was cruel and enormously violent. Some form of transitional justice was needed. Through various negotiations, the Truth and Reconciliation Commission (TRC) was born. Based on the foundations of restorative justice, the TRC sought to investigate the events of the past and establish as accurate a picture as possible regarding the nature of gross human rights violations that took place during apartheid. This thesis examines the case of the askaris; black people, generally former liberation fighters, turned operatives for the apartheid Security Police, working primarily for the death squad known as Vlakplaas, who came forward and applied for amnesty at the TRC. Through questioning how the askaris were configured by the TRC, as figures who committed egregious acts against their fellow black South Africans, while at the same time being victims of apartheid themselves, this thesis demonstrates the complicated position of the askaris and perpetrator-victims in general. This thesis reveals the general lack of nuance afforded to the askaris by the TRC. By utilising Baines' theory of complex political perpetrators, it makes an argument for a more nuanced approach to perpetrator-victims in future post-conflict settlements like truth commissions.

## List of Abbreviations

AC	Amnesty Committee
ANC	African National Congress
APLA	Azanian People's Liberation Army
AZAPO	Azanian People's Organisation
CODESA	Convention for a Democratic South Africa
GNU	Government of National Unity
HRVC	Human Rights Violations Committee
IFP	Inkatha Freedom Party
MK	UmKhonto weSizwe ( <i>Spear of the Nation</i> )
NP	National Party
PNR Act	Promotion of National Unity and Reconciliation Act 34 of 1995
PAC	Pan-African Congress
RRC	Reparation and Rehabilitation Committee
SACP	South African Communist Party
SADF	South African Defence Force
SAP	South African Police
TRC	Truth and Reconciliation Commission

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## **Introduction: Modern History and Transitional Justice in South Africa**

In 1994, with the election of Nelson Mandela to the presidency, South Africa emerged from hundreds of years of colonialism, white supremacy and apartheid. Since 1652, with the arrival of the Dutch Settlers in the Cape, South Africa's black and indigenous population had been systematically oppressed and excluded from South African society. This oppression and exclusion manifested in a number of different ways over the more than four centuries of white minority rule in South Africa, the most modern of which being established in 1948 when Hendrik Verwoerd and the National Party (NP), a predominantly Afrikaner nationalist party, ascended to political dominance in South Africa and began implementing the racist, separatist policy of apartheid. Intensifying internal unrest and significant international pressure caused the last apartheid President, F.W. de Klerk, to initiate a process of democratic reform. After almost fifty years of systematic racism, oppression, repression, disenfranchisement and struggle, the anti-apartheid movement achieved victory when Nelson Mandela became president in the country's first democratic election.

The election alone, however, would not be enough to bring the country out of centuries of colonialism and decades of apartheid - the wounds of the country were too deep to forget. Thus, emerging from this violent past, questions about how South Africa would transition and move forward as a new democratic state became apparent. It was in light of this that the newly elected Government of National Unity (GNU)<sup>1</sup> chartered the Promotion of National Unity and Reconciliation Act (PNR ACT) of 1995. This act "deemed [it] necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future"<sup>2</sup>. It further stated that "in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past"<sup>3</sup>. Thus, the PNR Act, in turn, founded the mandate and legal framework for the establishment of the Truth and Reconciliation Commission (TRC). The decision to opt for a truth commission, as opposed to criminal trials, was, however, not one which was taken lightly. In the build-up to the passing of the PNR Act, and indeed the first democratic elections in South Africa, there was much debate about what the nature post-apartheid settlement would look like, how it would treat perpetrators of gross human rights violations, and how it would best serve the country moving forward.

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<sup>1</sup> The GNU was one of the early measures of transitional justice and saw that all political parties who gained 10% or more in the 1994 election would be part of the government and was headed by the African National Congress (ANC).

<sup>2</sup> Republic of South Africa, Parliament of South Africa, *Promotion of National Unity and Reconciliation Act*, No. 34 adopted July 1995, <https://www.gov.za/documents/promotion-national-unity-and-reconciliation-act>

<sup>3</sup> *Promotion of National Unity and Reconciliation Act*, no.34, 1995

Of particular importance to those involved in the negotiated post-apartheid settlement at the Convention for a Democratic South Africa (CODESA) was the question of reconciliation within South Africa, and notably, how reconciliation could be achieved between the perpetrators of gross human rights violations and their victims. Similarly, there was debate about whether the GNU should pursue Nuremberg-style criminal trials for these perpetrators, and how this would even be possible with the new state apparatus. While this approach was decided against, the question remained: how to deal with perpetrators. While there had been at least fifteen truth commissions prior to the start of the one in South Africa,<sup>4</sup> and a number since then, the South African truth commission is arguably the best known, particularly for the different approach it took to perpetrators, and the fundamental importance it placed on restorative justice. According to Alex Boraine, the vice chairperson of the TRC, the South African commission was particularly influenced by those in Argentina and Chile. The most notable difference, however, was the decision to offer individual amnesty to perpetrators, rather than blanket amnesty, as was the case in Chile.<sup>5</sup> It was decided that amnesty would be awarded to individual perpetrators in exchange for truth, coupled with a number of stipulations, most significant of which was political motivation for the act in question. An Amnesty Committee (AC) was established by the TRC, becoming one of the three arms of the TRC. The AC was constituted primarily by judges and advocates, as well as a team of investigators and evidence analysts. The AC was chaired by Justice Hassan Mall, who was named South Africa's first judge of colour in 1988. Amnesty was one of the building blocks which aided in bridging the old South Africa to the new and restoring justice to the country. This decision - offering individual amnesty to perpetrators in exchange for *truth* - has, however, become the topic of significant debate both within academia and South African society in general, and to this day, commentators are divided on the matter. Therefore, there is significant relevance in studying the amnesty project and restorative justice in South Africa, twenty years after the work of the AC ended.

The work of the TRC and the amnesty policy have been the subject of a strong research focus in the fields of contemporary South African history, conflict resolution and criminal justice, to name a few. And while there is relevance to a study of the amnesty project, moving the field forward begs the question of what, or whom, has

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<sup>4</sup> Hayner, Priscilla B. 1994. "Fifteen Truth Commissions-1974 to 1994: A Comparative Study." *Human Rights Quarterly* 16 (4): 597-655.

<sup>5</sup> Boraine, "Truth and Reconciliation in South Africa: The Third Way", in *Truth V. Justice*, ed. Rotberg, Robert I, and Thompson, Dennis. Princeton, N.J.: Princeton University Press, 2000, pp. 141-157

been left out. In addition to the relevance of studying the AC with historical hindsight, literature research into the topic has revealed a glaring gap: the often-blurred line between “perpetrator” and “victim”.

The TRC was strict in its definitions of key concepts - including perpetrator and victim - and, as a result, a certain group of perpetrators are on the fringes of the discussion about the TRC, and have not yet been properly brought into the conversation. These perpetrators were the *askaris* - a group for whom the label ‘perpetrator’ was attributed, but who can simultaneously be seen as victims. The askaris were members of the liberation movement, generally from the military wings of the ANC and the Pan Africanist Congress (PAC), who were captured and converted into members of the Security Branch of the South African Police (SAP). As members of the Security Branch, these askaris - most often black men - perpetrated major human rights violations, generally against their former colleagues in the liberation movements.<sup>6</sup> However, they were often ‘turned’ through torture and were themselves victims of their white commanding officers, as well as the policy of apartheid at large. Consequently, the askaris were both perpetrators and victims, and occupied a complex position during the TRC, and today in post-apartheid South Africa. As such, the usage of either perpetrator or victim presents a difficulty for those studying the TRC wherein the status as either perpetrator or victim is crucial.

This thesis will provide an in-depth study of the TRC, and in particular, the amnesty project and restorative justice in South Africa, through the lens of the askari cases, looking at events that took place involving askaris located at Vlakplaas in the decade 1980 until the end of 1989. Vlakplaas was the headquarters of the now notorious counter-insurgency 1 unit, a secret paramilitary style death squad which operated during the final decade of apartheid. It held a vital place for the structures of perpetration that existed during the final years of apartheid, and most of the known askaris operated from Vlakplaas. The overarching research question guiding this project is: how were askaris configured and understood by the Amnesty Committee of South Africa’s TRC, and what can we learn from this about the grey area of figures who were at once perpetrators and victims in situations of conflict? This thesis explores this through the following sub-questions: (1) How were the askaris configured as perpetrators of gross human rights violations and as potential victims of gross human rights violations, and who configured them as such? (2) What justifications did individuals provide for becoming askaris, and how did those labelled as askaris conceive of themselves? (3) Was there an acknowledgement of coercion versus agency when it came to the askaris, particularly given the harsh circumstances in which black South Africans lived?<sup>7</sup> (4) How did the TRC marry principles of restorative justice, which fundamentally underpinned the TRC, with those actors

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<sup>6</sup> Sarkin-Hughes, Jeremy. 2004. *Carrots and Sticks: The Trc and the South African Amnesty Process*. Antwerp: Intersentia, 113

<sup>7</sup> This question draws upon the same question asked by Erin Baines in relation to former child soldier Dominic Ongwen. She asks, “what agency is available to individuals who are raised within a setting of extreme brutality?” in Baines, Erin K. 2009. “Complex Political Perpetrators: Reflections on Dominic Ongwen.” *The Journal of Modern African Studies* 47 (2): 163–91.



who did not fit neatly into one category as perpetrator, victim, or even collaborator; what means of restorative justice were utilised in cases of perpetrator-victims? And (5) how does the TRC address the context of collective victimisation of apartheid?

In examining these questions, this thesis will engage with several debates about the TRC that have been ongoing since it began in April 1996. Firstly, this thesis will discuss the extent to which the TRC was victim-centred or perpetrator-friendly: a criticism that is often levelled at the TRC is that it privileged the wants of perpetrators over the needs of victims. Secondly, it engages with the debate on the extent to which the TRC, and the amnesty process in particular, contributed to restorative justice in South Africa, and in doing so, engages the further debate surrounding the extent to which the TRC and its amnesty process actively attempted to facilitate national unity and reconciliation.<sup>8</sup> The askaris presents an especially interesting case regarding national unity and reconciliation, given that they were primarily black men who were formerly affiliated with a liberation organisation. They were often described as “traitors”, and thus reconciliation with them had to take place both across apartheid’s colour line and within - specifically within black communities. Therefore, it is important to consider what truth commissions can gain by engaging thoroughly, and in a nuanced fashion, with complex perpetrators.<sup>9</sup> These concepts of perpetrator, victim and complex perpetrator will be explained in detail below.

The academic relevance of this study lies in updating the existing research. Much of the scholarly research concerning the TRC was done in the early 2000s. As such, there had not been enough time to properly judge both the TRC and the work of the AC, particularly since the fundamental mandate of the TRC was to aid in nation-building, which can be judged better with hindsight. There is therefore academic relevance in studying the TRC and the AC more than 25 years after it was established. More recent studies have focused on the concepts of trauma and healing through truth-telling on the part of the victims who gave testimony to the Human Rights Violations Committee (HRVC) of the TRC.<sup>10</sup> The academic relevance of this study can thus be understood as furthering the current body of knowledge regarding the amnesty project in South Africa, and the TRC at large.

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<sup>8</sup> Sarkin-Hughes, Jeremy. 2004. *Carrots and Sticks: The Trc and the South African Amnesty Process*. Antwerp: Intersentia, 25

<sup>9</sup> The concept of a complex perpetrator is readily used in similar studies for figures such as Dominic Ongwen, a former Ugandan child soldier. It will be further elaborated on to come.

<sup>10</sup> See, for example, Brankovic, Jasmina. 2020. *Violence, Inequality and Transformation: Apartheid Survivors on South Africa's Ongoing Transition*. Parktown, Johannesburg: DSI-NRF Centre of Excellence in Human Development; Colvin, Christopher. 2019. *Traumatic Storytelling and Memory in Post-Apartheid South Africa: Performing Signs of Injury*. Abingdon, Oxon: Routledge; Mengel, Ewald, Michela Borzaga, and Karin Orantes. 2010. *Trauma, Memory, and Narrative in South Africa: Interviews*. Matatu, No. 38. Amsterdam: Rodopi; Bubenzer, Friederike. 2019. After the TRC: South Africa’s missed opportunity of prioritising mental health and psycho-social support [Africaportal.org]. *Africa Portal*. <https://www.africaportal.org/features/after-trc-south-africas-missed-opportunity-prioritising-mental-health-and-psycho-social-support>; Horne, Felicity. 2013. “Can Personal Narratives Heal Trauma? A Consideration of Testimonies Given at the South African Truth and Reconciliation Commission.” *Social Dynamics* 39 (3): 443–56.

Furthermore, given that the South African TRC has often been held up as a model of transitional justice and the use of truth commissions has proliferated, it is necessary to continually re-examine the South African TRC. The TRC was hailed as an innovative model for nation building and restorative justice, and many other countries dealing with post-conflict issues have instituted similar methodologies for such commissions. As such, it remains relevant to study the TRC and whether its truth-telling model will continue to be used, or even just held up as an example of restorative justice. Moreover, of prime relevance, is that few scholars have paid attention to the “gray zone in the bipolar world of victims and perpetrators” which is occupied by those who collaborated with the apartheid regime.<sup>11</sup> The askaris are those who occupy this grey zone between perpetrator and victim. There are very few studies on the askaris in South Africa, the primary one being Jacob Dlamini’s 2014 monograph, *Askari: A Story of Collaboration and Betrayal in the Anti-apartheid Struggle*. There is some mention made of askaris in the numerous articles and monographs concerning the TRC which were consulted for this thesis; however, there is a definite gap in the literature concerning the askaris and their interactions specifically with the TRC and the AC. It is known that a number of askaris applied for amnesty, so the question arises as to why there has been so little academic research into their roles at the TRC, how the TRC related to those who were perpetrators and victims, and their contributions to ‘truth’. Given their particular position within the grey zone between perpetrator and victims, it is interesting to ask how the TRC related its aim of restorative justice to the askaris, and whether restorative justice meant restoring justice to all. Moreover, it is important to ask why these cases have had very little academic attention paid to them, as these perpetrators are somewhat unique in the TRC, though not necessarily in conflict globally.

On a societal level, there is significant relevance to studying the TRC, the AC and perpetrators locally within South Africa, and on a broader, global scale. Within South Africa, there are significant debates about the TRC, and the TRC continues to be evaluated within society. More recently, however, it has come to be significantly criticised by South Africans. Over the years, the TRC has been lambasted for failing to sufficiently address the systematic structural violence perpetrated by the apartheid regime. This criticism of the TRC maintains that it failed to address apartheid as a gross violation of human rights, and instead looked at individual incidents and events, and also that it failed to address the forms of everyday violence that the majority of South Africans experienced during apartheid. To this same point, many criticise the commission for its apparent failure to sufficiently address the inherent, fundamentally racist nature of the apartheid system, and how the effects of this informed and continue to inform opportunity and access for the majority of South Africans. Similarly, the promises of reparations have seen little delivery, and many are still actively campaigning for the reparations they were promised. This, coupled with the visible, almost immediate, freedom given to those perpetrators of gross human rights violations who were granted amnesty only adds to the criticism levelled at the TRC by South African

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<sup>11</sup>Payne, Leigh A. 2001. “Collaborators and the Politics of Memory in Chile.” *Human Rights Review* 2 (3): 8–26, 23

society at large. Given the continued extreme levels of inequality in South Africa, it is understandable that many South Africans perceive the TRC as a failure in addressing the inequities of the past and bridging South Africa into a new future. The youth in South Africa today are particularly condemnatory of the TRC and have come to see it as an exercise in appeasing those who benefitted from apartheid, rather than seeking real social reconciliation, as well as a means to an end in maintaining existing power imbalances with superficial changes<sup>12</sup>. Globally, what was lauded as an international benchmark for restorative justice is now criticised retrospectively by many within and outside South Africa. If the TRC is to be held up as a model for future societies in transition, as it has been, for example, in Sierra Leone, it is imperative that we engage with its failures. Moreover, there is a social relevance to studying perpetrator-victims and complex perpetrators. The concept of a perpetrator-victim is one that continues to pervade modern day conflict, seen, for example, in the use of child soldiers in Uganda. Societal conflict resolution, therefore, needs an understanding of these figures.

In addressing these questions and debates, this thesis will make use of close reading of the testimony and reports that came out of the TRC. The archive of the TRC is readily available online in its entirety - including the reports, press releases and testimony - and has been somewhat underused in recent years by historians, despite the abundance of studies relating to the TRC that emerged in the early 2000s. This thesis will use testimony from those amnesty cases involving askaris. Moreover, close reading is an established method when using testimony, and will provide the most useful insight into the TRC archive.

Finally, this thesis will be structured as follows. For the purpose of context, background of apartheid South Africa and the TRC will be provided, albeit briefly, due to the limitations of space. Then, a literature review of the TRC and amnesties will be provided. The literature review concludes with a section on perpetrator-victims, a topic which has been a significant debate in the field of conflict studies and conflict resolution. However, for the purpose of this thesis, a perpetrator victim, briefly, is understood to be someone who occupies a double status, as both the victim of a human rights violation, as well as having perpetrated a violation. The first chapter of this thesis provides an overview of the role-players in this thesis, namely the perpetrators, victims and collaborators that took part in the TRC, as well as the theoretical frameworks of restorative justice, which supported these role-players and underpinned the TRC and the complex perpetrator victim, as introduced by Erin Baines. The second chapter concerns the analysis of the sources with regards to askaris as perpetrators of gross violations of human rights, while the third chapter considers askaris as victims of gross human rights violations. The fourth chapter brings the previous two together, providing an analysis of the askaris as perpetrator-victims, how the TRC related

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<sup>12</sup>du Plooy, Eleanor. "Why talking about the TRC is still important twenty years later." News 24. 24 July 2018. <https://www.news24.com/news24/columnists/eleanorduplooy/why-talking-about-the-trc-is-still-important-20-years-later-20180724>

to these more complex figures, and whether the principles of restorative justice as espoused by the TRC were applied to them. Finally, concluding remarks will address limitations of the thesis and suggestions for further research. This thesis therefore provides an interdisciplinary look at complex perpetrators of human rights violations, in a conflict, from a historical perspective.

### **Apartheid South Africa**

In 1948, with the election of the NP, apartheid formally began. Although prior to 1948 South Africa already had significant race-based legislation, from the time the NP was elected, the project of apartheid was to be formalised and South African society would be significantly racialised. The apartheid system was a programme of institutionalised and state-sponsored discrimination and segregation based on race. Apartheid entailed the formal recognition and separation of specific groups of people based on their race, and thus brought race-based policy and legislation into the public domain. These policies of apartheid were underpinned by a number of laws which sanctioned and made rational the practice of racial discrimination. Primary among these laws was the Population Registration Act of 1950, which provided statutory mechanisms for racial classification and saw the creation of a database of the identity of millions of South Africans according to the race which they had been classified as<sup>13</sup>. This act compelled all those living in South Africa to have an identity card with their race, “White”, “Black” (could be African, Native and/or Bantu), “Coloured” and “Asian”. Through this legislation, access to all services, education, amenities, jobs, and land was defined by one’s race. In addition to the Population Registration Act, other fundamental pieces of apartheid legislation included the Group Areas Act of 1950, which, in practice, meant that all white, black, coloured and Asian people in South Africa would have to live in group areas allocated to members of their groups, and, together with the Promotion of Bantu Self-Government Act of 1959, saw the forced removal of more than three million, primarily black, South Africans from their homes to areas designated to their race group.<sup>14</sup>

Other foundational legislation included the Reservation of Separate Amenities Act of 1943, which sought to create a totally separate social environment for the white and other population groups and was one of the most visible markers of apartheid, with public amenities such as parks, beaches and benches assigned “Net Blankes” (whites only). Vital to the apartheid state were the *Pass Laws* of 1952, which required black men over the age of 16 to carry a pass book, known as a *dompas*, everywhere and at all times. Finally, the Suppression of Communism Act of 1950 was another piece of legislation that underpinned apartheid. The cumulative effect of the introduction of these laws, and numerous more, was that the apartheid state was one of total, encompassing control. The laws

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<sup>13</sup> Posel, Deborah. 2011. “The Apartheid Project, 1948-1970” in *The Cambridge History of South Africa volume 2*, eds. Ross, Robert; Kelk Mager, Anne and Nasson, Bill. Cambridge: Cambridge University Press.

<sup>14</sup>Platzky, Laurine, Cheryl Walker, and Surplus People Project (South Africa). 1985. *The Surplus People: Forced Removals in South Africa*. Johannesburg: Ravan Press.

provided for a rational, modern underpinning of extreme racial discrimination, and for a state based on legislated discrimination. As a result, racism was entrenched in the public domain.

The upholding of a state of total and all-encompassing control meant the establishment of the Security Branch of the SAP, whose role was the “preservation of internal safety”, and sought to deal with political crimes, matters of national security and functioned as an intelligence gathering agency.<sup>15</sup> The Security Branch housed a number of operational units, most notorious of which was the Counterinsurgency (C1) unit, established in 1979 at Vlakplaas, a farm outside of Pretoria. Unit C1, or Vlakplaas as it became known, would support internal SAP counter-revolutionary operations, and sought to “[identify and track] ANC and PAC infiltrators” and seek their “rehabilitation”.<sup>16</sup> This meant the creation of askaris, or the expressed purpose of “turning” ANC and PAC to operate against their former comrades, whether that be done by force, through kidnapping and torture, or through individual agency. Moreover, Vlakplaas would conduct covert internal cross-border operations.<sup>17</sup> The aim of Vlakplaas cross-border operations, which took place primarily within Swaziland through the 1980s, was the termination of the ANC structures inside that country; thus, key personnel were targeted for abduction or elimination as Swaziland was a hotspot of ANC activity after the organisation was banned.<sup>18</sup> During the 1980s, Vlakplaas instituted a programme of interrogation, torture and murder against members of the ANC or PAC, and it functioned as a paramilitary death squad<sup>19</sup>. In 1985, Colonel Eugene De Kock, who came to be known as “Prime Evil” for his role as a torturer and assassin, became commander of Vlakplaas and accelerated the assassination programme.<sup>20</sup> In total, more than 65 people were killed by Vlakplaas operatives up to 1993, however this is up for debate due to the systematic destruction of documents by the Security Branch at the twilight of the apartheid era.

The Vlakplaas unit included askaris. The askaris were former members of the liberation force who had been “turned” to work for the apartheid side. The askaris of Vlakplaas were a highly effective force, working to destabilise the liberation movements, and partaking in the kidnapping and torture of anti-apartheid activists.

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<sup>15</sup>Republic of South Africa, Parliament, *Police Act*, No. 7, adopted 1958, as cited in O’Brien, *The South African Intelligence Services*, 2011.

<sup>16</sup> Republic of South Africa. Truth and Reconciliation Armed Forces Hearings – SAP. Online, available at <https://www.justice.gov.za/trc/special/forces/sap.htm>.

<sup>17</sup>South Africa. (2003) Truth and Reconciliation Commission of South Africa Report. Volume 6. Cape Town: Juta Press. <https://www.justice.gov.za/trc/report/index.htm>, accessed 20 April 2022. (Hereinafter, for all volumes: TRC Final Report, *Volume*, pp.).

<sup>18</sup> O'Brien, Kevin A. 2011. *The South African Intelligence Services: From Apartheid to Democracy, 1948-2005*. Studies in Intelligence Series. Milton Park, Abingdon, Oxon: Routledge, pp.110.

<sup>19</sup> Former Vlakplaas commander, Dirk Coetzee, went public with his intimate knowledge of death squads in South Africa in November 1989. As cited in O'Brien, *The South African Intelligence Services*, pp. 181.

<sup>20</sup> O'Brien, *The South African Intelligence Services*, pp. 110.

However, the askaris, being black men formerly of the liberation movements, were often subjected to cruel conditions and were themselves often victims of their white police superiors. It is this dual position as a perpetrator and victim that will be interrogated in this thesis. The farm and police officers are shown below. It should be noted that there is no photographic evidence from the Vlakplaas unit that includes any of the askaris as their identities were closely protected.



Fig. 2 Vlakplaas farm, 20km West of Pretoria and headquarters of C1 Unit (“Vlakplaas”).<sup>21</sup>

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<sup>21</sup> Vlakplaas farm. Photo by Gallo Images/ Foto 24/ Craig Nieuwenhuizen.





Fig. 3 Eugene De Kock and other SAP Security Branch Members in 1996, at Vlakplaas.<sup>22</sup>

### **The Truth and Reconciliation Commission**

Apartheid was met with fierce resistance both within South Africa and abroad, and, despite extreme efforts to ban, hinder and prevent resistance to apartheid, by the early 1990s the situation in South Africa was dire. With the country on the brink of civil war and extreme international pressure and sanctions to make a change, on February 2<sup>nd</sup>, 1990, the State President F. W. de Klerk delivered a speech at the Parliament of South Africa in which he announced extensive reforms that marked the beginning of the negotiated transition from apartheid to a constitutional democracy. Notably, during his speech, de Klerk unbanned the ANC and various other banned political organisations, such as the SACP, and he maintained that the government would work towards several aims, denoting, among other things,

“a new, democratic constitution; universal franchise; no domination; equality before an independent judiciary; the protection of minorities as well as of individual rights; freedom of religion; a sound economy based on proven economic principles and private enterprise; dynamic programmes directed at better education, health services, housing and social conditions for all.”<sup>23</sup>

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<sup>22</sup> Eugene De Kock and others. 1996. AFP Photo Files/The Star

<sup>23</sup> de Klerk, F.W. “Speech at the opening of Parliament.” Transcript of speech delivered at Parliament building, Cape Town, South Africa, February 2, 1990, <https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02039/04lv02103/05lv02104/06lv02105.htm>.

On February 10<sup>th</sup> 1990, de Klerk released Nelson Mandela from prison. As the leader of the anti-apartheid movement, whose image had been banned for years, Mandela's release signalled a significant commitment to transition away from apartheid.

Apartheid ended in South Africa through a negotiated settlement, which eventually gave way to the TRC. The question of justice for victims and perpetrators was a contested topic during these negotiations, centring around the remaining question of how South Africa would reconcile its population and gain closure for the years of apartheid after a democratic election. Primary among these negotiations was the Convention for a Democratic South Africa (CODESA) which was established as a negotiating forum between the apartheid government and eighteen other political organisations, notably the ANC. Despite the fraught nature of the negotiations, their breakdown a number of times and the ongoing low-level civil war in parts of the country, eventually an interim constitution was drafted, and, in April 1994, South Africa held its first democratic election. This election saw Nelson Mandela become the first democratically elected president of South Africa when the ANC secured 62% of the vote. This established the GNU, of which the NP was a part. Decided upon by the ANC prior to the first election, the GNU approach was a method in transitional justice which saw the inclusion of all political parties that gained a threshold of 10 percent of support in the electorate. This was one of the primary methods used to ensure inclusivity during the transitional period from apartheid to democracy. The GNU, recognising that gross human rights violations and atrocities had been committed during the apartheid period, formally established the TRC. The purpose here, however, is not to trace the genealogy of the legislation that set up the TRC, but rather to underline its political prerequisite - that the TRC followed the political agreement that arrived at CODESA.<sup>24</sup>

Additionally, it is notable that during these negotiations, state-sponsored repression continued, and in some cases intensified, with a number of key events on the road to democracy taking place during these years, notably the Boipatong and Bisho Massacres. The fact that South Africa was on the road to democracy did not mean immediate peace, and the need for a post-apartheid means of transitional justice was heightened at this time. It became clear that democracy alone would not suffice; South Africa needed some sort of settlement, a means to transition and to restore justice. According to Alex Boraine, vice-chairperson of the TRC, the enduring social and economic legacy of apartheid meant that there remained "unfinished business". Unless this unfinished business was effectively dealt with, sustaining the *miracle* of the negotiated transition,<sup>25</sup> consolidating democracy and ensuring a peaceful future for all South Africans would be impossible. Thus, alongside the democratic

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<sup>24</sup> Mamdani, Mahmood. 2015. "Beyond Nuremberg: The Historical Significance of the Post-Apartheid Transition in South Africa." *Politics and Society* 43 (1): 61–88.

<sup>25</sup> Many people, both within South Africa and beyond its borders, have described this transition as nothing short of a miracle.



transformation, there was also a compelling need to restore the moral order.<sup>26</sup> This need for the restoration of dignity, moral order and trust gave rise to the TRC. With this in mind, the GNU enacted the PNR Act, the foundational legislation and mandate that established the TRC.

The PNR Act of 1995 was passed by the newly-formed democratic Parliament of South Africa by an overwhelming majority.<sup>27</sup> The Act itself is broken down into seven chapters, referring to, amongst others, the Act's "interpretation and application", its aim to establish a "Truth and Reconciliation Commission", its mandate to pursue the "investigation of human rights violations", as well as the "amnesty mechanisms and procedures" and the "reparation and rehabilitation of victims".<sup>28</sup> The Act's summary states that it will "provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations committed during the period from 1 March 1960 to the cut-off date", which was later decided as the end of May 1994<sup>29</sup>. The PNR Act provided for both the establishment and authorisation of the TRC, as well as its primary duties which were, in summary, (1) to establish as complete a picture as possible of the gross violations of human rights in the past through investigations and hearings, (2) to facilitate the granting of amnesty to those who applied and met the relevant requirements, (3) to establish the fate or whereabouts of victims, restoring dignity by giving victims the opportunity to relate their own accounts, and recommending reparations, and (4) to compile a comprehensive report with findings and recommendations.<sup>30</sup> According to Dullah Omar, the first Minister of Justice in the new South Africa, the objective of the PNR Act was to account for the injustices of the past, thus "[re-establishing] the rule of law and the principle of accountability".<sup>31</sup> It should be noted that the founding documents of the TRC made particular provisions for the awarding of amnesty for perpetrators of gross human rights violations.

### **Literature Review: Restorative Justice, the TRC, South Africa's Efforts to Heal Post-Apartheid and Perpetrator-Victims**

There is an extensive body of literature, and academic tradition, of studying, transitional justice in general, and the TRC in particular. However, as will be shown, there is very little academic work studying acts of perpetrator victimhood within apartheid South Africa. As such, this literature review will focus on the TRC and its efforts to heal South Africa in the post-apartheid era. In the early 2000s, as the TRC came to a close, there was a wave of

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<sup>26</sup> Boraine, *Truth and Reconciliation in South Africa the Third Way*, pp.1145.

<sup>27</sup> Boraine, *Truth and Reconciliation in South Africa the Third Way*, pp. 145.

<sup>28</sup> *Promotion of National Unity and Reconciliation Act*, no.34, 1995.

<sup>29</sup> *Promotion of National Unity and Reconciliation Act*, no.34, 1995.

<sup>30</sup> *Promotion of National Unity and Reconciliation Act*, no.34, 1995.

<sup>31</sup> As cited by Pityana, Barney. 2018. "The Truth and Reconciliation Commission in South Africa: Perspectives and Prospects." *Journal of Global Ethics* 14 (2): 194–207.

academic work on the topic, which has since somewhat stagnated. Additionally, as mentioned, there is very little academic writing on the topic of perpetrator-victims in South Africa, although there is a significant academic interest in the topic generally. As such, this literature review will be structured according to a number of thematic interests of the TRC, as identified by Verdoolaege. These include theoretical perspectives, human rights/legal perspectives, social perspectives and political perspectives.<sup>32</sup> An additional category is literature which specifically engages with the notion of *truth* as a social and political phenomena, as well as the problem of truth as something inherently subjective, while attempting to get at an objective truth, which emerged during the TRC. Moreover, the emergent field that studies collaborators and perpetrator-victims during apartheid is engaged with. By using these categorisations of TRC-related literature, a narrative of the broader historiography can be grasped at. It is within both these fields, that of TRC-related studies and that of collaborators in South Africa during apartheid, that this research is located, and moreover, these perspectives are spread out among various disciplines, most relevant here being the disciplines of history, law, sociology and political science.

### **Theoretical Perspectives**

The theoretical perspectives of the TRC generally provide reflections on methods of transitional justice in general, and truth commissions in particular, as well as the contentious notion of *truth*. Primarily among these theoretical reflections is Rotberg and Thompson's edited volume<sup>33</sup>. This edited volume sees a number of authors weigh the virtues and failings of truth commissions, focusing particularly on the TRC, assessing the overall values and shortcomings of restorative as opposed to retributive justice by such authors as Du Toit, Minow, and Ntsebeza. Other authors, including Boraine and Slye, elaborate on the unique aspects of the TRC, particularly the amnesty project. Notably, Boraine points out that the revelation of truth offered more than the "comfort and peace of mind but also a limited form of justice" and that "amnesty was a price that South Africa had to pay for a relatively peaceful transition".<sup>34</sup> Slye, moreover, while acknowledging that the granting of amnesty to individuals for the perpetration of gross human rights violations is a deeply controversial mechanism which contemporary societies have used to address their violent pasts, simultaneously accepts that the amnesty process has produced a wealth of "truth" which provides important material for future discussions and evaluations of South Africa's past. Greedy explores a broad set of issues raised by political transition and transitional justice through the prism of the TRC in South Africa<sup>35</sup>. Greedy maintains that the South African case constitutes a very important study of the enduring structural legacies of a troubled past, and of both the potential and limitations of transitional justice and human

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<sup>32</sup> Verdoolaege, Annelies. 2006. "The Debate on Truth and Reconciliation: A Survey of Literature on the South African Truth and Reconciliation Commission." *Journal of Language and Politics* 5 (1): 15–35.

<sup>33</sup> Rotberg, Robert I, and Thompson, Dennis F. 2000. *Truth V. Justice: The Morality of Truth Commissions*. University Center for Human Values Series. Princeton, N.J.: Princeton University Press.

<sup>34</sup> Boraine, *Truth and Reconciliation in South Africa the Third Way*, pp. 150.

<sup>35</sup> Greedy, Paul. 2011. *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond*. Transitional Justice. Milton Park, Abingdon, Oxon: Routledge.

rights as agents of transformation in the contemporary era. Through the TRC, Greedy's contribution to transitional justice is in arguing that, despite its many values, transitional justice needs to do more to address structural violence. Gibson identifies the characteristics of South Africa's truth and reconciliation process that contributed to its success, and asks whether the reconciliation and democratisation is endogenous to the TRC<sup>36</sup>. He finds that the TRC did exert an independent influence on the democratisation process through its contributions toward creating a more reconciled society.

Theoretical perspectives, moreover, pertain specifically to the notion of truth, which was seen as the tangible marker of the TRC's work. This work often relies upon first-hand accounts and victim testimonies. Primary among these is the edited volume by Posel and Simpson<sup>37</sup>. This volume is located within the growing global enthusiasm for truth commissions in the late 20th century and represents a reassertion not merely of the possibility of the idea of objective historical truth, but of its profound political importance. The editors argue the emphasis on the acquisition of truth served to foster individual and national reconciliation through a catharsis of forgiveness and confession. The various contributors to this volume examine the "problem of truth", as it arose during the TRC, as something inherently subjective and the "modalities of truth [the TRC] delivered and their effects."<sup>38</sup> Bonner & Nieftagodien, and Van der Merwe, in their chapters, are critical of the TRC's ability to get at conclusive truths about local experiences of human rights violations during apartheid, with Van der Merwe specifically noting that the TRC prioritised the national agenda when it came to truth discovery, and so diminished the truth recovery of local communities in favour of creating a national narrative. Posel, in her chapter, engages with the TRC report as an official telling of South African history, based on a sample of the truth. She also argues that the sample on which the report is based, coming from individual experiences of apartheid, has resulted in a report which treats crimes during apartheid as individual, rather than seeing the system of apartheid itself as criminal. Moreover, those up the chain of command during apartheid-era South Africa, such as military officials and politicians, are treated with scant concern, and much of the blame falls on the 'trigger pullers' further down the hierarchy. Additionally, Simpson agrees that truth recovery was central to restorative justice, but contends that those perpetrators testifying to the AC are unlikely to make a "full disclosure" of truth, as was required to gain amnesty. Pigou, Matshiba and Dube elaborate on victims' stories and the complicated relationship between storytelling, confession and hearing the truth as a victim with regards to personal reconciliation. These chapters challenge the professed assumption of the TRC that "healing is revealing"; for victims, this is not always so straightforward.

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<sup>36</sup> Gibson, James L. 2006. "The Contributions of Truth to Reconciliation: Lessons from South Africa." *The Journal of Conflict Resolution* 50 (3): 409–32.

<sup>37</sup> Posel, Deborah, and Graeme Simpson. 2002. *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*. Johannesburg: Witwatersrand University Press.

<sup>38</sup> Posel and Simpson. *Commissioning the Past*, pp. 3.

## Human Rights and Legal Perspectives

These perspectives of academic writing on the TRC focus primarily on the amnesty clause, which, though controversial, was an inherent aspect of the TRC that set it apart from other attempts at truth commissions. Within this categorisation is Villa-Vicencio and Doxtader's edited volume which provided an early, exhaustive overview and analysis of the amnesty provisions of the TRC<sup>39</sup>. The concept of *amnesty* is considered by a number of different scholars, who engage with the advantages and disadvantages. The book is located specifically within the goals of the amnesty provisions as espoused by those who were a part of the decision making, who maintained that amnesty was intended to be part of the larger process of restorative justice. The book engages with the problematic relationship between amnesty and justice. For example, Shriver, in his chapter, presents several deliverables that can arise out of truth commissions and legal proceedings. Additionally, Gobodo-Madikizela argues that amnesty is not at odds with justice as it is a legitimate vehicle through which to reintegrate perpetrators into society, while at the same time claiming that the TRC put victims at the centre. Other contributors engage with the concept of amnesty, and the fraught context and circumstances in which public amnesty was decided upon, over criminal trials. These contributions provide insight into the historic compromises that brought about amnesty. Krog argues that too judicial a process would have excluded victims of apartheid. Doxtader argues that the public nature of the amnesty trials in South Africa could counteract the tendency to forget in post-conflict societies. Interestingly, Sonkosi notes the particular traditional forms of African communitarianism that supported amnesty, and Boraine stresses the issues faced by the TRC in implementing an amnesty that would be fair to victims. The penultimate section of the book sees contributors reflect on the virtues and limitations of amnesty in South Africa up to that point, asking how well the AC conducted its work. Fullard and Rousseau point to the contested nature of amnesty testimony, noting that those using it must do so with some scepticism; the relationship between 'truth, evidence, and history' is more nuanced than the findings of the AC imply. Pigou, in his contribution, notes that some victims felt that the interests of perpetrators took precedence, thereby highlighted the inequities of South African society in that security personnel who applied for amnesty on the basis of committing gross human rights violations were often able to afford legal representation, whereas the victims, most of whom were black, relied on pro bono legal aid. In addition to this edited volume, there are a number of authors who reject the amnesty provisions, often claiming it contradictory to international regulations, for example Manda, 1996,<sup>40</sup> or by arguing that it had the effect of instituting a culture of impunity, for example Mamdani, 2002.<sup>41</sup> It

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<sup>39</sup> Villa-Vicencio, Charles, and Erik Doxtader. 2003. *The Provocations of Amnesty: Memory, Justice, and Impunity*. Trenton, NJ: Africa World Press.

<sup>40</sup> Manda, Peter. 1996. "Apartheid as a crime against humanity: Is the TRC an answer?" *African Society for International & Comparative Law Annual*. Vol. 8 pp.201-209.

<sup>41</sup> Mamdani, Mahmood. 2002. "Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (Trc)." *Diacritics* 32 (3-4): 33-59.

should be noted that there exists a gap in the literature in terms of how the amnesty committee engaged with perpetrator victims specifically.

### **Political Perspectives**

The political perspective of TRC literature engages with the fundamentally political establishment of the TRC, as well as the TRC's role in legitimising the new South African state. It also argues for the political necessity of the amnesty provisions in ensuring the smooth transfer of power in South Africa. Shae argues that the TRC was fundamentally a politicised process because of the selection of the commissioners, the compromise with regards to amnesty rather than criminal trials and the later controversies surrounding the deliverance of reparations<sup>42</sup>. Wilson argues that the TRC's highly politicised aims formed part of the ANC's 'nation-building' strategy to promote reconciliation and establish legitimacy for the post-apartheid state. He also maintains that the TRC, and particularly the amnesty project, was an example of *realpolitik* because the Commission supposedly went easy on political parties<sup>43</sup>. Stone agrees that the TRC was the most realistic proposition for South Africa in transitioning from the authoritarian past to a democratic future<sup>44</sup>. McGregor argues that the promise of individual amnesty in South Africa provided a workable compromise to a country on the brink of civil war.<sup>45</sup> Moreover, reconciliation and developing a comprehensive understanding of the past would not have been effectively furthered by a prosecutorial system.

### **Perpetrator-victims Studies**

The topic of perpetrator-victims is a significant one in the field of conflict studies and conflict resolution, and there are many studies on those perpetrator-victim figures, typically focusing on women or children in conflict. Sharlach has emphasised the role of Hutu women as agents of genocide in the Rwandan Genocide, who were at the same time victims of patriarchal militarism.<sup>46</sup> Duramy argues that women living in slum communities in Haiti were often motivated to join armed combatants and perpetrate violence because of their own victimisation and experiences of sexual abuse.<sup>47</sup> Perpetrator-victims are also often termed *complex perpetrators*. This term has been

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<sup>42</sup> Shea, Dorothy C. 2000. *The South African Truth Commission: The Politics of Reconciliation*. Perspectives Series. Washington, D.C.: United States Institute of Peace Press.

<sup>43</sup> Wilson, Richard A. 2001. *The Politics of Truth and Reconciliation in South Africa. Legitimising the Post-Apartheid State*. Cambridge: Cambridge University Press.

<sup>44</sup> Stone, Adam. 2009. "Accountability, Victims and Reconciliation in South Africa's Truth and Reconciliation Commission." *Australian Journal of Human Rights* 14 (2): 115–37.

<sup>45</sup> McGregor, L. 2001. "Individual Accountability in South Africa: Cultural Optimum or Political Facade?," *The American Journal of International Law*, 95(1), pp. 32–45.

<sup>46</sup> Sharlach Lisa. 1999. "Gender and Genocide in Rwanda: Women As Agents and Objects of Genocide." *Journal of Genocide Research* 1 (3): 387–99.

<sup>47</sup> Duramy, Benedetta. 2010. "From Violence Against Women to Women 's Violence in Haiti." *Columbia Journal of Gender and Law* 19 (4): 1029-1075.

used particularly on writing concerning (former) child soldiers. The field of transitional justice specifically characterises child soldiers as both victims and perpetrators, or complex perpetrators. However, Vandenhole et al maintain that in the field of transitional justice, which is concerned with establishing accountability for perpetrators of serious crimes and human rights violations, their status as a child victim does not excuse the egregious acts committed, despite the fact that they may have been forced to commit these atrocities.<sup>48</sup> Morini emphasises the double status of child soldiers as victims first, and then perpetrators, and notes the difficulty in establishing their accountability.<sup>49</sup> Baines uses the term “complex political perpetrator” in describing Dominic Ongwen, a former Ugandan child soldier and indicted war criminal at the International Criminal Court (ICC).<sup>50</sup> Baines states that Ongwen is the first person to be charged with war crimes, of which he is also the victim, but that this dual position is not unique. Rather, it is somewhat common in “fragile African states”.<sup>51</sup> What is important in Baines’ argument is the application of Bouris’ theory of victim agency, which interacts with Baines own theory of a complex political perpetrator. Baines states that “the concept [complex political perpetrator] aptly describes a generation of youth who have grown up in settings of chronic crisis and, presented with a set of ‘choiceless decisions’ (Coulter 2008: 61), develop strategies to navigate complex, violent terrains.”<sup>52</sup> This idea is important in the present study as the same circumstances can be seen during apartheid South Africa; growing up in chronic crisis, with little choice, and considering how best to adapt to these circumstances. Finally, Borer argues for a more nuanced understanding of perpetrators and victims in human rights discourse.<sup>53</sup> By engaging with the TRC, she shows that generally, within the group of victims, not all victims are the same, and within the group of perpetrators, not all perpetrators are the same. Moreover, the two groups are seldom distinct, some individuals are both victims and perpetrators. She draws on empirical cases to make this point, such as highlighting the human rights abuses perpetrated by the ANC in pursuit of freedom in South Africa.<sup>54</sup> However, she makes no mention of the askaris.

The writing on Askaris during apartheid, as mentioned, is limited, but falls within the growing field of studies on perpetrator-victims in apartheid South Africa. The primary piece of literature on the Askaris comes from Dlamini, in which he studies the case of a high-ranking ANC MK member, Glory Sedibe, who was

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<sup>48</sup> Vandenhole, Wouter, Ilse Derluyn, Stephan Parmentier, and Cindy Mels. 2015. “Victims and/or Perpetrators? Towards an Interdisciplinary Dialogue on Child Soldiers.” *Bmc International Health and Human Rights* 15 (1): 1–13.

<sup>49</sup> Morini, Claudia. 2010. “First Victims Then Perpetrators: Child Soldiers and International Law,” *ACDI - Anuario Colombian Yearbook of International Law* 3, no. Special Issue: 187-208.

<sup>50</sup> Baines, Erin K. 2009. “Complex Political Perpetrators: Reflections on Dominic Ongwen.” *The Journal of Modern African Studies* 47 (2): 163–91.

<sup>51</sup> Baines, *Complex Political Perpetrators*, pp. 163.

<sup>52</sup> Baines, *Complex Political Perpetrators*, pp. 164-165.

<sup>53</sup> Borer, Tristan Anne. 2003. “A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa.” *Human Rights Quarterly* 25 (4): 1088–1116, pp. 1088

<sup>54</sup> Borer, *A Taxonomy of Victims and Perpetrators*, pp. 1092-1095

kidnapped by the apartheid secret police, and turned from a liberation army fighter to a collaborator; an *Askari*<sup>55</sup>. Sedibe, like many askaris, operated out of Vlakplaas, a secret police farm which was the location of the headquarters of apartheid's death squads. Dlamini shows that, when he appeared in court, as a state witness, Sedibe insisted that he had joined the police force out of free will, and that he had not been tortured. However, as Dlamini notes, being given the *choice* of collaboration under torture, or the threat of torture, does not equate to free will. Moreover, Sedibe died under mysterious circumstances in 1994, after he had begun making contact with the ANC to negotiate his return to the anti-apartheid movement. Dlamini uses the story of Sedibe to engage with the broader themes of collaboration, and victims and perpetrators, and discusses the degree to which Sedibe acted with agency. Importantly, Dlamini argues that “apartheid depended far more on collaboration to work”, when compared to authoritarian regimes in Latin America and liberation struggles in Algeria and Angola, for example.<sup>56</sup> The author suggests approaching apartheid history through the lens of “complicity and collaboration [which] might yield new ways of approaching South African history.”<sup>57</sup> Thus, Dlamini complicates the strict binary conceptions of perpetrators and victims, which, notably, was employed by the TRC during its lifetime. His book therefore provides a substantial starting point for a study on the experience of askaris during the TRC, and how the TRC received these complex perpetrator-victim figures.

## Methods and Sources

The methodology used in this thesis is primarily close reading and discourse analysis of the TRC reports, as well as of the testimony from the TRC amnesty hearings and decisions. Close reading is the most appropriate approach as it allows for a focus on the specific details as provided by the sources, while at the same time allowing for insight into the broader text and narrative. Moreover, these kinds of records have been frequently used to study perpetrators, particularly from the Holocaust-related trials onwards. Thus, such judicial or semi-judicial sources are frequently studied with the expressed purpose of understanding perpetrators. It is indeed an established way of doing research in the field of conflict studies. Given the contested nature of the sources, however, the close reading requires questioning the credibility of the source and its creator. Given that, at least in the case of testimony, and for much of the Report, the sources are created by those who lived through the historical events, the sources do lend themselves to a degree of reliability, insofar as we take into account human error in remembering. Moreover, we cannot assume that everyone is acting in good faith and not lying. In fact, with regards to TRC testimony, experts have retrospectively become aware of inaccurate stories, factual errors and lies

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<sup>55</sup> Dlamini, Jacob. 2014. *Askari : A Story of Collaboration and Betrayal in the Anti-Apartheid Struggle*. Auckland Park: Jacana Media.

<sup>56</sup> Dlamini, *Askari*, pp. 11

<sup>57</sup> Dlamini, *Askari*, pp. 2

in certain testimony<sup>58</sup>. However, the testimony and reports are what constitute the fundamental basis of this analysis academically, legally, and within public consciousness; they are what we can work with, and fact-checking every detail is not always possible. Moreover, elements of the TRC report and testimonies have been scrutinised, although not in any large-scale systematic way, since their creation due to the fact that there is a large body of literature using the TRC archive. Overall, the reports and testimony can be taken as accurate as a result of the academics, analysts, lawyers and judges etc who have examined, engaged with and discussed them. It is therefore acceptable to proceed by assuming they are true. Thus, in conducting a close reading of these sources, it is important to keep in mind the inherent subjectivity, the broader context within which they exist and the reliability of first-hand accounts. In doing so, it should be noted that no inherent truth about victims and perpetrators can be derived from this thesis; rather, this analysis presents what can be garnered when working with what we have. This lack of objectivity and inherent truth, however, does not seriously diminish the findings of this thesis as, in moving forward to a place where truth might be possible to get at, it is important that we interrogate what we have and what is taken as canon in the present moment. This notion of objective truth is an expansive topic that historians have been debating for a very long time, since testimony began, and a deeper dive into this topic is beyond the scope of this thesis. Moreover, it should be noted that while humans are prone to error and are not necessarily trustworthy, the systematic destruction of documents at the end of apartheid means that there is little else to go on in terms of investigating the past, besides human accounts. The destruction of official documents and archives was extensive, and resulted in what Jacob Dlamini calls the “memory purge”, or even, “paper Auschwitz”.<sup>59</sup>

In addition to close reading, a critical discourse analysis as defined by Machin and Mayr is conducted of a select number of sources. A discourse analysis allows the researcher to find what kinds of “social relations of power are present in texts both explicitly and implicitly”.<sup>60</sup> A critical discourse analysis is an additional appropriate method because, as Machin and Mayr explain, “language can (re)produce social life” and so it is useful to ask what kinds of “inequalities and interests” are being generated, and what kind of “world” is being created through texts, because language is a powerful means of social construction.<sup>61</sup> These two methods, taken together, allow for the identification of how askaris are described by themselves, the TRC, and other perpetrators involved with askaris. This, in turn, will provide insight into how askaris were received by the post-apartheid Commission, which focused on reconciliation, while at the same time drawing lines between perpetrators and

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<sup>58</sup> Varney, Howard. Senior programme investigator, International Center for Transitional Justice. By Savage, Hannah. 9 April 2022.

<sup>59</sup> Dlamini, Jacob. 2020. *The Terrorist Album: Apartheid's Insurgents, Collaborators, and the Security Police*. Cambridge, Massachusetts: Harvard University Press, pp. xii.

<sup>60</sup> Van Dijk, as cited in Machin, David, and Mayr, Andrea. 2012. *How to Do Critical Discourse Analysis: A Multimodal Introduction*. Los Angeles: SAGE, pp. 24.

<sup>61</sup> Machin and Mayr, *How to Do Critical Discourse Analysis*, pp. 24.



victims for the sake of this reconciliation. For example, are askaris described as “perpetrators” or “victims” by members of the anti-apartheid movement, and how does this differ from how they are described by the white members of the secret police who presided over them? These phrases and direct quotes from the primary sources will be identified and analysed in order to understand the complex and changing relationships between the various actors at the TRC.

### **The TRC as an Archive – A note on Sources**

In evaluating the TRC, and specifically the amnesty process with hindsight, this thesis will use a selection of TRC cases in which the askaris played a significant role. The incidents for which perpetrators sought amnesty all took place during the 1980s, the last decade of apartheid and the era of mass armed resistance against apartheid. Due to increased resistance, the 1980s were the years during which the Vlakplaas unit operated at its height in an attempt to eliminate counterinsurgency.<sup>62</sup> The sources used in this thesis are primarily the written and recorded testimony of a number of cases brought to the TRC Amnesty Committee, as well as the final report of the TRC, particularly volume six which dealt with the work of the AC. These sources can be found in online archives for South African history, on the official website of the TRC<sup>63</sup>, as well as the Truth Commission Special Report,<sup>64</sup> the television show which was broadcast by the state-owned South African Broadcasting Corporation every week between April 1996 and March 1998. Both of these websites contain invaluable information regarding South Africa’s democratic transition, and the TRC report itself was produced to form something of an archive of South African history post-apartheid. All transcripts from all hearings across the TRC, as well as all seven reports, can be freely downloaded from the official website of the TRC. Moreover, the weekly televised programme presented these in an accessible way to the public and sought to provide additional context through interviews with victims, perpetrators, and specialists, and thus provides valuable insight into how the South African public at large interacted with, and were presented with the TRC.

The amnesty hearings and decisions used as sources in this thesis are selected using the following criteria: (1) at least one of the amnesty applicants was labelled an ‘askari’ or the human rights abuse they perpetrated took place at Vlakplaas under the direction of the Vlakplaas commanding officer, (2) the incident for which amnesty is sought took place during the period January 1980-December 1989 in South Africa, (3) the amnesty application was heard in public rather than in chambers, and (4) the amnesty application was either granted or rejected.<sup>65</sup> This

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<sup>62</sup> The mid 1980s also saw the introduction of the country-wide state of emergency in South Africa. The state of emergency meant that the police could detain anyone for reasons of public safety, increasing the powers of the SADF and SAP, gave the President the ability to rule by decree and saw the censorship of any news reporting deemed a threat to public safety.

<sup>63</sup> Found at <https://www.justice.gov.za/trc/>.

<sup>64</sup> Found at <https://sabctrc.saha.org.za/index.htm>.

<sup>65</sup> Rejected applications were to be referred to the newly established National Prosecuting Authority for criminal proceedings, however due to a lack of resources and personnel in the new democratic South Africa this generally did not

criteria allowed for the narrowing down of sources to a few key amnesty hearings and decisions, as well as the popular narratives surrounding them. The testimonies and amnesty decisions are supplemented by the audio-visual sources of the state-sponsored Truth Commission Special Report television show, as well as a number of newspaper articles. Other elements of the sources, including their validity and reliability can be ascertained by answering a few questions, familiar to historians in particular, which reveal their most basic and elementary aspects<sup>66</sup>. These questions include: (1) is the source authentic/is it what it purports to be? (2) where does the source come from? (3) when was the source produced? (4) what type of source is it? (5) which person created the source and what basic attitudes or biases might they have held? (6) how far is the author of the source well-positioned to provide first-hand information on the topic at hand? (7) how was the source understood by contemporaries of the author?

The selection of sources must be explained in light of the aforementioned contested nature of the TRC reports and testimonies. What was unique about the TRC was its operation as a public archive and holder of historical memory. Derrida himself suggested that the TRC should be considered a public archive.<sup>67</sup> Compounding this, despite acting as a public archive and repository of knowledge, according to Cole, “there are 2,000 testimonies available online, and [she estimates] that less than 20 percent of these cases have been cited or analysed in the secondary literature on the TRC”.<sup>68</sup> As such, I was drawn to the TRC as a gripping, relevant and radically under-examined source. What should be noted here is the fact that the TRC, in creating its reports, sought to (re)write a history of South Africa after the systematic destruction of documents that came at the end of apartheid.<sup>69</sup> It is thus the official, authoritative account of what occurred during the years under investigation by the TRC, 1960-1994. Thus, a study of the TRC should necessarily engage with the official documentation of the TRC itself, in this case both the reports and testimonies.

What is important to note here, however, is that the TRC archives are somewhat a contested source, and thus they must be approached with a degree of scepticism. Several authors have noted this point, particularly when

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happen. Additionally, many simply did not come forward to the TRC and apply for amnesty. There existed little incentive to do so unless one was explicitly named in another amnesty or human rights violation hearing. Some applications were withdrawn with little follow up to this. In total, there were 7112 applications made with 5392 rejected and 849 granted. Others were thrown out, for example, for being incomplete. See, for example, Bubbenzer, Ole. 2009. *Post-Trc Prosecutions in South Africa: Accountability for Political Crimes After the Truth and Reconciliation Commission's Amnesty Process*. Leiden: M. Nijhoff.

<sup>66</sup> Marwick, Arthur. 1991. *The Nature of History* 3rd ed., repr ed. London: Macmillan.

<sup>67</sup> Derrida, Jacques. (2002). Archive Fever in South Africa. In C. Hamilton, V. Harris, J. Taylor, M. Pickover, G. Reid, & R. Saleh (Eds.), *Refiguring the Archive* (pp. 38–80). Cape Town: David Philip Publishers.

<sup>68</sup> Cole, *Performing South Africa's Truth Commission*, pp.80.

<sup>69</sup> TRC Report, *Volume 1*, chapter 8.

engaging with amnesty testimony.<sup>70</sup> The problem is that, although ‘full disclosure’ was a requirement to gain amnesty, there is obviously no objective way to ensure that someone is entirely truthful, and therefore the testimony cannot be read as an entire, objective truth, a concept that is itself unstable. In order to mitigate this, the TRC acknowledged and worked with four *types*, or layers, of truth due to the complexity of the subject.<sup>71</sup> These were forensic truth, narrative or personal truth, historical social or dialogic truth and restorative truth.<sup>72</sup> The TRC attempted not to privilege any single manifestation of truth and sought to weave together all four, creating a “tapestry that was truer” than any single notion of truth could have produced on its own.<sup>73</sup> In working with the sources, it is important to ask how each notion of truth may manifest in the TRC testimony, media and reports. Moreover, other scholars have noted that every testimony given to the TRC was mediated and interpolated by interpreters.<sup>74</sup> With that being said, it is nonetheless an important and useful source as historians agree that the Commission gained a large amount of information about the perpetration of gross human rights violations during apartheid that it otherwise may not have learnt.

Moreover, the TRC Report itself, in its totality, is somewhat contested as it provides a sample of cases on the basis of a careful political balancing act, reflecting the diversity of victims, regional and historical spread of cases and a commitment to even-handedness. This approach sought to reflect the gross human rights violations which were committed across the political spectrum, by both the apartheid and liberation sides. Thus, the Report distils South African history and uses what Posel calls “window cases”.<sup>75</sup> She also shows that the TRC treated local cases as cases of national patterns, and therefore, although it lays claim to being South Africa’s official historical archive, it is limited in its scope. The amount of history determined to be ‘enough’ for the Report was itself determined by the Commissioners. Finally, Posel, among others, argue that the Report lacks significant engagement with the historiography of apartheid, does not attempt to understand the inner working of apartheid and, in general, is more descriptive than explanatory, providing a moral story of wrongdoing, rather than an

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<sup>70</sup> Fullard, Madeleine, Rousseau, Nicky. “Truth, Evidence and History: A Critical Review of Aspects of the Amnesty Process”. in *The Provocations of Amnesty: Memory, Justice and Impunity*, ed. Villa-Vicencio, Charles and Doxtader, Erik. Trenton, NJ: Africa World Press, 2003.

<sup>71</sup> An in-depth explanation of the types of truth the TRC engaged with can be found on pages 110-114 of the First Volume of the Final Report.

<sup>72</sup> Boraine, *Truth and Reconciliation in South Africa*, pp. 151.

<sup>73</sup> Daly, Erin. 2008. Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition. *International Journal of Transitional Justice* 2:23–41, pp. 25.

<sup>74</sup> Cole, Catherine M. 2010. *Performing South Africa's Truth Commission: Stages of Transition*. African Expressive Cultures. Bloomington, IN: Indiana University Press; Verdoolaege, Annelies. 2009. “Dealing with a Traumatic Past: The Victim Hearings of the South African Truth and Reconciliation Commission and Their Reconciliation Discourse.” *Critical Discourse Studies* 6 (4): 297–309.

<sup>75</sup> Posel, “What Kind of History, What kind of Truth”, in *Commissioning the Past: Understanding South Africa’s Truth and Reconciliation Commission*, ed. Posel, Deborah and Smith, Graeme. Johannesburg: Wits University Press, 2000. pp. 159.

analysis of why South Africa was so shaped by racism<sup>76</sup>. Thus, in approaching the TRC Reports, again a researcher must bear in mind that they are limited in what they state that they do.

Other scholars argue that the TRC was the *guardian* of the archive. This guardianship was not in the sense of protecting what was deposited, but rather in ensuring the collecting, institutionalising and preserving of evidence of the past.<sup>77</sup> The TRC therefore sought to ‘fix’ the knowledge of the past; creating a stability in the meanings and the contestations over the truth of the past. In creating an archive of South African history, the TRC permitted the past to speak, and “called on the past to be spoken, by inviting the nation to recall and recollect the past at the TRC’s public hearings”.<sup>78</sup> Consequently, the TRC recollected and imposed a history that became an absolute, as opposed to a possible history. And although the sources from which this history emanated were often inherently subjective, the TRC, through allowing the subjects of history to create the history, built an archive that relied on human experience, and confirmed the atrocities that had for so long been hidden. However, it must be noted that the TRC, as per the PNR Act, was charged with the goal of uncovering “as complete a picture as possible of the nature, causes and extent of gross violations of human rights” that occurred during the years under study, 1960-1994.<sup>79</sup> Yet, the presentation of the Final Report creates the impression that the past could be known definitively through the work of the TRC, which was reinforced by the institutional nature of the TRC. This must be borne in mind when using the TRC as a source, as one cannot know the past once and for all through these kinds of sources. According to Harris, this meant that the work of the TRC was self-referential. The TRC archived the evidence it required to support the history that it sought to produce and, in turn, by archiving this evidence, it ensured the accuracy of that history and created the impression that that history is real because it is based on real evidence.<sup>80</sup>

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<sup>76</sup> Posel, *What Kind of History, What kind of Truth*, pp. 162-164.

<sup>77</sup> Harris, Brent. (2002). “The Archive, Public History and the Essential Truth: The TRC Reading the Past”. In C. Hamilton, V. Harris, J. Taylor, M. Pickover, G. Reid, & R. Saleh (Eds.), *Refiguring the Archive* (pp. 38–80). Cape Town: David Philip Publishers.

<sup>78</sup> Harris, *The Archive, Public History and the Essential Truth*, pp. 162.

<sup>79</sup> TRC Report, *Volume 1*, pp. 55.

<sup>80</sup> Harris, *The Archive, Public History and the Essential Truth*, pp. 163.

## Chapter I:

### Concepts and Role-players: Victims, Perpetrators, Collaborators and Restorative Justice

#### A Matter of Definitions: Crime Against Humanity, Victims, Perpetrators, Collaborators and Agency

Terms such as “victim”, “perpetrator”, and “collaborator” are loaded, and sometimes even contested terms within the fields of conflict resolution, transitional justice and post-conflict reconstruction, however it is not possible to undertake a study such as this without using these terms. As such, it is useful to clarify precisely how they will be used in this thesis. Firstly, what is important to note, is that within the TRC, these terms are used against the background of the TRC, as well the decision by the international community at large, represented by the United Nations, to condemn apartheid in South Africa as a crime.<sup>81</sup> Crimes against humanity can be understood as extreme, systematic or widespread violations of international human rights, sometimes committed by an authoritarian regime, against minority groups or political opponents in the absence of an armed conflict.<sup>82</sup> According to the Statute of the ICC, crimes against humanity are part of a widespread or systematic attack directed against a civilian population.<sup>83</sup> South Africa, as a pariah state in the latter half of the 20th century, denied this. However, from its outset, the TRC affirmed that apartheid, “as a system of enforced racial discrimination and separation, was a crime against humanity”<sup>84</sup>. Thus, for the first time, South African authorities themselves acknowledged the atrocity of apartheid.

Against this background of apartheid as a crime against humanity, the TRC was charged with defining who could come before the TRC. It is notable that the Commission itself, rather than its mandating legislation, was tasked with defining “victim” and “perpetrator”. This was perhaps the most important decision that determined how far the Commission’s work could extend. Without a comprehensive acknowledgment of victims of apartheid, there would be only a limited identification of perpetrators and partial understanding of the legal regime that made possible the “crime against humanity.”<sup>85</sup> Volume 1 of the TRC refers back to the PNR Act, which states,

“gross violation of human rights’ means the violation of human rights through - (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement,

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<sup>81</sup> Apartheid, as practised in South Africa, was qualified by the UN General Assembly as a crime against humanity in 1966.

<sup>82</sup> Smeulers, Alette, and Grünfeld Fred. 2011. *International Crimes and Other Gross Human Rights Violations: A Multi- and Interdisciplinary Textbook*. International and Comparative Criminal Law Series, V. 32. Leiden: Martinus Nijhoff, pp. 85.

<sup>83</sup> As cited in Smeulers and Grünfeld, pp. 85.

<sup>84</sup> TRC Report, *Volume 1*, pp. 94.

<sup>85</sup> Mamdani, *Amnesty or Impunity*, pp. 33.

instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to 10 May 1994 within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive”.<sup>86</sup>

In defining victims, the Commission made recourse to the TRC’s mandate, and saw victims as those who were affected by the gross forms of human rights violations as defined above. Moreover, the TRC made a specific choice to call those who had suffered “victims”, rather than “survivors” because “the person against whom that violation is committed can only be described as a victim, regardless of whether he or she emerged a survivor”.<sup>87</sup> Thus, it was the “intention and action of the perpetrator that created the condition of being a victim”.<sup>88</sup> However, the definition of what made one a victim remained somewhat open to interpretation because as “it became extremely difficult to decide exactly what constituted an act of sufficient severity to be included. As statements were received and studied, subtleties arose that influenced the thinking of members of the Committee”.<sup>89</sup>

A perpetrator, moreover, was any person found by the Commission to have committed a gross violation of human rights.<sup>90</sup> This is a very simplistic definition. The Commission, however, does acknowledge this and notes, in the report, that there was some discomfort with this definition “as it made no distinction between the kinds of acts committed, the reasons why they were committed, their consequences or their context”.<sup>91</sup> Furthermore, this definition failed to make any effort to differentiate between perpetrators who committed an act of human rights violation, and those whose entire “operation and purpose was the commission of such acts”.<sup>92</sup> In spite of these reservations, the TRC chose to adhere to this narrow definition of who was a perpetrator, and consequently there was little room for nuance according to the codified definition. Alleged perpetrators who were named by victims, or other perpetrators, were given the opportunity to respond to allegations.<sup>93</sup> Borer, in her review of the TRC, corroborates the view that the TRC was strict in its conceptualisation of both “victim” and “perpetrator”. She argues that truth commissions may reinforce the idea that victims and perpetrators are homogeneous groups, distinct from one another.<sup>94</sup> Furthermore, Borer states that the definition “perpetrator” as provided in the Final Report of the TRC,

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<sup>86</sup> TRC Report, *Volume 1*, pp.60.

<sup>87</sup> TRC Report, *Volume 1*, pp.59.

<sup>88</sup> TRC Report, *Volume 1*, pp.59.

<sup>89</sup> TRC Report, *Volume 5*, pp. 11.

<sup>90</sup>TRC Report, *Volume 1*, pp. 59.

<sup>91</sup>TRC Report, *Volume 1*, pp. 59.

<sup>92</sup>TRC Report, *Volume 1*, pp. 59.

<sup>93</sup>TRC Report, *Volume 5*, pp. 6.

<sup>94</sup> Borer, *A Taxonomy of Victims and Perpetrators*, pp. 1088.

“made no distinction between the kinds of acts committed, the reasons why they were committed, their consequences or their context; nor did it distinguish between individuals who committed just one act and those whose entire operation and purpose was the commission of such acts.”<sup>95</sup>

Consequently, the definition was too simplistic, lacking nuance and disregarding context.

However, volume five of the TRC report does indeed make reference to perpetrators themselves being victims of gross human rights violations, when speaking of army conscripts particularly, and notes that there is a need to address their experiences and actions.<sup>96</sup> Although the Report, in its entirety, gives no formal definition of collaborators, insight can be gained about how collaborators were perceived during apartheid and by the Commission through a reading of the report. Collaboration was often understood as something more formalised, as cogs within the apartheid bureaucracy. For example, local politicians within black communities, known as community councillors, “were perceived as collaborating with the state and came to be seen as symbols of oppression and exploitation”.<sup>97</sup> These figures were often seen as the faces of the system of apartheid to local communities, which thereby reduced the visibility of the state.<sup>98</sup> Other bureaucratic and political figures, such as the leaders of the homelands, were also seen as collaborators.<sup>99</sup> The homelands, or bantustans, were purported independent homelands for different black ethnic groups in South Africa, with each Bantustan correlating to a different ethnic group. These were nominally independent territories delineated by the NP for black South Africans to reside within, in pursuit of separate development. The homeland policy saw black South Africans reduced to non-citizens in places that they had resided for far longer than the white population. Regarding the homelands, the TRC acknowledged that often the administrations and governing bodies of the homelands had little choice, given their non-viability as independent states, to collaborate with the apartheid state.<sup>100</sup> In general, anyone who participated in state structures was seen as a collaborator, including the askaris. However, what is interesting is that the askaris were seen less as direct collaborators, as were the politicians and even those working for the police, but were seen more as perpetrator-victims.

For the purpose of this investigation, it is important that the concept of a perpetrator-victim be explored. In order for one to constitute a perpetrator-victim, they need to occupy a particular position in a chain of command or within particular immovable power dynamics. Perpetrator-victims are also often characterised as “complex perpetrators”. Figures that are often conceptualised as perpetrator-victims are child soldiers. Child soldiers, being

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<sup>95</sup> Borer, *A Taxonomy of Victims and Perpetrators*, pp. 1092.

<sup>96</sup> TRC Report, *Volume 5*, pp. 134.

<sup>97</sup> TRC Report, *Volume 5*, pp. 161.

<sup>98</sup> TRC Report, *Volume 5*, pp. 161.

<sup>99</sup> TRC Report, *Volume 5*, pp. 165.

<sup>100</sup> TRC Report, *Volume 5*, pp. 228.

below the internationally recognised age of majority, are able to commit atrocities, but at the same time are indeed children whose mental and moral development may mean that they are more prone, are more easily conditioned, to behave violently towards innocents than adult soldiers.<sup>101</sup> The paradigmatic case of a child soldier/ complex perpetrator is that of Dominic Ongwen, mentioned above in the literature review. Ongwen was abducted by the Lord's Resistance Army (LRA) in Uganda sometime between the the age of nine and fourteen, and, as a child, was trained to fight against the Government of Uganda and forced to kill, mutilate, and rape. The LRA is accused of widespread human rights violations including murder, rape and the recruitment of child soldiers. According to Baines, Ongwen became so efficient and loyal to his superiors that he was eventually 'promoted' to the 'inner circle' of the LRA.<sup>102</sup> He has since been sentenced to 25 years imprisonment by the ICC; however, as Baines notes, Ongwen is "at once a victim and a perpetrator".<sup>103</sup> Baines further states that, as a complex political perpetrator, Ongwen is responsible for his actions, however, the circumstances which gave rise to his status as a victim mitigate the accountability placed on him.<sup>104</sup>

In general, a number of authors agree that, in the case of perpetrator-victims, truth commissions and mechanisms of transitional and restorative justice seem the most appropriate response after the human rights violation has been committed<sup>105</sup>. Baines argues that one of the advantages of a truth seeking mechanism in a post-conflict society is that those mechanisms are able to grapple with the historical roots of the conflict, "enabling victims and perpetrators to provide testimony towards a public record of wrongdoings and to advance recommendations for prevention of such abuses in the future."<sup>106</sup> This is important for the investigation at hand, wherein the option presented to perpetrator-victims in South Africa was to come before a truth commission. Interestingly, in Steinl's book, *Child Soldiers as Agents of War and Peace*, the author talks at length about South African children and youth, who were not allowed to take part in the TRC, however many of whom played active roles in the armed struggle, as perpetrators and victims.<sup>107</sup> She notes that the TRC held a series of special hearings on children and youth during which adults could testify to apartheid's root causes and its effects on children and youth.<sup>108</sup> She also notes that the active involvement of South Africa's children in the anti-apartheid struggle was central to the movement and its success, and consequently, children were systematically targeted by the regime

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<sup>101</sup> Matthew Happold, "Child Soldiers: Victims or Perpetrators," *University of La Verne Law Review* 29 (2008): 56-87.

<sup>102</sup> Baines, *Complex Political Perpetrators*, pp. 163.

<sup>103</sup> Baines, *Complex Political Perpetrators*, pp. 163.

<sup>104</sup> Baines, *Complex Political Perpetrators*, pp. 181.

<sup>105</sup> Morini, 2010; Steinl, 2017; Vandenhoe et al, 2015.

<sup>106</sup> Baines, *Complex Political Perpetrators*, pp. 185.

<sup>107</sup> Steinl, Leonie. 2017. *Child Soldiers As Agents of War and Peace : A Restorative Transitional Justice Approach to Accountability for Crimes Under International Law*. International Criminal Justice Series, Volume 14. The Hague, The Netherlands: T.M.C. Asser Press.

<sup>108</sup> Steinl, *Child Soldiers*, pp.51.



and subjected to grave human rights violations. Furthermore, because of young people's active participation in the struggle against apartheid,<sup>109</sup> many children were actively involved in violence, not only as victims and witnesses, but also as perpetrators.<sup>110</sup> The TRC reports make mention of this fact that children were involved too in violence in South Africa, stating that many young people felt that the only means to deal with the systemic violence they faced was to fight back. They cite the TRC testimony of Sandra Adonis, who became an activist at the age of fifteen, who told the TRC, "although we have done things that we are not very proud of, but the reasons why we have done it we are proud of them...".<sup>111</sup> What is relevant in this is that, if the TRC could take particular actions to address the experience of children who were affected as perpetrator-victims, could it not extend that same opportunity to adults who defected, were tortured, or by their own agency turned to the apartheid side of the conflict?

In the case of the TRC, what is of particular value is the short section on *perpetrators as victims*, in Volume Five, the chapter titled "Causes, Motives and Perspectives of Perpetrators". This short section provides the only insight into how the TRC perceived figures like the askari, and still remains somewhat vague. This brief note on perpetrator-victims mentions that "perpetrators may be seen as acting under orders, as subjects of indoctrination, as subjected to threats, as outcomes of earlier doctrinaire education".<sup>112</sup> This section acknowledges that the *askaris* were in the most pernicious situation in which they were transformed into assets of the regime as kidnapers, killers and torturers. Accordingly, perpetrators seen also as victims is a "thorny question", and a "grey area".<sup>113</sup> Per the report, understanding these grey areas involves being drawn into a position of sympathy with the perpetrator, which may "ignore the suffering of the victims of abuse [and] exonerate the doer of violent deeds".<sup>114</sup> In attempting to avoid these issues, the Commission's approach was to note that, in recognising that grey areas existed, it was not absolving perpetrators of responsibility for their actions, and, in addition, the acknowledgement that while the acts of gross human may be regarded as immoral and inhumane, it was counterproductive to the goal of reconciliation to regard persons who perpetrated those acts as necessarily immoral and inhumane.<sup>115</sup> Thus, according to this telling, all persons who committed gross human rights violations were able to redeem themselves for the sake of reconciliation. However, it must be noted that this section is very brief, and the TRC Reports, overall, make little mention of askaris except in the capacity of committing gross acts of human rights violations, and often in conjunction with their white superiors within the secret police. Thus, at least according to the official

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<sup>109</sup> As demonstrated by the 1976 youth uprising in Soweto.

<sup>110</sup> Steinl, *Child Soldiers*, pp.52.

<sup>111</sup> TRC Report, *Volume 4*, pp. 254.

<sup>112</sup> TRC Report, *Volume 5*, pp. 274.

<sup>113</sup> TRC Report, *Volume 5*, pp. 274.

<sup>114</sup> TRC Report, *Volume 5*, pp. 274.

<sup>115</sup> TRC Report, *Volume 5*, pp. 274.

written report of the TRC, which, as will be seen, serves as an archive of South African history, the askaris are afforded very little agency, except in their potential to redeem themselves.

### **Perpetrator-Victims in South Africa: Askaris**

The case studies selected for this investigation into the South African amnesty process, and the TRC broadly, all concern a central type of perpetrator - those of the askaris. Askari was the term used to describe any black former members of the liberation movements in South Africa who were recruited, and came to work for the Security Branch of the South African Police. According to Jacob Dlamini, the term “askari” entered the South African lexis to refer to “ANC and Pan Africanist Congress members who, through voluntary defection or torture, had switched sides to fight against their former comrades as part of a counterinsurgency campaign”<sup>116</sup>. The term is a Swahili word for soldier, and has been used in different contexts in Africa, but generally denotes soldiers of some kind. In South Africa, askaris functioned as informers and identifiers, infiltrating various anti-apartheid groups, and participated in acts ranging from kidnappings to murders while with the Security Branch Police. Notably, askaris formed a vital part of the notorious Vlakplaas counter-insurgency unit, which functioned as a paramilitary style hit-squad. As a known death squad, the Vlakplaas unit was involved in the abduction, torture and killing of important anti-apartheid activists, and thus was expected to play a fairly large role in the hearings of both the Human Rights Violations Committee, as well as the Amnesty Committee. Many askaris, as well as a few of the commanding officers of Vlakplaas, applied for amnesty to the truth commission. One of the best-known of the askaris, Joe Mamasela, however, did not apply for amnesty but rather appeared as a key state-witness in the amnesty hearings. Despite their role facilitating the work of the Security Branch, work which the TRC acknowledged was extremely effective,<sup>117</sup> the askaris were often treated with brutality and, by their own admission, were often forced to collaborate. Consequently, and in complex ways, they too were victims. Furthermore, as askaris were primarily black men, they themselves were not only victims of the white Security Branch officials above them, but also, like all black South Africans, products of the apartheid system at large. They occupy a dual position as both perpetrator and victim.

Given the ambiguous status of askaris as both perpetrators and victims, their cases provide particular insight into the perceptions and workings of the TRC broadly, and the amnesty process in particular. Furthermore, it can be instructive on the question as to whether the TRC was in fact perpetrator-friendly, rather than victim-centred, as is often the criticism. Moreover, the askaris, as largely black former liberation activists who “turned” (or perhaps more accurately were “turned”) to the side of apartheid, certainly held knowledge and truth about events during apartheid South Africa that would contribute significantly to the truth-seeking agenda of the TRC,

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<sup>116</sup> Dlamini, *Askari*, pp. 11.

<sup>117</sup> TRC Final Report, *Volume 6*, pp. 218.

which sought to reveal as accurate a picture as possible about what happened during the period between 1960-1994. Finally, with regards to the nation-building mandate of the TRC, the askaris also provide a particularly interesting case study, as they were often described as “traitors”, and their reconciliation often had to be seen as an “enemy” within black communities, rather than across the colour line. Their contributions could very well have provided valuable insight into apartheid South Africa on both sides of the political divide. Very little, however, has been written about the experiences of askaris within the TRC, its amnesty process, and the period of democratic South Africa broadly. It is therefore important to ask why these cases have had very little academic attention paid to them, as these perpetrators are somewhat unique in the TRC, though not necessarily in conflict globally.

Finally, it is important to take note of the meaning of agency in this context. Agency refers to one’s capacity to act within a situation, with “agency” describing the exercise of this capacity.<sup>118</sup> However, within periods of conflict, this capacity to act may be compromised. According to Vigh, agency, in periods of conflict, is not a question of capacity, but rather one of possibility, asking the extent to which we are able to act within a given context.<sup>119</sup> Agency is, therefore, not something we inherently possess, but rather something that is determined by the external context in which one finds themselves. To this end, Baines cites Denov and Maclure who add that agency is always conditional when it exists within the limits of militarised groups.<sup>120</sup>

### **Theoretical Framework: Restorative Justice and the Complex Political Perpetrator**

This thesis approaches the topic of perpetrator-victim studies from the perspective of restorative justice as the guiding theoretical framework. Given that restorative justice was one of the foundations and purposes of the TRC itself, it is useful to consider the work of the TRC when studying complex figures of perpetrator-victims using principles of restorative justice. This means that, when examining the various figures of perpetrator-victims during the TRC, this thesis will, simultaneously, engage with the degree of restorative justice the TRC sought and engendered in post-apartheid South Africa. Restorative justice, unlike retributive justice which is based on punishment, focuses on the harmful effects of an offenders’ action, and seeks to bring all stakeholders together in the process of reparation and rehabilitation. Marshall describes restorative justice as a process in which all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.<sup>121</sup> Zehr characterises restorative justice as viewing crime as a

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<sup>118</sup> Schlosser, Markus. “Agency.” The Stanford Encyclopedia of Philosophy. December 2019. <https://plato.stanford.edu/entries/agency/>.

<sup>119</sup> Vigh, Henrik. 2008. “Crisis and Chronicity: Anthropological Perspectives on Continuous Conflict and Decline.” *Ethnos* 73 (1): 5–24.

<sup>120</sup> Denov and Maclure, as cited in Baines, *Complex Political Perpetrators*, pp, 179.

<sup>121</sup> Marshall, Tony F. 1999. *Restorative Justice: An Overview*. London: Crown, pp.5.

violation of “people and relationships, which in turn leads to obligations to make things right” and viewing justice as a “process in which all parties search for reparative, reconciling, and reassuring solutions”.<sup>122</sup> In sum, the final report of the TRC sees restorative justice as being less interested in punishment than as with “correcting imbalances, restoring broken relationships – with healing, harmony and reconciliation...[and]focuses on the experience of victims”.<sup>123</sup>

In South Africa, restorative justice meant restoring human and civil dignity to victims of apartheid and encouraging the rehabilitation and reintegration of perpetrators into South African society. Practically, this meant that principles of restorative justice underpinned all three committees of the TRC, and fundamentally supported the amnesty project. TRC Chairperson Desmond Tutu maintained that restorative justice sought to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he has injured by his offence.<sup>124</sup> Individualised, accountable amnesty was seen as having the most potential to rehabilitate perpetrators into the society.<sup>125</sup> Consequently, restorative justice demands that the accountability of perpetrators be extended to making a contribution to the restoration of the well-being of their victims.<sup>126</sup> As such, the question arises as to how we can restore the dignity of those perpetrator-victims, whose status does not fall easily into this dichotomy, but whose dignity was certainly stripped from them in some way. As will be demonstrated, the askaris were treated with contempt, and often inhumanely, by those white officers who outranked them, and so the topic of their dignity should have been configured into their amnesty hearings, even when discussing the human rights violations, they committed. This framework of restorative justice is important because it informed and guided the source analysis and connected the subject of this thesis to the broader underlying themes and goals of the TRC.

Additionally, the concept of a complex political perpetrator is used as a guiding theoretical framework in this thesis. As stated above, Baines uses the term “complex political perpetrator” in describing Dominic Ongwen, a former Ugandan child soldier of the LRA.<sup>127</sup> Ongwen is, according to Baines, at the same time, a perpetrator and a victim, and she uses the term “complex political perpetrator” as a means to add nuance to this discussion on perpetrator-victims. In accounting for this concept, Baines draws upon Bouris’ notion of a complex political victim, which engages with the sometimes simplistic categories of “perpetrator” and “victim”. According to

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<sup>122</sup> Zehr, Howard. 1990. *Changing Lenses: A New Focus for Crime and Justice*. A Christian Peace Shelf Selection. Scottsdale, Pa.: Herald Press, pp.181.

<sup>123</sup> TRC Report, *Volume 1*, pp. 9.

<sup>124</sup> Tutu, *No Future Without Forgiveness*, pp. 51.

<sup>125</sup> TRC Report, *Volume 1*, pp. 130.

<sup>126</sup> TRC Report, *Volume 1*, pp. 131.

<sup>127</sup> Baines, *Complex Political Perpetrators*, pp. 163.

Bouris, these simplistic categories are prescribed a “moral value in the field of peacebuilding”, wherein those seen as victims are generally associated with the words such as “pure and innocent”, while perpetrators with “evil and guilt”.<sup>128</sup> Bouris is concerned that the search for pure victims and tarnished perpetrators will lead to further exclusion, dehumanisation and future violence.<sup>129</sup> Therefore, it is crucial that we see past these categories as without deconstructing these simplistic ideas we are not able to understand the “horror” of the circumstances in which victims become perpetrators.<sup>130</sup> Consequently, Baines conceptualises the complex political perpetrator which, in her words, describes a

“generation of victims in settings of chronic crisis who not only adapt to violence to survive, but thrive. By becoming a perpetrator, a child or youth can gain some degree of control over his or her life. For Ongwen and generations like him, the state is absent, unable to extend protection or provide basic goods or services to affected populations. In its absence, war opens spaces for social, economic and political innovation into which excluded children and youth can be either forced or willingly enter and become upwardly mobile.”<sup>131</sup>

Moreover, while acknowledging that the former child soldier is indeed responsible for his actions, it is very important here that context is kept in mind. Quoting Bouris, Baines explains that it is crucial to recognise these perpetrators as victims in order to understand the cruel circumstances which gave rise to perpetration.<sup>132</sup> Thus, although figures like Ongwen embrace, whether by their own choice or not, the role of perpetrator, it is important to recognise that they do so against the background of everyday, structural violence. Importantly, Baines states that it is absolutely paramount that we recognise the context in which these choices are made, as this affects the development of methods of justice moving beyond conflict.<sup>133</sup>

Like those children in Uganda, it is undeniable that black South Africans too lived in chronic crisis during apartheid, although in this case, the state was unwilling to provide protection or basic services to those affected. The question that arises is whether or not the askaris gained some degree of control over their lives through perpetration. For this reason, this concept is useful when examining other types of perpetrator-victims, such as those discussed in this thesis: the askaris during apartheid. As such, it will be used as an analytical tool to further engage with those complex perpetrators in South Africa. By extending the concept of a complex political

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<sup>128</sup> Baines, *Complex Political Perpetrators*, pp. 177.

<sup>129</sup> Bouris, as cited in Baines, *Complex Political Perpetrators*, pp. 181.

<sup>130</sup> Baines, *Complex Political Perpetrators*, pp. 181.

<sup>131</sup> Baines, *Complex Political Perpetrators*, pp. 180.

<sup>132</sup> Bouris, as cited in Baines, *Complex Political Perpetrators*, pp. 181.

<sup>133</sup> Baines, *Complex Political Perpetrators*, pp. 181.

perpetrator beyond child soldiers, it opens the door to further nuanced work in conflict relations, transitional justice, and peacebuilding.

## **Chapter II:**

### **Case Study: The Askaris at the TRC as Perpetrators**

This chapter will use testimony and decisions from the TRC, as well as the final report of the TRC to engage with the askaris as perpetrators of gross human rights violations. A small number of askaris applied for amnesty on the basis of the gross human rights violations they had committed during their time stationed at Vlakplaas. The former askaris who applied for amnesty often did so in conjunction with their white superiors, primarily Eugene De Kock. It is important to note that the mere application for amnesty, first of all, self-identified one as a perpetrator of some gross human right violation, because the amnesty application required a confession of some sort. This chapter will focus on two notable cases brought before the AC which involved askaris, namely the murder of Bathandwa Ndonga and the PEBCO 3 case, as well as focus on two askaris in particular, Sello David Thejane and Chris Mosiane, and their testimony to the TRC as askaris. Finally, it is important to note that only five men came forward to the AC as askaris, all of whom were based at Vlakplaas.<sup>134</sup> Therefore, the testimony that we do have access to cannot be considered representative of the experience of all askaris, but it is important nonetheless to engage with as much information as possible, for the purpose of understanding restorative justice in South Africa.

#### **Murder of Bathandwa Ndonga**

Bathandwa Ndonga was a young anti-apartheid activist who, in September of 1985, was murdered by local police based in the Transkei region of the Eastern Cape and a group of askaris from Vlakplaas. Ndonga was fairly well known for his activism as a student leader while at the University of the Transkei, from which he was expelled for inciting students to become involved in political activities.<sup>135</sup> Ndonga is listed in the Final Report of the TRC as a victim of a gross human right violation,<sup>136</sup> and his mother gave testimony to the HRVC regarding his abduction and killing. In her testimony, Ndonga's mother, Lulama Sidumo, stated that members of the security

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<sup>134</sup> Foster, Don H, Haupt, Paul, De Beer, Marésa, and Institute for Justice and Reconciliation (South Africa). 2005. *The Theatre of Violence: Narratives of Protagonists in the South African Conflict*. Cape Town: HSRC Press, pp. 15.

<sup>135</sup> TRC Report, *Volume 2*, pp. 443.

<sup>136</sup> TRC Report, *Volume 5*, pp. 80.

police would frequently interrogate her about his political activities while at university, and that he was a “freedom fighter”.<sup>137</sup> With regards to the justification Sidumo received for her son's death, she told the panel the following:

MEMBER OF PANEL: Mama, was there any word from the Government at the time about the death of your son?

MS SIDUMO: Yes, there was but it was over the media in the meeting which was held at Idiqua.

MEMBER OF PANEL: Could you tell the Commissioner what was said at the time?

MS SIDUMO: The Government said we have killed the terrorist Batandwa, we have ordered Batandwa to be killed.<sup>138 139</sup>

Ndondo was classified as a terrorist, working against the state, after his murder. It is important to note that during apartheid, the definition of ‘terrorist’ was so wide that almost anyone who held anti-apartheid sentiments could be classified as a terrorist.<sup>140</sup>

The application for amnesty was heard in June 1998 and was opposed by the family. Primary among those who applied for amnesty for Ndondo’s murder were Vlakplaas Commander Eugene de Kock, Transkei police force member Gcinisiko Lamont Dandala and askari Mbuso Enock Shabalala. Two more askaris, Silulami Gladstone Mose and Xolelwa Virginia Shosha, took part in the abduction and murder of Ndondo, however both were believed to have died before the amnesty hearing.<sup>141</sup> Shabalala was previously a member of the ANC before becoming an askari of Vlakplaas. This section will utilise Dandala’s and Shabalala’s testimony to the AC to demonstrate the gross acts of human rights violations that askaris were party to during apartheid.

The askaris were capable of committing gross human rights violations and were indeed perpetrators. The murder of Bathandwa Ndondo is just one example of this. In his testimony, Shabalala states his function as an askari, and repeatedly emphasises where askaris lay in the police hierarchy. According to Shabalala, askaris were there to trace and arrest insurgents:

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<sup>137</sup> Proceedings held at Umtata, Day 1, (1996), testimony of Lulama Sidumo. <https://www.justice.gov.za/trc/hrvtrans/umtata/sidumo.htm> accessed 13 August 2022.

<sup>138</sup> Proceedings held at Umtata, Day 1, (1996), testimony of Lulama Sidumo. <https://www.justice.gov.za/trc/hrvtrans/umtata/sidumo.htm> accessed 13 August 2022.

<sup>139</sup> In order to be authentic, this thesis uses the original transcripts as they are recorded on the website archive of the TRC. There may be some spelling and language mistakes as the transcripts often required translation.

<sup>140</sup> Seen most prominently in the 1950 Suppression of Communism Act. Under this act, any group seeking to affect political, industrial, social or economic change in South Africa could be labelled as communist, and so the act had the effect of banning almost all liberation movements in South Africa. See, for example, Ross, 2009.

<sup>141</sup> Truth and Reconciliation Commission Press Release, (10 June 1998), *De Kock to Appear before the Amnesty Committee*, <https://www.justice.gov.za/trc/media/pr/1998/p980610b.htm>, accessed 13 August 2022.

MR KNIGHT: So your official function as askaris was to assist in the tracing of insurgents and the arrest of the insurgents. Is that correct?

MR SHABALALA: Yes that is correct that was my job.<sup>142</sup>

Later on, he states the following:

MR HUGO: And is it also true that you never as askaris had carte blanche to just go and kill people randomly. That these things were all done structured and on orders of your superiors. Is that correct?

MR SHABALALA: I do not follow the question.

CHAIRPERSON: The question is that as askaris you were not free to go and kill as and when you like. You could only do so upon being given specific orders to do so. Is that your question?

MR HUGO: That is indeed the question. Thank you Mr Chairman.

CHAIRPERSON: Do you understand the question?

MR SHABALALA: Yes I hear the question.

MR HUGO: Well do you agree with that particular statement and the evidence that Mr de Kock will give in this regard? Is that in fact true?

MR SHABALALA: Yes I agree we were not allowed to go and kill carte blanche.<sup>143</sup>

However, once Ndondo had been apprehended by a member of the Transkei police, Shabalala was one of two people who shot Ndondo in the back as he attempted to flee, killing him:

CHAIRPERSON: You have not told us what you did. Did you shoot at the deceased when you told us that Bra Mos said to you, you must shoot at the deceased.

MR SHABALALA: Yes I too shot about 4 bullets at the deceased.

MR KNIGHT: Thank you Mr Chairman. When you shot the 4 rounds at the deceased was he facing towards you or facing away from you?

MR SHABALALA: I was about behind him to the left and Bra Mos was at the right. Dandala was also to his left, that is the deceased left[...]

Shabalala maintained that he only began shooting after receiving a non-verbal order from his superior, Lieutenant Braam Moss, to shoot Ndondo.

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<sup>142</sup> Proceedings held at Umtata, Day 2, (1998), testimony of Mbuso Shabalala.  
[https://www.justice.gov.za/trc/amntrans/1998/98061719\\_omt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_omt_dandala2.htm), accessed 12 August 2022.

<sup>143</sup> Proceedings held at Umtata, Day 3, (1998), testimony of Mbuso Enoch Shabalala  
[https://www.justice.gov.za/trc/amntrans/1998/98061719\\_omt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_omt_dandala2.htm) accessed 12 August 2022.



MR KNIGHT: Yes Mr Chairman. The other thing I wanted to ask you with regard to the initial firing of the shots. Who gave the orders to shoot?

MR SHABALALA: I can say it was [Braam Moss]<sup>144</sup> who gave us the order to shoot because he had already [started] shooting. We could not have shot had he not started shooting.<sup>145</sup>

This testimony, however, was contradicted by the testimony given by the member of the Transkei police force who had apprehended Ndondo, Gcinisiko Lamont Dandala. He maintained that Shabalala was the first to open fire:

MR KNIGHT: Who commenced the shooting? Who was the first person to start shooting?

MR DANDALA: It was Shabalala.<sup>146</sup>

If Dandala's version of events is to be believed, Shabalala exercised an abuse of power in making the decision to kill Ndondo, especially because he maintains in his testimony that they did not seek out Ndondo to kill him on that day, but rather were instructed by Vlakplaas commanders to aid in tracking of ANC operatives in the Transkei area.<sup>147</sup> As a member of the South African police, Shabalala also had no jurisdiction in the Transkei, which was nominally an independent country at the time.<sup>148</sup> In wrongfully murdering a young anti-apartheid activist, Shabalala committed a gross human rights violation. However, he was awarded amnesty on the basis that the act was politically motivated, and he made full disclosure.<sup>149</sup> The awarding of amnesty does not, however, change the fact that Shabalala was intimately involved in this murder, beyond the tracing and abduction of Ndondo. The askaris had great potential for violence in that, due to their status as associated with the SAP, they had something of a legitimate use of violence over other black South Africans, which could be exerted against those fighting against apartheid.

Moreover, Shabalala admits that he and the other askaris "celebrated" the successful mission of killing Ndondo.

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<sup>144</sup> The TRC reads Uncle Mos instead of Braam Moss. This is changed for the sake of consistency and clarity.

<sup>145</sup> Proceedings held at Umtata, Day 2, (1998), testimony of Mbuso Enoch Shabalala.  
[https://www.justice.gov.za/trc/amntrans/1998/98061719\\_umt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_umt_dandala2.htm) accessed 12 August 2022.

<sup>146</sup> Proceedings held at Umtata, Day 1, (1998), testimony of Gcinisiko Lamont Dandala.  
[https://www.justice.gov.za/trc/amntrans/1998/98061719\\_umt\\_dandala.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_umt_dandala.htm), accessed 12 August 2022.

<sup>147</sup> Proceedings held at Umtata, Day 2, (1998), testimony of Mbuso Enoch Shabalala.  
[https://www.justice.gov.za/trc/amntrans/1998/98061719\\_umt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_umt_dandala2.htm) accessed 12 August 2022.

<sup>148</sup> Proceedings held at Umtata, Day 2, (1998), testimony of Mbuso Enoch Shabalala.  
[https://www.justice.gov.za/trc/amntrans/1998/98061719\\_umt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_umt_dandala2.htm) accessed 12 August 2022.

<sup>149</sup> Truth and Reconciliation Commission Amnesty Committee, Decision case no. AC/2000/057,  
<https://www.justice.gov.za/trc/decisions/2000/ac200057.htm> accessed 10 August 2022.

MR DUKADA: You had a braai and drinks to celebrate the success. The success means the killing of Batandwa Ndondo. Is that correct?

MR SHABALALA: I can say so yes.<sup>150</sup>

In addition to this, once the askaris, including Shabalala, had returned to Vlakplaas, they were each given a reward for the killing of Ndondo:

MR HUGO: Then there is just one last aspect that I want to deal with and that was the reward that was paid to you, the R500. Was this the first time that you were paid an extra amount for an operation that you took part in?

MR SHABALALA: It was the first time.

...

MR DUKADA: Now it goes back to the earlier point Mr Shabalala that after having killed a person who was defenceless you were given R500. It shows that your activities at Vlakplaas were unlawful. Do you agree with me?

MR SHABALALA: Yes.<sup>151</sup>

Shabalala was intimately involved in the murder of an innocent student activist and by his own admission, was guilty of committing a gross human rights violation (in pursuit of political goals). Even though Ndondo was painted as a terrorist in South Africa, his murder amounted to nothing less than a brutal act of human rights violation perpetration, committed by someone who, under the same system of apartheid, had little more status and rights than Ndondo did. The amnesty decision reflects that Ndondo was a victim of a gross human right violation, and that Shabalala was primary among the perpetrators. Ndondo is also listed as a victim of a gross violation of human rights in the TRC final report, which also states that the act was perpetrated by an askari of Vlakplaas.<sup>152</sup> Shabalala, along with De Kock, was, however, awarded amnesty on the basis of making “full disclosure of the relevant facts” of the murder.<sup>153</sup> Moreover, in their decision, the AC did not differentiate between Shabalala and De Kock as perpetrators; both are guilty of having committed the act. De Kock, moreover, was not present when the murder took place, but as Vlakplaas commander, he is seen as involved, and was instrumental in defeating the

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<sup>150</sup> Proceedings held at Umtata, Day 3, (1998), testimony of Mbuso Enoch Shabalala. [https://www.justice.gov.za/trc/amntrans/1998/98061719\\_umt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_umt_dandala2.htm) accessed 12 August 2022.

<sup>151</sup> Proceedings held at Umtata, Day 3, (1998), testimony of Mbuso Enoch Shabalala. [https://www.justice.gov.za/trc/amntrans/1998/98061719\\_umt\\_dandala2.htm](https://www.justice.gov.za/trc/amntrans/1998/98061719_umt_dandala2.htm) accessed 12 August 2022.

<sup>152</sup> TRC Report, *Volume 5*, pp. 80; TRC Report, *Volume 7*, pp.609.

<sup>153</sup> Truth and Reconciliation Commission Amnesty Committee, Amnesty Decision case no. AC/2000/057, <https://www.justice.gov.za/trc/decisions/2000/ac200057.htm> accessed 10 August 2022.

ends of justice which saw the coverup of Ndondo's murder. Despite not pulling the trigger, or even being at the scene, De Kock is equally guilty.<sup>154</sup> As the foot soldier who fired shots at Ndondo, the AC does not make accommodations for the fact that Shabalala was following orders given by (white) police superiors. However, in awarding him amnesty, the AC makes attempts at promoting restorative justice for the former askari, Mbuso Shabalala.

### **PEBCO Three**

The PEBCO Three Case is one of the better-known gross violations of human rights that took place during apartheid. The case involved three black anti-apartheid activists, who were members of the Port Elizabeth Black Civil Organisation, which was affiliated with the United Democratic Front (UDF). In May 1985, these three men, Siphon Hashe, Champion Galela, and Qaqawuli Godolozzi, were abducted by members of the SAP, and subsequently murdered. The three men who formed the PEBCO Three were prominent activists within the UDF, and their murder sparked massive outcry and further tension and destabilisation in the Eastern Cape province of South Africa. Given their prominence, these three men were targeted by the SAP for “[abduction] and [elimination]”.<sup>155</sup> Police coverups during apartheid meant that much of what happened to the PEBCO Three was only revealed during the TRC, through the amnesty applications brought forward by the Port Elizabeth Security Police and the Vlakplaas askaris who committed the offence. The PEBCO Three were abducted on 8 May 1985 from the Port Elizabeth Airport by members of the Port Elizabeth Security Branch. They were then taken to a farm and killed. It emerged, through the amnesty hearings, that the three men had been severely assaulted and tortured prior to their killing. Their bodies were subsequently thrown into a river. Askaris from the Vlakplaas unit assisted in the operation, particularly in the abduction.

Among those applying for amnesty were Herman Barend Du Plessis, former Commanding Officer of the Security Police in Port Elizabeth, Johannes Martin Van Zyl, Gideon Niewoudt and Gerhardus Johannes Lotz, all of whom were members of the Security Branch. In addition to these were askaris Johannes Koole and Kimpani Peter Mogoai. Furthermore, former askari Joe Mamasela gave testimony for his role in the abduction and murder of the PEBCO Three, however he never applied for amnesty. Both Mogoai and Mamasela were previously members of MK, the armed wing of the ANC. This section will use the testimony given to the AC in the matter of the disappearance of the PEBCO 3 to demonstrate how the askaris took part as willing perpetrators.

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<sup>154</sup> Truth and Reconciliation Commission Amnesty Committee, Amnesty Decision case no. AC/2000/057, <https://www.justice.gov.za/trc/decisions/2000/ac200057.htm> accessed 10 August 2022.

<sup>155</sup> Proceedings held at Port Elizabeth, Day 3, (1997), testimony of Johan Martin Van Zyl. <https://www.justice.gov.za/trc/amntrans/pe/pebco2a.htm> accessed 2 August 2022.

On 8 May 1985, the PEBCO Three, Hashe, Godolozzi, and Galela, were on their way to the airport to meet a person whom they believed to be with the British Consulate who was sympathetic to their cause. This was, however, a ruse to lure them to the airport under false pretences. When they arrived at the airport, they were abducted by askaris who had come to assist the operation from Vlakplaas. Port Elizabeth security policeman Johannes Martin Van Zyl said during his testimony:

MR VAN ZYL: The discussion with Mr Du Plessis had the following substance, namely that there would be an opportunity during the next day or the following day at which these three people, Mr Godolozzi, Mr Hashe and Galela could be abducted in a way which could possibly not be traced and that I should speak to Lieutenant Nieuwoudt about this matter. And that I should get together a team to actually plan the operation to abduct and eliminate them.

ADV DE VILLIERS: During May of 1985 Captain Roelf Venter, Warrant Officer Gert Beeslaar and a team of so-called askaris from Vlakplaas, were at work in Port Elizabeth?

MR VAN ZYL: That is correct.

...

MR VAN ZYL: We decided to make use of the askaris. Captain Venter was obviously in charge of the askaris and the idea was that the askaris, because they weren't known in the area, and because their vehicle wasn't known, that they should actually carry out the abduction and that would then mean that no member of the Security Branch would be implicated in the abduction.<sup>156</sup>

The askaris involved in the PEBCO Three case would therefore be used for the abduction of the three men. Askaris were effective when it came to abduction on behalf of the SAP, as they were black men it was thought that activists would trust them more than if they were approached by white men. Moreover, as van Zyl states, the security police would not be implicated in the disappearance of the PEBCO Three if they were not involved in the abduction. After the askaris had abducted the three men, they drove them to Post Chalmers farm where they were subsequently assaulted and killed. The askaris were informed by the Port Elizabeth police that “the reason for abduction was interrogation”<sup>157</sup>. However, Van Zyl noted that the askaris were purposely misled because the police officers could not trust the askaris. The real purpose of the abduction was:

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<sup>156</sup> Proceedings held at Port Elizabeth, Day 3, (1997), testimony of Johan Martin Van Zyl. <https://www.justice.gov.za/trc/amntrans/pe/pebco2a.htm> accessed 2 August 2022.

<sup>157</sup> Proceedings held at Port Elizabeth, Day 3, (1997), testimony of Johan Martin Van Zyl. <https://www.justice.gov.za/trc/amntrans/pe/pebco2a.htm> accessed 2 August 2022.

MR VAN ZYL: The purpose as I can remember, was to remove the three activists from society so that they could no longer participate effectively in organisation and be either directly or indirectly responsible for the unrest in the townships.

ADV DE VILLIERS: Was the interrogation that took place therefore instrumental or secondary to this purpose that you had just described - the interrogation?

MR VAN ZYL: The interrogation as I have already said, was mainly to bring the askaris under the impression that this was the purpose for abducting the activists. At no stage did the askaris know that they had to be eliminated.

Despite this, the Chairperson of the Amnesty Committee notes that there is very little chance that the askaris, who were familiar with the processes of the SAP and formed part of a death squad, believed that the PEBCO Three would only be interrogated:

CHAIRPERSON: And this aspect of not trusting them. If you didn't trust them about the question of elimination, how could you trust them enough to involve them in the abduction? Surely they would know that those people eventually were killed, wouldn't they know that?

MR VAN ZYL: They could have surmised that afterwards, of course.

CHAIRPERSON: Of course they would have known...<sup>158</sup>

Mogoai himself acknowledges that he knew from the moment the PEBCO Three had been abducted that it was not a "normal arrest".<sup>159</sup> The askaris were willing perpetrators in this case, and they knew that the PEBCO Three would not merely be interrogated. Moreover, Mogoai testified that he and the other askaris were present during the interrogation, and took part in the assault on the three activists:

ADV LAMEY: And can you remember whether the interrogation proceeded and if so, what was the substance of the interrogation?

ADV DE JAGER: Can we just first get the answer. He asked the blindfold to be removed, was it removed or wasn't it?

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<sup>158</sup> Proceedings held at Port Elizabeth, Day 3, (1997), testimony of Johan Martin Van Zyl. <https://www.justice.gov.za/trc/amntrans/pe/pebco2a.htm> accessed 2 August 2022.

<sup>159</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

MR MOGOAI: Yes. They removed the cloth and he was asked whether he was prepared to tell the truth? He refused. After refusing he was beaten with fists and he was kicked - all of us in that room.

ADV LAMEY: Does that include yourself?

MR MOGOAI: Yes, My Lord, I took part in the beating.<sup>160</sup>

Mogoai goes on to explain the severe beating that Hashe received, as well as the torture inflicted upon Godolozzi over the next few hours. He states that he did not take part in this assault; he stood back and observed.<sup>161</sup> By his own admission, Mogoai was a perpetrator and had committed a gross human right violation in his part in the disappearance of the PEBCO Three. He applied for amnesty for the abduction as well as assault with intent to do harm. When asked why he took part in the assault on one of the PEBCO Three, Mogoai states that he took part in the physical assault because he was a member of the police who was present there. He was not instructed to do so, he merely decided to do so on his own account:

ADV BOOYENS: Why did you assault these people Mr Mogoai, this man?

MR MOGOAI: I was taking part as a member that was present there.

ADV BOOYENS: You had nothing to do with the investigation, so you just took part automatically?

MR MOGOAI: I did not know whether I was not supposed to take part in the investigations. I took part because I was already involved with these people, I couldn't turn back.<sup>162</sup>

There is of course the question of the power dynamic that existed between white police officers and the askaris; perhaps Mogoai was fearful that if he did not take part in the physical assault of Hashe that he may be seen as sympathetic to the anti-apartheid activist. He was also involved in the second beating of Hashe the following morning. It is notable that in this case, Mogoai's testimony contradicted that of the white policemen who were applying for amnesty, most of whom stated that there was no assault on the PEBCO Three:

ADV DU PLESSIS: Thank you Mr Chairman. Lastly Mr Mogoai, can you explain to us why Captain van Zyl, Mr Niewoudt and Mr Lotz say - while they were present there, testified that there

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<sup>160</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

<sup>161</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

<sup>162</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

were no assaults and to certain extent Mr Beeslaar supported this evidence although his evidence wasn't 100% clear on this, that there were no assaults. Mr Beeslaar testified that he couldn't see any signs of assault. Can you explain to us why these people all say there were not assaults and you come with this evidence about these grievous assaults, do you have any explanation for that?

MR MOGOAI: They do not want to tell that these people were assaulted, that's how [I] see it and they really surprise me why they speak like that and I would not come here and ask [for] amnesty for the assault without having assaulted the people. I did this application so that I can come and tell the whole truth as I know it and that is how I know the things. I was really surprised to hear that these people were not assaulted, they really surprised me why they didn't give that reason and it is true these people were assaulted.<sup>163</sup>

It is notable that Mogoai's testimony was contradictory because he was awarded amnesty for his role in the abduction of the PEBCO Three, whereas the Port Elizabeth policemen, van Zyl, Niewoudt and Lotz, were refused amnesty. Mamasela's testimony corroborated Mogoai that the PEBCO Three were severely assaulted. The evidence provided by the former askaris, Mogoai and Mamasela, was accepted as reasonably true and was seen as "consistent with probabilities, having regard to the reason for the decision to abduct and kill the PEBCO Three".<sup>164</sup> Throughout his testimony, Mogoai repeatedly implicates himself in having committed this egregious act. However, perhaps it is because of the remorse that Mogoai expressed at his hearing that he was awarded amnesty and had the amnesty committee generally perceive him as being an "impressive and satisfactory witness".<sup>165</sup> At his hearing, he stated the following,

MR MOGOAI: I have taken this opportunity to speak the truth and to express my torturing regrets about wasted years and my shame about a mean and petty past. As I regard myself today as a disgrace to my mother, my family and my relatives. My friends and the families of the Pebco 3 and the nation as such, it is with my deepest remorse that I ask for forgiveness and hopefully wishes to be reconciled with everybody once more and be part of a better and brighter future of South Africa. I say it now here today, as I could not have done so in the earlier days of this realisation for obvious reasons. I thank you.<sup>166</sup>

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<sup>163</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

<sup>164</sup> Truth and Reconciliation Amnesty Committee, Amnesty Decision case no. AC/99/0223, <https://www.justice.gov.za/trc/decisions/1999/ac990223.htm> accessed 2 August 2022.

<sup>165</sup> Truth and Reconciliation Amnesty Committee, Amnesty Decision case no. AC/99/0223, <https://www.justice.gov.za/trc/decisions/1999/ac990223.htm> accessed 2 August 2022.

<sup>166</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.



## **Murder of Pat Mafuna**

Mbuso Enoch Shabalala once again approached the amnesty committee for killing fellow Vlakplaas askari, Pat Mafuna. There are other cases in which askaris were killed, but this was usually done by their white superiors. In this case, the binary between an askari as a perpetrator, Shabalala, and an askari as a victim, Mafuna, is sharp. In his testimony to the AC, Shabalala claims he cannot accurately remember exactly when he killed Mafuna, however he knows it was sometime between 1982-1986. Both Shabalala and Mafuna were previously affiliated with the ANC, and, what's more, they had briefly trained together as part of the overseas guerrilla training that ANC cadres often received:

MR KNIGHT: When you were with the African National Congress did you receive training in the use of weapons and explosives?

MR TSHABALALA: That is correct.

MR KNIGHT: Whereabouts did you receive training?

MR TSHABALALA: In Angola and East Germany.

...

MR KNIGHT: Now when you returned to South Africa in - well before we get to your return, when you were with the ANC did you know Pat Mafuna?

MR TSHABALALA: Yes that is correct, I was once with him during the training.

MR KNIGHT: What was his training in or what was he trained in?

MR TSHABALALA: I found him in Angola, we were together in the training.<sup>167</sup>

When Shabalala eventually joined the Vlakplaas in 1982, after returning to South Africa from Angola in 1981, Mafuna was already working at Vlakplaas as an askari. Shabalala testified that Mafuna escaped Vlakplaas or defected from Vlakplaas, and as a result, the askaris were given orders by the commanding officers at Vlakplaas, including Eugene de Kock, to kill Mafuna. Askaris who escaped or defected were considered very dangerous due to the information that they had about the Vlakplaas-based unit, which operated largely as a death squad:

MR TSHABALALA: As Pat Mafuna was regarded as a highly dangerous person so we were told that if we can find him, even if we can kill him, that wouldn't be a problem because he was highly dangerous.

MR KNIGHT: Was it also danger with Pat Mafuna that he knew of the existence of Vlakplaas and the people that were working there? That was an additional danger that he posed?

MR TSHABALALA: Yes that is correct.<sup>168</sup>

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<sup>167</sup> Proceedings held at Pretoria, Day 3, (2000), testimony of Mbuso Enoch Shabalala. <https://www.justice.gov.za/trc/amntrans/2000/201122pt.htm> accessed 8 August 2022.

<sup>168</sup> Proceedings held at Pretoria, Day 3, (2000), testimony of Mbuso Enoch Shabalala. <https://www.justice.gov.za/trc/amntrans/2000/201122pt.htm> accessed 8 August 2022.



During a patrol, Shabalala spotted Mafuna at a taxi rank; he states that Mafuna ran away in shock. Shabalala shot him three times and Mafuna died. At the time of Mafuna's death, Shabalala was not accompanied on his patrol by any superiors or white officers, so had he wanted to, he perhaps could have looked the other way when seeing Mafuna. Of course, there was a standing order for Mafuna's death, however much of the testimony given by askaris for why they committed human rights violations refers to the fear they felt of their white superiors, and that they may be viewed as sympathetic if they did not take part. Askaris often make inferences to the social pressure they felt to perpetrate in the presence of their white commanding officers. Shabalala was a willing perpetrator, prepared to act without this social pressure, even against his former comrade. Shabalala received amnesty for the murder.

### **Askaris as Torturers: Sello David Thejane**

Sello David Thejane was a former askari who came to the AC for his part in the torture of anti-apartheid activists Abel and Norman Choane, who were members of the ANC as well as the Congress of South African Students (COSAS). Thejane was a former member of the APLA who had been turned in 1989 and was operating as an askari. Abel and Norman Choane were abducted by members of the Security Branch at some point between 1990 and 1991 and were detained and tortured. Thejane openly admits to the gross human right violation of torture in asking for amnesty for the event. Abel Choane was, according to Thejane, an escaped askari who ran away due to the ill-treatment of askaris at the hands of white police officers, but this claim has been denied by Choane<sup>169</sup>:

MR THEJANE: I learned that Abel Choane was one of those who were working at a particular unit and white members were not treating him well, then he ran away.

MR JOHNSON: Is it correct that he was indeed - also formed part of askari at that stage?

MR THEJANE: Correct, Chairperson.<sup>170</sup>

Thejane explains in detail what methods were used to torture the Choane brothers. Norman Choane was severely tortured through the method known as "tubing" as the askaris were looking for information about his brother, Abel. Thejane describes the torture as follows:

MR JOHNSON: Were you also then involved in, or first of all this brother of Abel Choane, was he tortured as well?

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<sup>169</sup> Proceedings held at Bloemfontein, Day 2, (2000), testimony of Sello David Thejane, <https://sabctrc.saha.org.za/documents/amntrans/bloemfontein/54253.htm?t=%2Bchoane+%2Bnorman&tab=hearing>, Accessed 15 August 2022.

<sup>170</sup> Proceedings held at Bloemfontein, Day 2, (2000), testimony of Sello David Thejane, <https://sabctrc.saha.org.za/documents/amntrans/bloemfontein/54253.htm?t=%2Bchoane+%2Bnorman&tab=hearings>, Accessed 15 August 2022.

MR THEJANE: That is correct, Chairperson, he was tortured and I was present.

MR JOHNSON: In what way and how was he tortured?

MR THEJANE: He was interrogated first then thereafter he did not co-operate, Luit Landman instructed us to torture him, that was myself, Jack Baloi and Patrick Ngamela. We tortured him, we tied him with a bandage, his hands were at the back, we tied him on the legs. We took a blanket, a sealing blanket which was used by detainees at the cells, we made him to lie down and we covered him with the blanket. We rolled him so that he will face upwards. Then somebody would sit on his legs. I had a small tube. I would cover him on the face with that tube up to a point where he would tell us the truth.

MR JOHNSON: You covered his face with this tube. Do I understand correctly that this person would then suffocate?

MR THEJANE: Correct, Chairperson.

MR JOHNSON: How many times, or - yes how many times was this person, this brother of Abel Choane, how many times was he tortured in this way, by putting this tube over his face?

MR THEJANE: I would say we did it five to six times.

MR JOHNSON: And in each period, how long would this tube be over his face?

MR THEJANE: It would depend, because you'd feel as to whether that person is suffocating and those signs would tell us when to move the tube. It may be some seconds to a minute. We will see some [signs], when you see him that he is suffocating, and then we'll move that tube quickly.

Thejane also admits to using the same torture technique on Abel Choane:

MR JOHNSON: Can you remember how many times did you put the tube over his face?

MR THEJANE: It was not only me who was tubing him but that was done four to five times.

MR JOHNSON: But can you remember how many times you did it?

MR THEJANE: I tubed him many times, but I recollect only two to three times.<sup>171</sup>

In the same hearing, Thejane testifies about the torture of another individual, Moeketsi Jikila, who was questioned by the Security Branch about attacks by the APLA on white-owned farms. Thejane notes that he used the same method of torture on Jikila and that he was the “main roleplayer” of the tubing effort.<sup>172</sup>

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<sup>171</sup> Proceedings held at Bloemfontein, Day 2, (2000), testimony of Sello David Thejane, <https://sabctrc.saha.org.za/documents/amntrans/bloemfontein/54253.htm?t=%2Bchoane+%2Bnorman&tab=hearing>, Accessed 15 August 2022.

<sup>172</sup> Proceedings held at Bloemfontein, Day 2, (2000), testimony of Sello David Thejane, <https://sabctrc.saha.org.za/documents/amntrans/bloemfontein/54253.htm?t=%2Bchoane+%2Bnorman&tab=hearing>, Accessed 15 August 2022.

Torture was clearly not within the official roles of the askaris, which Thejane himself stated are to gather information and track anti-apartheid dissidents. However, given that the askaris formed part of a death squad, it is not surprising that torture occurred. As the “main roleplayer” in torture, Thejane was undeniably a willing perpetrator. He was, however, awarded amnesty, and in his testimony, he offered an apology to the victims, all of whom accepted it.

### **The Murder of Griffiths Mxenge**

In November 1981, prominent anti-apartheid activist and civil right lawyer Griffiths Mxenege was abducted and brutally assassinated by Vlakplaas-based askaris, Joe Mamasela, Almond Nofomela and David Tshilalanga, led by then-Vlakplaas commander, Dirk Coetzee. Murdered askari Brian Ngulungwa was also involved in the abduction. Mxenge’s killing was a very high-profile case due to his prominence as a lawyer in South Africa who had been involved in numerous political trials. He had also served two years imprisonment on Robben Island for his political activities as a member of the ANC. Prior to his death in 1981, there had been several other attempts on his life; his car and house were bombed, and it was clear he was a marked target. Nofomela and Tshilalanga, along with Coetzee, applied for amnesty, and for all three, it was granted.<sup>173</sup>

In an interview, former Vlakplaas Commander and self-confessed murderer, Dirk Coetzee, told the TRC Special Report, “for the Mxenge killing, I mean I couldn’t walk as a white man into a black township, and I would stand out like a sore finger, so you need black guys to cooperate and do the job for you, act as instruments for you... so depending on the situation and the circumstances, you need a guy who was black, you need a guy who could speak the local language, you need a guy to, to, throw out as a frontrunner to go and prepare the way and speak to, search for your specific target in a way that no one would suspect any, anything funny.”<sup>174</sup> Thus, because Mxenge lived in a predominantly black area, it was necessary that the askaris abduct and kill him. On November 19th, the three askaris abducted Mxenge and drove him to a nearby sports ground:

MR MARAIS: Now, on the day of the killing of Mr Mxenge can you describe to the Committee what took place?

MR NOFOMELA: We went to his place of work. It was time for him to go home. We found his car still there. Brian Ngulungwa knew the area quite well. I can't remember where it was. He then drove ahead of us and we followed him. When we got to his house we actually used

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<sup>173</sup> Truth and Reconciliation Commission, Amnesty Committee, (1997), Amnesty Decision case no. AC/97/0041, [https://www.justice.gov.za/trc/decisions/1997/970805\\_coetzee](https://www.justice.gov.za/trc/decisions/1997/970805_coetzee), accessed 20 August 2022.

<sup>174</sup> Coetzee, Dirk. *TRC Special Report*, South African Broadcasting Corporation. 8 February 1998. <https://sabctrc.saha.org.za/tvseries/episode80/playlist.htm>, accessed 14 August 2022.

another route and we got there first before him. We then parked our car not far from his house. We then waited for him there. When we saw him coming he stopped. Brian - I can't remember whether it was Brian or David, but they stopped the car such that they could stop Mr Mxenge. Joe had a pistol, I had my own Makaroff. He then asked us if he could help us. We said yes. We asked him to shift over. He switched his car off. Joe then entered into the car. I got into the car at the back. David followed us. Then we got next to the Umlazi Stadium. When we got there then David stabbed him, David Tshikalanga. He is the first one who stabbed him. And then from there, with the exception of Brian - Brian just stood there with his gun - that's when we started stabbing him until he died.

MR MARAIS: Did you personally stab Mr Mxenge?

MR NOFOMELA: Yes, I did stab him.<sup>175</sup>

Nofomela and Tshikalanga both confirmed that the two of them, along with Mamasela, stabbed Mxenge at least 40 times, killing him. When pressed on why he was stabbed so many times, both former askaris stated that Mxenge was fighting back. Ngulungwa, however, did not take part in the killing, although he was present. Moreover, the murder was brutal, and the testimony details the mutilated state in which Mxenge's body was left after being killed. Before driving the body to Dirk Coetzee, Mxenge's throat was cut, and his body was mutilated.<sup>176</sup>

Nofomela stated that, in killing Mxenge, he acted on behalf of Vlakplaas in the war against the ANC:

MR DE JAGER: You said in your application that you considered it to be a war against the ANC, is that correct?

MR NOFOMELA: Yes, Sir.

MR DE JAGER: Did you consider yourself to be in this war?

MR NOFOMELA: I was on the side of the Vlakplaas group.

MR DE JAGER: On whose behalf did they fight?

MR NOFOMELA: Vlakplaas was fighting for the National Party Government.

MR DE JAGER: Were you under the impression, or were you told, that you're fighting on behalf of the Government?

MR NOFOMELA: Sir, it Sir, it was quite obvious that I am fighting for the Government, because

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<sup>175</sup> Proceedings held at Durban, (1996), testimony of Dirk Coetzee, Almond Nofomela and David Tshikalanga, <https://www.justice.gov.za/trc/amntrans/durban/coetzee1.htm> accessed 20 August 2022.

<sup>176</sup> Proceedings held at Durban, (1996), testimony of Dirk Coetzee, Almond Nofomela and David Tshikalanga, <https://www.justice.gov.za/trc/amntrans/durban/coetzee1.htm> accessed 20 August 2022.

most of the things I was doing I was doing to people like myself, fellow blacks, and not whites, and the whites were in government then.

Tshilalanga also maintained that he took part in the killing as part of furthering the government's war against the ANC:

MR MSHE: I understand you to be saying that anybody who was ANC was to be killed, and you would kill him.

MR TSHILALANGA: I mean if there were orders given to do that I was definitely going to do that, foresee no problem in doing that.

MR MSHE: Now, Mr Tshikalanga, in killing Mr Mxenge what did you hope to achieve?

MR TSHILALANGA: Truly there was nothing which I was expecting to gain, but it was just to follow the commands, and I was on duty, and if we were supposed to do this then we were going to do it.

MR MSHE: For whom were you doing this?

MR TSHILALANGA: I can say because I was on duty I was doing it on behalf of my job. I mean because the orders were given by my superiors to do that act it's then I am putting in a way that I am following the command from the superiors.

...

MR MSHE: In doing this, Mr Tshikalanga, in murdering Mr Mxenge, did you know that you are doing what you are doing in order to preserve a status quo?

MR TSHILALANGA: Yes, I think it's true.<sup>177</sup>

Both Nofomela and Tshilalanga give the impression that they are aware of the stakes involved, and that they were fully prepared and willing to act on the side of the apartheid government. The askaris considered this act to be within the range of their activities and duties as Vlakplaas operatives. Both the askaris indicated that they were prepared to commit gross acts of human rights violations in an attempt to uphold the apartheid status quo, and indeed they did in assassinating Griffiths Mxenge.

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<sup>177</sup> Proceedings held at Durban, (1996), testimony of Dirk Coetzee, Almond Nofomela and David Tshilalanga, <https://www.justice.gov.za/trc/amntrans/durban/coetzee1.htm> accessed 20 August 2022.

### **Were the Askaris Perpetrators?**

The cases elaborated upon demonstrate the askaris to be perpetrators of gross violations of human rights, ranging from abduction to torture and murder. Of course, it cannot be said with certainty that the askaris always acted willingly and without some form of coercion - there are undeniable power dynamics at play in a system, such as apartheid, wherein black people are fundamentally made to be inferior, second-rate citizens to their white counterparts. However, it is equally undeniable that the askaris were capable of, and indeed did, commit egregious actions against their fellow humans. In approaching the TRC as perpetrators, in the above cases, the AC did not make any reference to the fact that the askaris themselves may have been acting under somewhat different circumstances than their white counterparts at Vlakplaas and with the Security Branch. The askaris were working within a brutal regime in which their lives were less valued because of the colour of their skin, and in spite of this, the TRC treated them as equal perpetrators, with the same capacity to commit gross human rights violations. Even though the TRC amnesty committee made little distinction between the askaris and the white police officers who commanded them, the awarding of amnesty for the above cases, and in some cases - the apologies - saw restorative justice in action.

Furthermore, many of the askaris, who were known to the public through the TRC, struggled with what they had done after the fact, and expressed public regret. For example, Joe Mamasela and Jimmy Mbane expressed regret when speaking to the TRC Special Report. Mbane told the Special Report coverage of the TRC, "I really regret what happened. I really regret it. As a result, I want to apologise to the nation as a whole..", while Mamasela admits to killing at least thirty people, and struggles with the fact that he killed and worked against his "own" people. He states that "no self-respecting human being can feel happy for killing even one person... it's terrible, it's a dastardly act, it's something that one cannot forgive himself for, for doing. But under those circumstances, one could not do anything." The remorse expressed, for example by former askari Kimpani Mogoai, added credence to the restorative justice goal. While some argued that contrition should be a requirement for amnesty, others believed that not requiring contrition saved the process from faked apologies. Mogoai's apology is cited in the Final Report as a moment of genuine remorse and potential for healing within the black community, which indeed was betrayed by collaborators such as the askaris.<sup>178</sup>

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<sup>178</sup> TRC Report, *Volume 5*, pp. 391.

### **Chapter III:**

#### **Case Study: The Askaris at the TRC as Victims**

Askaris were perpetrators of gross human rights violations; that is undeniable. Through testifying to the AC, the askaris who did so self-identified as perpetrators, and the AC largely agreed that they were indeed perpetrators who committed serious violations against their fellow human beings. However, it also cannot be denied that the askaris were operating within a very particular set of circumstances which saw them easily victimised at the hands of their commanding officers. The nature of living in South Africa under apartheid meant that black people were not, in any respect, considered equal to white South Africans, and so the situation between askaris and their commanding officers, who were always white, was precarious. Although he was not applying for amnesty, Mamasela appeared as a state witness in a number of amnesty hearings which involved Vlakplaas and the askaris. Mamasela had the following to say about life at Vlakplaas:

MR LAMEY: Mr Mamasela, you are on record saying that: "At Vlakplaas, under the command of Dirk Coetzee and de Kock it was hell" I think you described it as: "The chambers of the devil"

MR MAMASELA: That is true, life was hell for a black man, especially an askari. Our lives were worthless there. We were beaten, we were killed. It's history, it speak for itself. More than 10 askaris were killed there so how can I say it was heaven."<sup>179</sup>

This chapter will use testimony and decisions from the TRC, as well as the final report of the TRC to engage with the askaris as victims of gross human rights violations. The sources used in this chapter arise primarily from the testimony given by the white police members who were the superiors of the askaris while at Vlakplaas. The cases with which this thesis engages with askaris as victims include the killing of askaris Brian Ngqulunga, Goodwill Sikhakhane and Pumelo Ntehelang and the abduction of askari Chris Mosiane, who himself came forward to the AC as a perpetrator. Moreover, the relationships between the white police superiors and the askaris who worked beneath them will be interrogated. These relationship dynamics, characterised by the victimisation of the askaris, run throughout the testimony given by Vlakplaas officials across the cases which involved Vlakplaas broadly.

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<sup>179</sup> Proceedings held at Port Elizabeth, Day 3, (1998), testimony of Joe Mamasela.  
<https://www.justice.gov.za/trc/amntrans/pe/3pebco3a.htm>, accessed 20 August 2022.

## Murder of Askaris

The askaris often fell victim to their superiors, and a number are known to have been killed while engaged by the security branches. In his testimony concerning the Mafuna killing, Shabalala stated as follows:

MR KNIGHT: In your experience were there many other askaris that defected murdered?

MR TSHABALALA: Yes. You wouldn't survive after escaping as an askari. That was what one would be told.<sup>180</sup>

That was the fate which befell Pat Mafuna, which has been elaborated upon, as well as Brian Ngqulunga, Goodwill Sikhakhane and Pumelo Ntehelang. This notion that askaris had no chance of escaping Vlakplaas alive was a common theme within the testimonies and was constantly echoed by askaris and their commanders alike. In his testimony to the AC for the numerous crimes for which he applied for amnesty, Dirk Coetzee and his lawyer had the following lengthy exchange about askaris who attempted to defect (back to the anti-apartheid movement):

MR JANSEN: Mr Coetzee did it sometimes happen that some of the askaris defected from Vlakplaas?

MR COETZEE: It did Mr Chairman, in my time there.

...

MR JANSEN: What kind of information would such a person have been able to give the ANC, would it have been valuable information?

MR COETZEE: Absolutely about the whole Vlakplaas set-up, who was on the farm, how the teams operated, for how many days we were out per month, names, force numbers, photos. I ended up seeing my own photo on an ANC file in Lusaka.

MR JANSEN: The leaking of this type of information, is this one of the types of things that had to be prevented?

MR COETZEE: I beg your pardon?

MR JANSEN: Was this one of the things that had to be prevented, not only the public exposure of Vlakplaas but also information to its enemy?

MR COETZEE: At all costs Mr Chairman.<sup>181</sup>

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<sup>180</sup> Proceedings held at Pretoria, Day 3, (2000), testimony of Mbuso Enoch Shabalala, <https://www.justice.gov.za/trc/amntrans/2000/201122pt.htm> accessed 8 August 2022.

<sup>181</sup> Proceedings held at Johannesburg, Day 1, (1997), testimony of Dirk Coetzee, <https://www.justice.gov.za/trc/amntrans/joburg/coetzee2.htm>, accessed 23 August 2022.



That the Vlakplaas authorities were prepared to prevent the exposure of the unit *at all costs* is not surprising considering the illegal activities which took place there. It was for fear of leaked information and questioned loyalties that askari Brian Ngqulunga was kidnapped and murdered in July of 1990. Vlakplaas commander Eugene De Kock and several other operatives applied for amnesty for his murder. De Kock testified that Ngqulunga was indeed an askari of Vlakplaas and notably took part in the abduction of Griffiths Mxenge.<sup>182</sup> At the time of his murder, South Africa was in the transitional period away from apartheid and, ironically, the Harms Commission was ongoing. The Harms Commission of Inquiry was appointed by President FW De Klerk following international outcry at the allegations by three former police officers in October and November 1989 that they had been members of an officially authorised and funded police death squad, which was being vehemently denied. These three officers were Dirk Coetzee, Almond Nofomela and David Tshikalange, the three Vlakplaas operatives who later received amnesty for murdering Griffiths Mxenge. Following the disclosures of Nofomela, Tshikalange and Coetzee in 1989, there was increasing fear that askaris would reveal the workings of Vlakplaas.

As a result of the Harms Commission, both De Kock and Ngqulunga were on “special leave” from the police force. De Kock received information that Ngqulunga was putting out feelers to re-join the ANC, and had established contact with the ANC, and his loyalties were being seriously questioned.<sup>183</sup> Consequently, De Kock was instructed by one of his superiors to kill the askari:

MR DE KOCK: Yes, I was approached again. Gen Nick van Rensburg requested of me in his office, that we make a concerted attempt to silence Brian Ngqulunga and the silencing was not a question of us speaking to him and saying "look from now on, please keep your mouth shut". Silencing in this context meant very clearly according to the lines of the discussion, that he had to be killed, that he had to be silenced forever.

...

MR DE KOCK: I felt that we would have to execute this operation. I did not feel personally that I felt like killing Brian, but we did not really have any other choice in that matter.

De Kock confirmed that there was also fear amongst the security branch that Ngqulunga could have done the same as the former askari Nofomela and exposed his involvement in and work for Vlakplaas:

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<sup>182</sup> Proceedings held at Pretoria, Day 5, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990914pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990914pt.htm), accessed 20 August 2022.

<sup>183</sup> Proceedings held at Pretoria, Day 5, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990914pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990914pt.htm), accessed 20 August 2022.

MR LAMEY: So, if one summarises all of this, then one would not be wrong to say that there was a great fear that Ngqulunga could be a second Nofomela, specifically because he was involved with the Griffiths Mxenge matter?

MR DE KOCK: Yes, that is correct Chairperson.

De Kock gave the order and other Vlakplaas operatives carried out the murder of Ngqulunga, and he was repeatedly shot and mutilated as a result of his becoming a security risk. De Kock and the other officers who carried out the murder all received amnesty for Ngqulunga's murder.<sup>184</sup> This amnesty ruling overruled the 20-year prison sentence with De Kock had been given in 1996 for conspiring to Murder Ngqulunga. Brian Ngqulunga is also named in the list of victims of apartheid identified by the TRC.<sup>185</sup> His remains were later exhumed from the makeshift grave at Vlakplaas in which his body was left.

Another askari who also fell victim to De Kock and the white police was Goodwill Sikhakhane, who was killed in January 1991. De Kock similarly ordered his murder for fears of Sikhakhane revealing information about the disappearance of ANC members towards the end of apartheid. De Kock, along with Vlakplaas police officers David Brits, Johannes Swart, Willem Nortje, Lawrence Hanton, Andrew Taylor and Johannes Steyn all applied for amnesty for the abduction, assault and killing of Sikhakhane, as well as for defeating the ends of justice with regards to the killing.<sup>186</sup> In 1990, Sikhakhane was working as an askari at the Terrorism Unit in Durban, South Africa after defecting from the ANC in 1988. His commanding officer, Col. Andrew Taylor, had noted ill-conduct from Sikhakhane; he had at times been absent without official leave from the unit, and if his bad behaviour continued, he would pose a security risk.<sup>187</sup> Askaris had intimate knowledge of the ongoings of the Security Branch, and in this case, Sikhakhane had information about the death of anti-apartheid activist, Charles Ndaba, who was eliminated under Steyn's orders. There was also the worry that if further information about the Security Branch and death squads would be leaked, it would further destabilise the country, which was already on the brink of civil war, and affect the ongoing negotiations:

GEN STEYN: If this were to happen, it would necessarily lead to a full-scale official investigation with the accompanying risks for me and certain other members under my command. And as I have already stated, if this were to be made public, the negotiations at that stage and the interests of the government at that stage, would have been affected.

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<sup>184</sup> Truth and Reconciliation Commission Amnesty Committee, (2001), Amnesty Decision case no. AC/2001/063 <https://www.justice.gov.za/trc/decisions/2001/ac21063.htm> accessed 19 August 2022.

<sup>185</sup> TRC Report. Volume 7, pp. 643.

<sup>186</sup> Truth and Reconciliation Commission Amnesty Committee, (2000), Amnesty Decision case no. AC/2000/090, <https://www.justice.gov.za/trc/decisions/2000/ac20090.htm>, accessed 19 August 2022.

<sup>187</sup> Proceedings held at Pietermaritzburg, Day 1, (1999), testimony of Johannes Steyn, [https://www.justice.gov.za/trc/amntrans/1999/99092021\\_pmb\\_990920pm.htm](https://www.justice.gov.za/trc/amntrans/1999/99092021_pmb_990920pm.htm), accessed 19 August 2022.

MR VISSER: Now the negotiations to which you refer, are these the negotiations regarding negotiations and the later negotiations at Codesa, among the various political groupings in the country?

GEN STEYN: Yes, that is correct.

Taylor and Steyn believed Sikhakhane to be a double agent. As a result of this:

GEN STEYN: Chairperson, in light of the aforementioned, the behaviour and conduct of Sikhakhane posed such a serious threat and danger, that the lives of certain Security Branch members and the lives of certain informers would also be jeopardised.<sup>188</sup>

Consequently, Steyn ordered the askari to be “eliminated”, and Eugene De Kock was brought in to do so. What is notable is that, despite the years of work by the askaris for the Security Branch, the commanding officers were willing to *eliminate* members on suspicion of them being a security risk, and because this came during the period in which the negotiated settlement was underway, the commanding officers were particularly wary of information leaks occurring at a time when their future was very unstable.

MR VISSER: Sikhakhane was an askari, the action here was not directed against any member of the ANC, it was directed at an askari.

GEN STEYN: That's correct.<sup>189</sup>

It becomes clear through the testimony of the various amnesty applicants that there was only the suspicion of Sikhakhane defecting to the ANC, or leaking information to them. There was no hard proof that Sikhakhane had this intent.<sup>190</sup> De Kock ordered his officers, Nortje, Brits and Swart to kill Sikhakhane and provided them with money as well as AK-47 firearms to shoot Sikhakhane. The officers testified as to how he was severely assaulted and killed by them in January 1991. Sikhakhane is listed as a victim of gross human rights violations during apartheid in the Final Report of the TRC.<sup>191</sup>

Johannes Mabotha was a Vlakplaas askari who was tortured and shot dead in 1989. Mabotha was a trained MK operative turned askari after being arrested by the SAP.<sup>192</sup> According to testimony, Mabotha was tortured

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<sup>188</sup> Proceedings held at Pietermaritzburg, Day 1, (1999), testimony of Johannes Steyn, [https://www.justice.gov.za/trc/amntrans/1999/99092021\\_pmb\\_990920pm.htm](https://www.justice.gov.za/trc/amntrans/1999/99092021_pmb_990920pm.htm), accessed 19 August 2022.

<sup>189</sup> Proceedings held at Pietermaritzburg, Day 1, (1999), testimony of Johannes Steyn, [https://www.justice.gov.za/trc/amntrans/1999/99092021\\_pmb\\_990920pm.htm](https://www.justice.gov.za/trc/amntrans/1999/99092021_pmb_990920pm.htm), accessed 19 August 2022.

<sup>190</sup> Proceedings held at Pietermaritzburg, Day 1, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99092021\\_pmb\\_990920pm.htm](https://www.justice.gov.za/trc/amntrans/1999/99092021_pmb_990920pm.htm), accessed 19 August 2022.

<sup>191</sup> TRC Report. Volume 7, *Victim Findings*, pp. 806.

<sup>192</sup> TRC Report. Volume 2, chapter 7, pp. 599.

until he chose to cooperate with the security police and become an askari.<sup>193</sup> Eugene De Kock and several other Vlakplaas operatives applied for amnesty for the abduction and murder of Mabotha, as well as the desecration of the deceased body. De Kock testified that Mabotha was an askari of Vlakplaas who, in October 1989, disappeared from Vlakplaas. De Kock later was informed that Mabotha had been arrested and was thought to be working with Winnie Mandela and the ANC:

MR DE KOCK: Chairperson I received a telephone call at Vlakplaas and I was informed by the Soweto Security Branch that Johannes Mabotha had once again been arrested. This was approximately in the vicinity of Marble Hall in the Western Transvaal and that he was once again involved in ANC activities.<sup>194</sup>

Upon arrival with Mabotha, he was transported to a “safe premises”, where De Kock and Bellingan, another Vlakplaas officer, and members of the Soweto Security Branch were present and was interrogated and tortured. De Kock describes the torture inflicted upon Mabotha:

MR DE KOCK: Chairperson, during that session there on that day Mabotha was interrogated, he was assaulted, among others by means of a bag and a rubber band he was suffocated. The terminology there would be "tubing" or whatever. Among others he was hung upside down; he was physically assaulted, and in the process of this assault he was also injured.

MR HATTINGH: Did you yourself participate in this assault?

MR DE KOCK: Yes Chairperson, among others I assisted in hanging him upside down, and I also participated in the suffocation by means of this rubber band.

MR HATTINGH: And what was the purpose behind this torture?

MR DE KOCK: Chairperson, among others from my side, from the side of Vlakplaas, we wanted to know what information he would have leaked out about Vlakplaas...<sup>195</sup>

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<sup>193</sup> Truth and Reconciliation Commission, Amnesty Committee, (2000), Amnesty decision case no. AC/2000/084 <https://www.justice.gov.za/trc/decisions/2000/ac20084.htm>, accessed 21 August 2022.

<sup>194</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.

<sup>195</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.

De Kock himself admits that the torture was severe and describes other methods of extreme torture that were used.<sup>196</sup> De Kock made arrangements for Mabotha to be handed over to Vlakplaas operatives once he was released from the Soweto Security Branch, after which he would be killed:

MR HATTINGH: Which arrangements did you make in this regard?

MR DE KOCK: Firstly I made enquiries at Mr Vermeulen and Mr Snyman to determine whether they had a place where we could bury Mr Mabotha. In other words the idea or the framework of the idea had already been established for his death and, if I remember correctly, Mr Vermeulen told me that we could do this at Penge Mine. The problem with Penge Mine was that that area could be traced. Sometimes there would be cattle or livestock there and this grave could be traced. The suggestion was put that explosives be used to destroy Mabotha, in other words that there should be no traceable evidence to anything about him.

MR HATTINGH: Was a decision made regarding this proposal?

MR DE KOCK: Yes.

MR HATTINGH: Did you give any orders to some of your members to prepare for this operation?

MR DE KOCK: Yes I created a group, Vermeulen and Snyman would prepare the explosives. They would go to Penge Mine. The equipment and the explosives would be of such a nature that they would not only deal with Mabotha's death that day or that evening, but they would also do shooting exercises. We had a great deal of phospho-grenades which we would use to ensure that any remains be destroyed or burnt or further broken down.

De Kock testified in detail about the day when Mabotha was murdered:

MR DE KOCK: We walked in single file. That was the only manner in which we could walk before one gets to the mine shaft. I heard that somebody asked from behind, "who has the weapon, who has the weapon?". And at that stage Mabotha looked to the left and he saw the charge and I think a detonator was already attached to it and he turned around, he looked at me and it seemed like he wanted to say something, but from a short distance, however, it must have been two metres or less I shot him, two bullets in the heart. Afterwards I would imagine, when I say I imagine, this

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<sup>196</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.

is the recollection I have, I think that Snyman and Vermeulen took off his clothes and they dragged him to the block of explosives. I turned around and I walked away.<sup>197</sup>

Mabotha was yet another askari who was considered a security risk, particularly with the changing tides in South Africa's political landscape. He is also listed as a victim of gross human rights violations committed during apartheid in the final report.<sup>198</sup> Mabotha's case is particularly gruesome in that he was severely tortured, per De Kock's own admission. Furthermore, despite having defected and becoming an askari, according to Vlakplaas operatives who testified for amnesty for his murder, he is not known to have taken part in any abductions, or Vlakplaas operations.<sup>199</sup> Mabotha, Sikhakhane and Ngqulunga were all killed in a short period between 1989 and 1990, when tensions were particularly high in South Africa and the negotiations to bring about the end of apartheid had begun. Askaris who turned back to the ANC had more to gain in providing information since it appeared that a change was coming, whereas the Security Police were already being implicated as murderers, and Vlakplaas as a paramilitary style death-squad. The murder of three askaris in the late 1980 and early 1990s was therefore no surprise. In all three of these cases, the applicants received amnesty for the killings because the gross human rights violations were easily shown to be of a political nature. There was clearly a high degree of fear and suspicion on the part of white police officers when the transitional period arrived, and the killings all took place against the fear of askaris revealing the happenings within the Security Branch and Vlakplaas.

Another askari who is also known to have been killed in 1989 was Pumelelo Moses Ntehelang. Unlike Mabotha, Sikhakhane and Ngqulunga, however, Ntehelang was not killed for fear of defection or revealing secret information; rather, he was killed for the sole reason of going absent without official leave. When he arrived back at Vlakplaas, De Kock and at least nine other Vlakplaas operatives physically assaulted Ntehelang until he died.<sup>200</sup> According to De Kock's testimony, Ntehelang was absent without official leave:

MR HATTINGH: And before you departed for the Eastern Transvaal, was Mr Ntehelang on the farm?

MR DE KOCK: No, I think that he had already missed one deployment or he hadn't arrived for a deployment. So at that stage he was absent without leave.

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<sup>197</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.

<sup>198</sup> TRC Report, *Volume 2*, pp. 253.

<sup>199</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.

<sup>200</sup> Truth and Reconciliation Commission, Amnesty Committee, (2000), Amnesty decision case no. AC/2000/085, <https://www.justice.gov.za/trc/decisions/2000/ac20085.htm>, accessed 24 August 2022.

De Kock testified that before the assault on the askari took place, De Kock and the other officers had been drinking throughout the day:

MR HATTINGH: How much did you have to drink? I don't need to know the quantity, but was it a few drinks or did you have quite a lot of drinks?

MR DE KOCK: Chairperson, I would have said it was quite a lot. I think I had six to seven beers.

...

CHAIRPERSON: Yes. You were very drunk yourself, questioning were you not?

MR DE KOCK: Drunk no, but under the influence of liquor, yes.

CHAIRPERSON: You distinguish between the two, do you?

MR DE KOCK: Chairperson, my opinion of drunk is when one can barely walk or there is no co-ordination of any sorts.

CHAIRPERSON: And you were questioning someone whom you thought was under the influence of liquor?

MR DE KOCK: That's correct, Chairperson.<sup>201</sup>

The other Vlakplaas amnesty applicants testified similarly:

MR BOOYENS: Were you drunk?

MR VAN HEERDEN: No, I was not drunk.

MR BOOYENS: Were you sober?

MR VAN HEERDEN: No, I also wasn't sober.<sup>202</sup>

It was during this evening of drinking that De Kock was informed of Ntehelang's return to Vlakplaas. He testified that other askaris had found him somewhere at a bar and they had brought him back to Vlakplaas.<sup>203</sup> Ntehelang was interrogated by De Kock as to his whereabouts; however, according to De Kock and the other applicants, Ntehelang was too drunk to be able to engage with the officers, aside from telling De Kock that his Vlakplaas-issued firearm had been lost:

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<sup>201</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.

<sup>202</sup> Proceedings held at Pretoria, Day 1, (1999), testimony of Eugene De kock, Andries van Heerden, Leon Flores and Douw Willemse, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990906pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990906pt.htm), accessed 24 August 2022.

<sup>203</sup> Proceedings held at Pretoria, Day 1, (1999), testimony of Eugene De kock, Andries van Heerden, Leon Flores and Douw Willemse, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990906pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990906pt.htm), accessed 24 August 2022.



MR DE KOCK: I once again asked him where he had been during that month, what he had been up to, where specifically he had been, and I think I asked him who he had been with and he had a very strong sense of contempt and I took the snooker cue that I was playing with and hit him over the head three or four times reasonably hard and then with my right hand, I gave him a smashing blow which made him collapse.

MR HATTINGH: What happened to the cue?

MR DE KOCK: It was one of those where the cue consisted of two sections which were attached to each other and that point of connection snapped as a result of these blows to his head. And upon that it appeared to me that I was going to have a heart attack out of pure rage, because you would try everything in your power to help these persons and that was the tragedy of it. Apart from the fact that we had a latent defection on our hands, I left the canteen in order to calm down.

MR HATTINGH: And did you return to the canteen eventually?

MR DE KOCK: I did not return myself, one of the members called me. I don't know whether it was Flores or Bosch, it was one of the two. I was in my office. He told me that there was a problem in the canteen, that I must come and look and when I arrived there I found Ntehelang laying on the ground, approximately two or three paces away from the sliding doors. I bent down and looked at him and it was clear to me that he had died.

De Kock claims that they had a “latent” defection on their hands, however the AC found that there was no evidence to support this claim. Rather than being for fear of a security leak, Ntehelang was killed in cold blood by his superiors, all of whom were under the influence of alcohol. De Kock testified that it was not him who killed Ntehelang. He began the assault, which was further carried out by officers who he had been drinking with. These officers tortured Ntehelang using the tubing method. De Kock acknowledges that they did not deal with him as they normally would a troublemaking askari:

MR DE KOCK: Well we didn't handle him in the same way that we would have handled an askari at that stage, we dealt with him in the way that we would have dealt with a terrorist, and he had been suffocated or strangled and seriously assaulted.<sup>204</sup>

De Kock and his accomplices then transported the body to be secretly buried in a makeshift shallow grave on a nearby farm. This incident shows a particular contempt for human life on the part of the Security Branch members

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<sup>204</sup> Proceedings held at Pretoria, Day 9, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99060708\\_pre\\_990607pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99060708_pre_990607pt.htm), accessed 21 August 2022.



who killed Ntehelang in cold blood. Rather than waiting for both themselves and Ntehelang to sober up, the officers interrogated and tortured him in a drunken state. The justification given in the amnesty decision makes it clear that the amnesty committee found this aspect of the case to be particularly cruel. The amnesty decision states the following:

“It is quite clear from the evidence that was led that the incident flowed directly from the drunken state the applicants were in. It is unacceptable that the deceased was interrogated at a time he was drunk and, what is worse, the interrogators themselves were also drunk...The deceased had not manifested any desire to escape from Vlakplaas. When he returned he had done so on his own volition and he had not been placed under guard to prevent him from escaping. In the circumstances, one can understand why some of the applicants say they walked out of the canteen when the assaults and questioning had commenced. This was clearly not the right time to question the deceased, if they had any serious suspicions about him. There is also no credible evidence that the applicants genuinely suspected the deceased of being a double agent.”<sup>205</sup>

### **The Relationship between Askaris and their Commanding Officers**

The amnesty decision report of the murder of Puemlo Ntehelang’s strongly exemplifies another way in which the askaris were routinely victimised by their white commanding officers. The amnesty decision states that the coverup of Ntehelang’s murder was within the interest of the Vlakplaas unit, the SAP broadly, and even the South African government at the time. Incidents such as these had to be covered up in order to conceal the way in which Vlakplaas members interacted with and treated the askaris who worked for them. What is important here, as already stated, is the overarching context of apartheid in South Africa, which meant that black people were second-rate citizens, as enshrined in the law. This dynamic existed within all spheres of South African society and very much informed the relations between askaris and their white superiors. The position of askaris as black people working for the Security Branch at Vlakplaas was fundamentally unstable, and there is no question that commanding officers saw the askaris as inferior. There are many instances within the testimony which has been used so far in this thesis that indicate a less than harmonious relationship between commanders and askaris.

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<sup>205</sup> Truth and Reconciliation Commission, Amnesty Committee, (2000), Amnesty decision case no. AC/2000/085, <https://www.justice.gov.za/trc/decisions/2000/ac20085.htm>, accessed 24 August 2022.

On the most basic level, askaris were not to question their commanding officers; they could only obey. Almond Nofomela stated the following at his amnesty hearing for the killing of Mxenge:

MR MARAIS: When you received this order from Dirk Coetzee did you question the order at all?

MR NOFOMELA: No, I would not have been able to ask. You were not to ask any questions when you were given an instruction.

This sentiment of askaris being unable to question any instructions, decisions or orders that they received from their commanding officers was echoed by Vlakplaas operative Leon Flores:

MR ROSSOUW: Mr Flores, first of all, I represent Mr Chris Mosiane, who was an askari at that time at Vlakplaas, is that correct?

MR FLORES: That's correct, Mr Chairperson.

MR ROSSOUW: And he received his instructions directly from you?

MR FLORES: That's correct, Mr Chairperson.

MR ROSSOUW: Now a person as an askari, we all know what his description is. Would he be in a position to question your authority or your orders?

MR FLORES: Not at all, Mr Chairperson.

MR ROSSOUW: He would accept them and carried it out?

MR FLORES: That is correct, Mr Chairperson.

MR ROSSOUW: You would expect that of him?

MR FLORES: That's correct, Mr Chairperson.<sup>206</sup>

At the PEBCO Three hearing, Mamasela claimed that askaris could be met with severe punishment for questioning their commanding officers:

MS HARTLE: What would you put the cause of death down to in respect of the three victims

MR MAMASELA: It was severe torture and assault, nothing more nothing less.

MS HARTLE: Did you ever question why the need to kill the three?

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<sup>206</sup> Proceedings held at Nelspruit, Day 1, (2000), testimony of Leon Flores, <https://www.justice.gov.za/trc/amntrans/2000/201009ne.htm>, accessed 1 September 2022.

MR MAMASELA: You question, you die. As an askari you are not supposed to question instruction, yours was just to carry out the instructions or die.<sup>207</sup>

Askari Frank Zole Mbane, also known as Jimmy Mbane, who testified at the hearing for the killing of Pumelo Ntehelang, repeatedly emphasised that it was a normal occurrence for askaris to be “beaten up” by their commanding officers. He stated that he had his teeth broken in by De Kock on one occasion for being drunk:

MR MBANE: Sir, I was beaten up by de Kock because I was drunk with the other guys. We were beaten at Ladybrand. That's when he broke my teeth...<sup>208</sup>

There was undoubtedly fear amongst the askaris of failing to satisfy their commanders, and intimidation to stay at Vlakplaas. In their testimonies, many of the askaris repeatedly shared the fear that they could not leave, or they would be tracked and killed. At his amnesty hearing for the PEBCO Three case, Kimpani Mogoai spoke about the conditions in which askaris often lived, such as sleeping without blankets in the cold of winter, and doing the grunt work for their commanding officers. He testifies to the unequal standing between askaris and their commanding officers:

MR NYOKA: It seems to me - if you agree with me, that the askaris were not treated equally with and by your other security colleagues in the operation, would you agree with me?

MR MOGOAI: That is correct.

MR NYOKA: Is it perhaps - having anything to do with the fact that you askaris were not respected by your colleagues simply because of the fact that whilst you had fought against the National Party regime, you turned and fought against the people who fought against it, in other words you had 10 coats. Not so?

CHAIRPERSON: Perhaps you could say - unless you wanted to ask something drastically, instead of saying: "not respected", maybe you could say: "You were not trusted, they didn't trust you".

MR MOGOAI: Yes, we were not trusted. I would explain it this way, the way I saw it we were used as instruments then when they had done their job they would throw them away.

MR NYOKA: And because of that you felt that you had at all costs to please your masters, that is the security branch seniors and handlers, not so?

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<sup>207</sup> Proceedings held at Port Elizabeth, (Day 5), 1998, testimony of Joe Mamasela, <https://www.justice.gov.za/trc/amntrans/pe/3pebco4.htm>, accessed 3 August 2022.

<sup>208</sup> Proceedings held at Pretoria, Day 3, (1999), testimony of Frank (Jimmy) Zole Mbane, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990908pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990908pt.htm), accessed 24 August 2022.

MR MOGOAI: That is correct.<sup>209</sup>

Mamasela echoes the lack of trust that existed between askaris and their commanding officers:

MR LAMEY: Mr Mamasela, were the askaris as a group and individuals while with - during their involvement at Vlakplaas, were they under surveillance and under continuous suspicion, were they trusted?

MR MAMASELA: It depends on what you call trusted because askaris like I said, they were never considered as humans, we were never considered as humans. And we were only trusted as far as killing of the black people by us is concerned, further than that we were never trusted.

There is also the notion that the askaris were dispensable and easily replaced, as is seen in Mogoai's words, referring to the askaris as "instruments". This sentiment of askaris as less-than-human tools for which the Security Branch could use as they needed is echoed by Mamasela in his interview with the TRC Special Report. He states that askaris were "political animals" who could be used as "political serial killers" as needed and discarded, or *eliminated*, when necessary, because "[their] commanders had absolutely no respect for [their] lives."<sup>210</sup>

This fraught relationship between askari and commanding officers, in turn, had an impact on the relationships between the askaris themselves. Vlakplaas was set up in a way in which askaris were made to spy on one another, fostering distrust, rather than camaraderie. This obviously benefitted the structures of white supremacy at Vlakplaas and ensured that the askaris would not rise up against their commanders. To that end, there is not one recorded instance of the askaris at Vlakplaas revolting against the commanding officers. De Kock testified at the hearing for the murder of Bathwana Ndongdo that he did indeed set up Vlakplaas in this way:

MR DILIZO: Perhaps the reason why I am asking that question, I imagine the situation where for instance in the Intelligence Service, a spy is sent to go and spy on B and while he is still busy spying on B, then D is being sent to spy on the one spying on B, which shows that there is no question of much confidence in each other, you treat each other with caution. That is the reason why I am asking that question.

MR DE KOCK: Yes, it is a century old principle in counterintelligence. At Vlakplaas I

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<sup>209</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

<sup>210</sup> Mamasela, Joe. *TRC Special Report*, South African Broadcasting Corporation. 8 February 1998. <https://sabctrc.saha.org.za/tvseries/episode80/playlist.htm>.

appointed some of the askaris to an extra salary from the Secret Fund, to ensure that I don't have to go and get 20 or 30 askaris who were messing with weapons, because in other words I had askaris who spied on other askaris, yes counter-insurgence.<sup>211</sup>

When asked if the shared experience of oppression that the askaris faced from the commanders created something of a “brotherhood” amongst them, Mamasela made it clear that every individual was looking out for themselves. As mentioned, Vlakplaas was set up in such a way to discourage camaraderie between the askaris as that would be dangerous for the white corps of officers. Mamasela’s words are important here:

MR LAMEY: Now this oppression of the askaris, did that lead to some form of brotherhood among the askaris?

MR MAMASELA: I don't know what you mean by "brotherhood among askaris". Each and every askari that was at Vlakplaas had to survive by all means, whether his survival centred around the brotherhood of other askaris or in ...[indistinct] himself with other black policemen like Koole or in ...[indistinct] himself like in my case with the Generals, it was purely for survival, everybody had to survive. So it was not a uniform overall survival tactic, everybody, every individual had his own survival instinct that he used to survive.

MR LAMEY: But I mean you were there Mr Mamasela, you surely could have - you've witnessed what askaris did. If they were oppressed by their white superiors, I would take it that they were brothers in this oppression?

MR MAMASELA: Not really man. Let me tell you something, these people that you are representing, most of them, they used a divide and rule tactic. They sent an askari to check on another askari, they even sent askaris to kill other askaris, so what are you talking about? I was there, like you say.

### **Were the Askaris Victims?**

As this thesis has shown, askaris were, at the same time, perpetrators and victims. The circumstances within which the askaris found themselves were fundamentally precarious. As most askaris were former members of the anti-apartheid movement, usually MK or APLA cadres who had been turned, it seems unlikely that they would ever have the full trust of their white police commanding officers. Tensions ran so high that as soon as one was suspected of leaking information or acting as a double agent against Vlakplaas or the Security Branch, an askaris’

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<sup>211</sup> Proceedings held at Umtata, Day 1, (1998), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1998/98082425\\_umt\\_umtatal.htm](https://www.justice.gov.za/trc/amntrans/1998/98082425_umt_umtatal.htm), accessed 13 August 2022.

chances of survival were low. The relationship between commanding officers and the askaris they handled was characterised largely by the victimisation of the latter, and many of the askaris who lived seem to have understood themselves to also be victims. One askari, Ephraim Mfalapitsa, told the amnesty committee that, despite the gross human rights violation that he had committed and was seeking amnesty for, he believed himself to simultaneously be a victim:

MR MFALAPITSA: And that is how I understood myself - my feelings were also that I was a victim. A concept such as askari, former terrorist,<sup>212</sup> you know, all those concepts they bring a multiple of danger and feeling of helplessness and alienation to those who were so named.<sup>213</sup>

Mamasela also names himself as a victim.

MR LAMEY: As it pleases you Mr Chairman.

Mr Mamasela, I understand also your evidence that you were a victim of the security forces throughout your involvement with them, from the days at Vlakplaas and also further on, is that correct?

MR MAMASELA: I still consider myself so, even today. I'm a victim of both black and white politicians.<sup>214</sup>

Additionally, the question of restorative justice is challenging when the victims are dead. However, as mentioned, the askaris who were killed by their commanding officers are listed as victims in the TRC Final Report, lending validity to their status as victims. This is despite any egregious acts they may have committed during their time as askaris. Moreover, some of the bodies of the murdered askaris were exhumed and given proper burials, in the same way as other murdered victims of the Security Police and other state apparatus that were named in the TRC report. The apologies to the victims of their crimes by the askaris who lived can be seen as them seeking restorative justice; however the TRC has done nothing to see to their restoration of dignity and justice as victims. Although they are undeniably complicated figures, even those askaris who were not killed by their commanding officers were victims, and, by failing to recognise this, the TRC set a dangerous precedent of viewing perpetrators and victims in the binary. The lack of acknowledgement of this position of askaris as both perpetrators and victims,

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<sup>212</sup> A terrorist, in this context, refers to an individual who was working against the state and the system of apartheid, usually a freedom fighter associated with the ANC or another one of the anti-apartheid organisations. This definition of a terrorist was established by the Suppression of Communism Act of 1950.

<sup>213</sup> Proceedings held at Johannesburg, Day 2, (1999), testimony of Ephraim Mfalapitsa, [https://www.justice.gov.za/trc/amntrans/1999/99050321\\_jhb\\_990504jh.htm](https://www.justice.gov.za/trc/amntrans/1999/99050321_jhb_990504jh.htm), accessed 4 September 2022.

<sup>214</sup> Proceedings held at Port Elizabeth, (Day 3), 1998, testimony of Joe Mamasela, <https://www.justice.gov.za/trc/amntrans/pe/3pebco3a.htm>, accessed 3 August 2022.

the TRC lent credence to one of its biggest flaws and subsequent criticisms: its failure to address the system of apartheid itself, at both a grand and everyday level, as a gross violation of human rights that victimised black people in South Africa on a daily basis, at a structural level, for decades.

## **Chapter IV:**

### **Analysis: Perpetrator-victims**

The above case studies show that the askaris occupied a grey area wherein they did not fit neatly into one category of either perpetrator or victim. They are, fundamentally, perpetrator-victims. Furthermore, this label of perpetrator victim goes beyond that of “collaborator”. While askaris did indeed collaborate with the apartheid regime and fought for the apartheid status quo, their collaboration did not imply ease of life under a harsh regime, nor was it the “easy way out” as some Vlakplaas officials maintained.<sup>215</sup> Collaborating here went hand-in-hand with victimisation, which was, oftentimes, severe and fatal. Nevertheless, it is important to acknowledge that, while the askaris were victims, this status does not absolve them of responsibility for their acts of perpetration. When engaging with askaris as figures who were clearly perpetrators and victims at the same time, it is also important to question their agency within their working for the Security Branch, and moreover, how their lives may have been impacted by apartheid as black collaborators, employed by the apartheid state. To this end, the broader socio-political context of apartheid is important. It informed the totality of the askaris’ lives, and, regardless of whether they were victimised individually by white officers, as black people in South Africa, they were victims of apartheid. This chapter will look at how the askaris understood their own agency in becoming perpetrators upholding the apartheid status quo, as well as how the TRC dealt with the askaris as victims of the crime of apartheid.

### **The Question of Agency**

Agency in perpetrating egregious acts during a period of conflict is a contentious subject, and there are numerous studies and inquiries into the topic. The relevant question here is about where the locus of agency lies: do the askaris, as human beings with agency, perpetrate human rights violations on behalf of the apartheid government which is actively working against them as black people, because they have the agency to do so? Or, are they completely at the mercy of a system which seeks to remove black people from all areas of South African life and legislates the superiority of South Africa’s white citizens? Clearly, the relationship between askaris and their commanding officers was marked by fundamental inequality and hierarchy which placed any white person above any black person regardless of rank. If we use the testimony of former askaris, it is apparent that most of them,

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<sup>215</sup>Coetzee, Dirk. *TRC Special Report*, South African Broadcasting Corporation. 8 February 1998. <https://sabctrc.saha.org.za/tvseries/episode80/playlist.htm>.

although not all, felt that they were forced to become askaris and take part in the perpetration of gross human rights violations. They state that they were working under duress and had no choice in the matter. Former askari Jimmy Mbane told the TRC Special Report in an interview that, when he was captured by Vlakplaas operatives, De Kock told him, with a gun to Mbane's head, that he could "cooperate or die".<sup>216</sup>

Another former askari, Chris Mosiane, who applied for amnesty for the gross violations he had committed while an askari at Vlakplaas, was also the subject of another amnesty case when members of the SAP applied for amnesty for his kidnapping. At the time of Mosiane was an MK cadre, who was turned and became an askari after being detained for six months. Mosiane's testimony echoes the sentiment expressed by Mbane above, stating that he was given the *choice* to cooperate with the security police or "disappear":

JUDGE DE JAGER: Did you join the Security Police out of your own free will?

MR MOSIANE: I was forced to join, Chairperson.

JUDGE DE JAGER: What did they do to you to force you to join them? Why do you say you were forced to join them?

MR MOSIANE: You would be aware Chairperson that I was abducted from Swaziland and brought to the Republic [of South Africa]. When I was kidnapped, I was a member of Umkhonto weSizwe. When I was abducted from Swaziland, I had only two options, to collaborate with them, or disappear.

JUDGE DE JAGER: And if you say disappear, what do you mean? You had to collaborate or be killed, or what do you mean?

MR MOSIANE: I mean be killed, like those who were killed.<sup>217</sup>

Mamasela also maintained that he joined the askaris because of force inflicted upon him, rather than individual choice:

MR BOOYENS: ... Would I be correct if I say that you claim to have been working involuntary for the security police and started to work with them under duress?

MR MAMASELA: I don't understand your question.

MR BOOYENS: You never wanted to join the security police or to become an askari, you were forced by

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<sup>216</sup>Mbane, Jimmy. *TRC Special Report*, South African Broadcasting Corporation. 8 February 1998. <https://sabcrc.saha.org.za/tvseries/episode80/playlist.htm>.

<sup>217</sup> Proceedings held at Durban, Day 1, (2000), Testimony of Christopher Mosiane, <https://www.justice.gov.za/trc/amntrans/2000/201016db.htm>, accessed 1 September 2022.



them, would that be correct?

MR MAMASELA: That is absolutely correct.

MR BOOYENS: Your real loyalties were never with the security police but because of the duress and the fear that you would be killed you stayed on at Vlakplaas?

MR MAMASELA: Yes.

MR BOOYENS: Not wanting actually to want anything to do with that terrible system that made you into what you became at Vlakplaas, is that correct.

MR MAMASELA: Yes I had no alternative.<sup>218</sup>

This notion put forward by Mamasela of loyalty is echoed by Mosiane, who maintains that he never aligned with the values of Vlakplaas and in his mind he remained loyal to the ANC. In this case, if he truly remained loyal to the principles of the ANC, his individual agency was totally stripped from him, as he was forced to join Vlakplaas or be killed.

MR PANDAY: Mr Mosiane, the way I understand your evidence is that obviously it was out of necessity that you joined the askaris, is that correct?

MR MOSIANE: That is correct, Chairperson.

MR PANDAY: Do I further understand it that in no way did you support any of their objectives?

MR MOSIANE: That is so, Chairperson.

MR PANDAY: So at the time, did you still believe in the principles of the ANC whilst being an askari?

...

MR MOSIANE: Yes, Chairperson.

MR PANDAY: At present?

MR MOSIANE: I haven't changed, Chairperson.<sup>219</sup>

Mbuso Shabalala and Kimpani Mogoai had a different answer when asked why they joined Vlakplaas as askaris. Both cite financial reasons and imply that it was their own decision to join the ranks of the SAP as askaris. They indicate significantly more agency in joining the askaris than the other men do, showing that it was not always as

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<sup>218</sup>Proceedings held at Port Elizabeth, (Day 1), 1998, testimony of Joe Mamasela, <https://www.justice.gov.za/trc/amntrans/pe/3pebco1.htm>, accessed 3 August 2022.

<sup>219</sup> Proceedings held at Durban, Day 1, (2000), Testimony of Christopher Mosiane, <https://www.justice.gov.za/trc/amntrans/2000/201016db.htm>, accessed 1 September 2022.

simple as having all choices removed. Mogoai agrees that he himself decided to join the Security Branch of the SAP, that he was not captured and forced to turn. Rather, he became disillusioned with the running of the ANC, and sought a better salary.

MR LAMEY: You also state in paragraph 2.7 of annexure A on page 206 of the bundle sorry, 204 of the bundle that one of the reasons that made you to decide to join the ranks of the Security Police that you became disillusioned with the ANC in that respect that more prominent leaders in the ANC also were members of the South African Communist Party and that they played a prominent role in Umkhonto weSizwe, is that correct?

MR MOGOAI: That is correct, Mr Chairman.<sup>220</sup>

ADV LAMEY: And you say that although the main reason for joining the Security Police was because you were unemployed and had to earn an income to look after your family, you also say that you were particularly disillusioned with the ANC due to the fact that more and more prominent leaders in the ANC were members of the South African Communist Party, or other communistic organisations and that they in particular played a prominent role in Umkhonto weSizwe, that was the reason for your disillusionment?

MR MOGOAI: The way you explained you say I was a member of the South African Communist Party, that is why I have a problem?

ADV LAMEY: No, let me rephrase the question. You said that you were disillusioned with the ANC because several prominent leaders in the ANC were also members of the South African Communist Party or other communist organisations and that they played a particularly prominent role in Umkhonto weSizwe, is that correct?

MR MOGOAI: That is correct.<sup>221</sup>

Shabalala states that he was not interested in politics and joined the SAP as an askari because he needed a better job. This point is, of course, very important because black South Africans were plunged into poverty because of firstly, a history of colonialism, and secondly, apartheid which systematically oppressed black South Africans and sought to prevent them from becoming economically independent. An aim of the apartheid system was for the

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<sup>220</sup> Proceedings held at Pretoria, Day 10, (1998), Testimony of Kimpani Peter Mogoai, [https://www.justice.gov.za/trc/amntrans/1998/98072031\\_pre\\_cosatu10.htm](https://www.justice.gov.za/trc/amntrans/1998/98072031_pre_cosatu10.htm), accessed 3 September 2022.

<sup>221</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

black population to work primarily as unskilled labourers, and so there were few decently paid employment opportunities.<sup>222</sup>

MR SHABALALA: You see I was not interested in politics. I don't want to lie to you.

MR DUKADA: So if the South African Police force was paying you an adequate salary then you would not bother yourself about what was the policy of the South African Police force then.

...

MR DUKADA: Yes thank you Mr Chairman. Now if you are receiving the salary which was satisfying you in the South African Police force then you were comfortable. It is all that you wanted. Is that correct?

CHAIRPERSON: Are you putting to this witness that he was content with the salary that he was receiving with the South African - yes? The question is as to whether your salary from the police force was satisfactory to you?

MR SHABALALA: Yes it was satisfactory to me.

MR DUKADA: Thank you Mr Chairman. And you had no interest of any other thing in the South African Police force?

MR SHABALALA: Interest?

MR DUKADA: Yes alright. The question may be vague to you. You had no interest in South African politics. All what you were satisfied with was the salary you were receiving in the police force?

MR SHABALALA: Yes to me that was the case. I just wanted to work for myself. That is what I wanted.

Mogoai and Shabalala demonstrate that it was not always simply a matter of being forced to join or to be killed; that they had a say in the matter and decided to become askaris. However, once he was a member, Mogoai indicates that there existed significant coercion, forcing the askaris to take part in violations, such as the assault on the PEBCO Three:

ADV BOOYENS: Why did you assault these people Mr Mogoai, this man?

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<sup>222</sup> Ross, Robert John. 2009. *A Concise History of South Africa* 2nd ed. Cambridge Concise Histories. Cambridge etc: Cambridge University Press.

MR MOGOAI: I was taking part as a member that was present there.

ADV BOOYENS: You had nothing to do with the investigation, so you just took part automatically?

MR MOGOAI: I did not know whether I was not supposed to take part in the investigations. I took part because I was already involved with these people, I couldn't turn back.

...

ADV BOOYENS: I am indebted to Your Lordship. But you had no interest in any of these assaults - I want to know why you took part? You say you had no choice, why did you not have the choice?

MR MOGOAI: If I didn't take part whilst people were assaulted, I would be regarded as if I was supporting those people who were assaulted

ADV BOOYENS: What gave you that idea?

MR MOGOAI: As an askari and other members, we were at all times guarded or supervised what we were doing or what we were not doing.

ADV BOOYENS: So are you saying there was a sort of indirect form of duress upon you to take part?

MR MOGOAI: I don't know what you mean.

ADV BOOYENS: In terms of the fact of your association with Vlakplaas askari, are you saying it was expected of you to take part in the assaults?

MR MOGOAI: That is correct.<sup>223</sup>

Mamasela, too, expressed that the askaris were forced into participation:

MR BOOYENS: You had no alternative, and would I also be correct if I say that those things that you did inter alia getting involved in the murder of the PEBCO 3 was because you were this reluctant policeman acting under duress - not policeman, you know what I mean, this reluctant askari having been forced into this situation to work at Vlakplaas and you could never get out, and that's how you got involved in the murder of the PEBCO 3, is that right?

MR MAMASELA: That is the position with most askaris including myself.<sup>224</sup>

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<sup>223</sup> Proceedings held at Port Elizabeth, Day 10, (1997), testimony of Kimpani Peter Mogoai. <https://www.justice.gov.za/trc/amntrans/pe/pebco6.htm>, accessed 3 August 2022.

<sup>224</sup> Proceedings held at Port Elizabeth, (Day 1), 1998, testimony of Joe Mamasela, <https://www.justice.gov.za/trc/amntrans/pe/3pebco1.htm>, accessed 3 August 2022.

MR LAMEY: You were coerced to participate in all the atrocities that you participated in.

MR MAMASELA: That is true, if one did not do that one would have been killed as is the case with more than 10 askaris who were killed in the same fashion.<sup>225</sup>

What is important to note, however, is that these statements came during the TRC, while many of the applicants were applying for amnesty. It is therefore not improbable that they testified to force and duress and a lack of choice as their testimony came at a moment of transition in the country, and it can be speculated that they did not want to be remembered solely as collaborators who betrayed their communities. However, it must also be noted that, to attain amnesty, it was necessary that the applicant prove a political motivation; many of them state that they were fighting against the ANC because the ANC were fighting against the government of the day. Their political motivation was therefore to uphold the status quo. This political motivation implies some degree of agency, as some applicants could not solely state that they were forced and had no choice but to participate in committing gross human rights violations.

In the case of Mosiane, prosecutors at the AC argued that he should not be given amnesty because he admitted to still believing in the policies of the ANC when he was working as an askari at Vlakplaas; he was only participating because he had no choice but to, and therefore could not fulfil the political motivation criteria. The Amnesty Committee chose to award him amnesty nonetheless, and acknowledged that, although he was acting against his will, he acted within the scope of his employment as an askari and had to act on the orders of his superiors.<sup>226</sup> This case was treated with some nuance and showed that those judges and lawyers who formed TRC Amnesty Committee were capable of acknowledging the dual positions that one may occupy as a perpetrator and victim. Unfortunately, however, this was not the norm, and this case was very much the exception with regards to how it was dealt with.

There were clearly possibilities: one could join Vlakplaas on one's own account or be forced into it. Here, it is useful to engage with Dlamini's central thesis in his book, *Askari*, wherein he claims that Sedibe was not a victim, but had agency. Sedibe was given the same choice as other MK-captured men - collaborate or die - and testimony showed that he was assaulted before choosing to become an askari. Dlamini maintains that "we cannot accept Sedibe's claim that he had no choice".<sup>227</sup> However, Sedibe is dead and the subject's voice is not in this statement; he died before he could give independent testimony to the TRC without the threat of violence from

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<sup>225</sup> Proceedings held at Port Elizabeth, (Day 3), 1998, testimony of Joe Mamasela, <https://www.justice.gov.za/trc/amntrans/pe/3pebco3a.htm>, accessed 3 August 2022.

<sup>226</sup> Truth and Reconciliation Commission, Amnesty Committee, (2000), Amnesty decision case no. AC/2000/194, <https://www.justice.gov.za/trc/decisions/2000/ac200194.htm>, accessed 1 September 2022

<sup>227</sup> Dlamini, *Askari*, pp. 12

Vlakplaas commanders, unlike those askaris who did testify before the Amnesty Committee, which came after apartheid ended. Dlamini's steadfast argument that we cannot accept the claim that Sedibe had no choice in becoming an askari is therefore problematic. What is important is that, in the context of a system like apartheid, where black voices were systematically silenced, and the system itself was founded on the oppression of black people, "consent is meaningless if refusal is not an option".<sup>228</sup>

It is important to ask whether the apartheid state offered choice to black people, and in this case, the private choices of some are not independent of the public and the political. Apartheid sought to completely manipulate "social, ethnic and other divisions, with the intention of mobilising groups against one another".<sup>229</sup> There was very little left to public agency in a state as controlled as apartheid South Africa was. Even in the case of Mbuso Shabalala, who testified that he elected to join the security branch and became an askari for the sake of a better salary, he cannot be said to be acting wholly with agency. It was in the context of apartheid, which denied black people opportunities, that Shabalala was took the job. There are social forces at play beyond one's need for a good salary. Apartheid was, crucially, a project of social engineering, and that can be poignantly seen here.

### **Apartheid as a Systemic Violation of Human Rights and the TRC**

The discussion of whether one had a legitimate choice or genuine agency to collaborate with the apartheid regime as an askari is intimately related to the question of what life under apartheid meant for black South Africans. Life under apartheid has been studied since the system began, and has been memorialised since the end of the brutal regime in 1994. It is broadly accepted that apartheid was a cruel system which sought to socially engineer a white South Africa, where black South Africans would be wholly excluded from public life and were systematically oppressed and disenfranchised. It is against this background of legislated inequality and oppression that all the individual crimes of apartheid took place. This begs the question of whether or not the TRC acknowledged that, in spite of the egregious acts they committed, askaris were, like all black people, always the victims of the apartheid system at large. The answer to this is that, on a structural level, the TRC failed to recognise that the askaris were operating within the confines of the apartheid system, as were all black South Africans, and as a result, were victims of daily violations. The TRC took gross violations of human rights to be individual acts committed by one person or group, and it did not engage with how the entire system of apartheid amounted to a gross violation, with transgressions ranging from those severe individual acts explained in the case studies, such as abduction, torture and murder, to the difficulties of daily life for black people in South Africa.

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<sup>228</sup> Hartman, Saidiya V. 1997. *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*. Race and American Culture. New York: Oxford University Press, pp. 111

<sup>229</sup> TRC Report, *Volume 2*, pp.311.

The crime of apartheid is a gross violation of human rights and, in ignoring the system at large, the TRC failed to acknowledge this level of victimisation faced by the askaris. This has become one of the biggest criticisms of the TRC after the fact: that the TRC failed to address apartheid itself, with its day-to-day laws and institutions, as a systematic violation of human rights. The TRC, and particularly the amnesty process, failed to acknowledge that individual acts of gross perpetration with which they were dealing were solely enabled by the apartheid system. In doing so, the TRC missed the opportunity to validate the daily injustices that most of the country faced during apartheid. As such, the TRC did not acknowledge the daily structural violence that askaris faced.

Further, the structure of apartheid meant the askaris were clearly regularly discussed by the apartheid enforcers, SAP or their handlers at Vlakplaas, as integral to their planning of abductions and murders. In many ways, the askaris were the key to the Vlakplaas operation. The structure of apartheid meant that the askaris could never be present in a discussion planning a Vlakplaas operation, because the planning took place in spaces of white authority that excluded askaris. The askaris were, as Mamasela calls them, “political animals”, or mere tools through which the project of apartheid could be held. This adds an additional layer of victimisation, wherein the askaris were victims who were being used to further the apartheid project and then moved into perpetrator role once they had received the orders.

### **The Perpetrator Victim in South African Society: Restorative Justice**

It is important, then, that we ask how best we can apply the principles of restorative justice to these complex figures of perpetrator-victims. The end of apartheid and the coming of democracy was largely a time of joy and hope in South Africa, as for the first time in the country’s history, all South Africans were given the right to vote. The optimism that marked the end of apartheid can be seen in that the election turnout for the 1994 general election was remarkably high, at 86.87%.<sup>230</sup> For those who had collaborated with the apartheid regime, the coming of a new government may have been somewhat less of an exciting prospect:

MR SIBANYONI: You said with the unbanning of the ANC, the askaris felt uneasy because they will be regarded as traitors by the people who were unbanned. What was the attitude of Vlakplaas or the police, did the unbanning of the ANC not also create problems for the government, for the police, so as to say what are we going to do with askaris?

MR BAKER: Mr Chairman, the problem with the askaris, I think was raised on a number of occasions at various discussions between the political wing of the ANC and the government of

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<sup>230</sup> De Kadt, Daniel. 2017. “Voting Then, Voting Now: The Long-Term Consequences of Participation in South Africa's First Democratic Election.” *Journal of Politics* 79 (2): 670–87.

the day as to what should be done with them, they regarded the askaris as a threat because at that stage a number of MK cadres were still infiltrating illegally into the country and these people were still identifying them and having them arrested. It was an ongoing problem and it was later decided that they should towards the end of 1990, that the whole operation should be aimed at fighting crime, organised crime, and be taken out of the political sphere.<sup>231</sup>

There was fear among those who had collaborated about how their actions would be perceived by their broader community in the post-apartheid landscape. This began early on, as explained by Eugene De Kock in his testimony for the murder of Brian Ngqulunga:

MR HATTINGH: And there were problems at the cemetery itself, there were youths who attacked those attending the funeral with stones, they did not want a person who they regarded as a traitor, to be buried in that cemetery?

MR DE KOCK: Yes, there was a messenger from the Civics Association who was there and the comrades were also there and they indicated that we could bury him there if we wanted to, but that they would exhume his body and burn his body afterwards.<sup>232</sup>

It is also notable that only five askaris applied for amnesty, and six, along with Joe Mamasela, testified before the TRC's amnesty committee. There is indeed shame associated with collaborating, which can account for this. The question, therefore, is to how askaris would figure themselves into the new South Africa, and further, how the TRC could engage with reconciliation with black communities, rather than just across the colour bar. This, unfortunately, did not take place, and former askaris expressed that they felt they had no place in the new South Africa. Jimmy Mbane told the TRC Special report that "it feels as if the world has just closed the doors for me, because I've got nowhere now".<sup>233</sup>

ADV BOOYENS: Dealing with your background briefly, you have changed your loyalty from the ANC to the SAP at some stage?

MR MOGOAI: That is correct.

ADV BOOYENS: And after these things happened, have you changed your loyalty back again

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<sup>231</sup> Proceedings held at, Pretoria, day 5, (1999), testimony of Adrian David Baker, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990914pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990914pt.htm), accessed 21 August 2022.

<sup>232</sup> Proceedings held at Pretoria, Day 5, (1999), testimony of Eugene De Kock, [https://www.justice.gov.za/trc/amntrans/1999/99090616\\_pre\\_990914pt.htm](https://www.justice.gov.za/trc/amntrans/1999/99090616_pre_990914pt.htm), accessed 20 August 2022.

<sup>233</sup> Mbane, Jimmy. *TRC Special Report*, South African Broadcasting Corporation. 8 February 1998. <https://sabctrc.saha.org.za/tvseries/episode80/playlist.htm>.



to another political organisation or what is your political loyalty now?

MR MOGOAI: I don't belong to any political organisation now. I don't know where I am, I am lost.

This is particularly poignant because, at a time when black South Africans finally felt like they belonged in the country, and the country's makeup was changing to reflect that belonging, Mogoai, as a former askari, felt lost in the new South Africa.

The askaris did commit egregious acts and they were perpetrators of gross human rights violations, but they were also, undeniably, victims. At some point the line crossed into being a perpetrator is impossible to recross for some people. What also should be noted in regard to restorative justice is that the white officers of Vlakplaas did not have to face their own white communities in this same way. Betrayal within, rather than across, the colour line in South Africa added an additional layer of complication when it came to restoring justice. The same kind of institutionalised and systematic hate taught to the white community towards the black community did not necessarily exist within black communities. However, the awarding of amnesty and the opportunity to speak about their actions provided the possibility for restorative justice in action for the former askaris.

### **Askaris as Complex Political Perpetrators**

It is necessary here to return to Baines' definition of a complex political perpetrator, which states that a complex political perpetrator is someone who has lived in a setting of chronic crisis, and has adapted to the violence in some way as a means to gain some control over their lives. Complex political perpetrators are unsupported by any kind of state or governmental agency, and engaging in violence allows for the opportunity to become upwardly mobile. These figures hold a contradictory status as both a victim and a perpetrator, and the generally horrific circumstances within which they have lived informs this status. Complex political perpetrators experience conflict which becomes the "devastation in the everydayness of life", and agency becomes something that is "not a question of capacity – we all have the ability to act – but of possibility; that is, to what extent we are able to act within a given context".<sup>234</sup> In other words, harsh conflict and strife is part of daily life ("chronic crisis") for complex political perpetrators, and agency becomes limited within these harsh circumstances.

Extending this concept to the askaris studied in this thesis, it is clear that they represent another type of complex political perpetrator, and that Baines' idea is applicable beyond the child soldier archetype. With regards to the requirement of living in chronic crisis, it is undeniable that, for the majority of South Africans, living under

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<sup>234</sup> Vigh, *Crisis and Chronicity*, pp. 10-11.

apartheid represented as much. Apartheid saw different kinds of violence permeating the everyday lives of black South Africans, and, although not a war like the chronic crisis experienced by Dominic Ongwen, violence was widespread and inescapable. Violence manifested in the everydayness of apartheid: pass laws, severely restricted movement of black people, and surveillance. This kind of socio-economic violence was fundamentally state-sponsored and represented the bureaucratic racist policies which systematically neglected black life.<sup>235</sup> Moreover, certain areas of South Africa were so plagued by physical violence and clashes between anti-apartheid activists and police, as well as “third force”<sup>236</sup> violence, that there were indeed low-level civil wars happening in the country, for example in the province of Natal and the townships of Johannesburg. The forced removals were another kind of violence that black South Africans were subject to, and being held in detention, and prisoners often dying in detention, was common.<sup>237</sup> Moreover, the SAP was notorious for their brutality during apartheid, seen in the multitude of mass killings, such as the Sharpeville Massacre, the Soweto Uprising, and policing under the state of emergency between 1985-1989 which saw mass violence perpetrated by the police towards black communities.<sup>238</sup> Additionally, it is clear that there was excessive violence perpetrated by secret police units, such as Vlakplaas, that inflicted terror upon South Africans. These are but a few notable types of violence experienced under apartheid, but the list goes on and includes such things as medical violence, and the spreading of diseases to black communities.<sup>239</sup> Suffice to say, violence was chronic in almost all aspects of daily life under apartheid.

Socio-economic violence extended into the treatment of black South Africans by the state, from whom black people could never rely on for any kind of social protection. The apartheid government deliberately under-developed black people through insufficient education and deprived them of opportunities even close to those given to white South Africans. Further, areas with high concentrations of black people were also systematically under-developed. Black communities, many of which were artificially constructed through the forced removals, were fundamentally under-resourced and under-serviced.<sup>240</sup> Although black people living in the Bantustans were supposed to be supported by the Bantustan governance, in practice this did not happen because of how under-resourced the areas and the Bantustan authorities were.<sup>241</sup>

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<sup>235</sup> Pillay, Suren. 2008. “Crime, Community and the Governance of Violence in Post-Apartheid South Africa.” *Politikon* 35 (2): 141–58.

<sup>236</sup> Third force is a term used to describe the extreme outbursts of violence that occurred in the final years of apartheid. It was believed that there was a covert force that lay behind random violence which operated to destabilise the country further and prevent democratic transition.

<sup>237</sup> See, for example, the cases of [Neil Aggett](#) and [Ahmed Timol](#).

<sup>238</sup> Lamb, Guy. 2018. “Mass Killings and Calculated Measures: The Impact of Police Massacres on Police Reform in South Africa.” *Sa Crime Quarterly* 63: 5–16, pp. 10.

<sup>239</sup> Gready, Paul. 2007. “Medical Complicity in Human Rights Abuses: A Case Study of District Surgeons in Apartheid South Africa.” *Journal of Human Rights* 6 (4): 415–32.

<sup>240</sup> Pillay, *Crime, Community*, pp. 150.

<sup>241</sup> Shireen, Ally and Lissoni, Arianna. 2012. “Let's Talk About Bantustans'.” *South African Historical Journal* 64 (1): 1–4.

Askaris were clearly the victims of the everyday violence of apartheid as well as the lack of state protection that black South Africans experienced. They indeed constitute complex political perpetrators. Moreover, like the askaris, Ongwen too states that he was working under duress and had no choice in the matter. As Baines states, Ongwen is responsible for his actions, but the circumstances which gave rise to them must be taken into account; these choices exist against the background of extreme everyday violence. The same can be said for the askaris, having committed egregious acts but in the context of a space of chronic crisis. Even those askaris who claim agency in their acts are doing so under a very specific set of influencing conditions, and so context is crucial in these cases. Moreover, these former askaris, by going to the TRC and confessing to what they did, took responsibility for their own actions; however, once again, where the TRC fails is in taking these external and very powerful circumstances into account when engaging with the askaris.

## **Conclusion**

To conclude, it is useful to return to the original question at hand: how were askaris configured and understood by the Amnesty Committee of South Africa's TRC, and what can we learn from this about the grey area of figures who were at once perpetrators and victims in situations of conflict? Through a substantial excavation of the archive of the TRC, including both the Final Report, as well as the testimony and decisions from hearings, this thesis has worked to address this question and the sub-questions detailed in the introduction. In doing so, key concepts such as the perpetrators and victims, the perpetrator-victim, or complex political perpetrator, agency and restorative justice have been interrogated. To answer the question, it is clear that the askaris were configured almost solely as perpetrators by the TRC Amnesty Committee, with little attention given to their complex perpetrator status, a status which is indisputable. Through the examination of cases involving askaris, it has been shown that askaris represented both perpetrators of gross human rights violations, seen in their participation in various kidnappings and killings, as well as victims, seen in their own victimisation at the hands of their white commanding officers. This is, of course, a simplistic answer to a very complex question, but it stands that the Amnesty Committee did not take the complexity of the perpetration of these people into account when they came before the TRC. The complexity of this kind of perpetration, however, comes through in the justifications that the askaris gave for their roles in perpetrating gross human rights violations. Here, we see the non-choice given to the askaris, ranging from those who were forced to turn to those who elected to join at their own volition; both of whom, however, did so against a horrific background of sustained and ongoing human rights abuses that can certainly amount to chronic crisis. As such, there was little acknowledgement of coercion versus agency when it came to becoming an askari. As a further consequence of the lack of acknowledgement of the factors which gave rise to perpetration as an askari, the TRC fails to address the context of collective victimisation of apartheid.

The second part of the question, asking what we stand to learn about the grey area of figures who were at once perpetrators and victims, speaks to the implications of this thesis. The findings of this thesis have implications on the field of conflict resolution, studies of complex perpetrators and the study and work of truth commissions and future tribunals. What becomes abundantly clear, first of all, is that context is the most important thing in such complex cases. Consequently, within any future truth commission or tribunal after a conflict, a specific committee for complex perpetrators should exist. Truth commissions and tribunals need to make a substantial effort to explore the circumstances which led to those who became perpetrator-victims, as well as the circumstances leading to the perpetration of their crimes. This was a major failing of the South African TRC; crimes were treated as individual aberrations, rather than the product of an abusive system. The TRC failed victims, and particularly those complex perpetrators who were also victims, in that it did not treat the system of apartheid as a whole as a crime against humanity, and so missed the opportunity to engage with the nuances of a system that resulted in such cases of perpetrator-victims. However, it is important that any such future commission or tribunal not allow the engagement with the context to remove individual accountability. The askaris are accountable for their actions, however they do not exist in a vacuum, and this will be the same for other perpetrator victims, or complex political perpetrators in the future. Baines states that “appropriate accountability mechanisms [should] recognise the circularity of victims and victimisers”,<sup>242</sup> and this point deserves reiteration; truth commissions must do their best to recognise that even those who perpetrate can be victims, and in order to ensure justice moving forward, all those who are affected by conflict should be figured into the mechanisms of transitional justice, and the state moving forward. Additionally, transitional and restorative justice work as seen in the TRC needs to move beyond the individual and towards the group level when dealing with perpetration of gross human rights violations. Communal reconciliation is not served by looking at the individual and failing to account for the group level and broader, societal-level of perpetration that exists beyond the individual.

The question of restorative justice in cases of complex perpetration is also important to reflect upon. The TRC, in encouraging truth-telling and confession, fostered some restorative justice; however it failed to take into consideration the precarious position of regime collaborators, and so some were left behind in the project for restorative justice. A consideration for those who collaborated and were perpetrator-victims could have seen special hearings on perpetrator-victims, such as those special hearings held for the business sector, the armed forces and the faith community. Such hearings could have encouraged further dialogue and understanding as to why these people became askaris, and what it meant for them now, in the new South Africa. In this way, the TRC could have fostered intra-community reconciliation between the askaris and those who felt betrayed by them. It should be noted that if there is conflict, there is potential for collaboration, and the TRC did itself a disservice by

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<sup>242</sup> Baines, *Complex Political Perpetrators*, pp. 186

failing to acknowledge this, and further, by failing to acknowledge this in the context of a racialised conflict such as that in South Africa, those who are active collaborators are also, likely, victims. This is not unusual in history: one needs to look no further than the Jewish Councils and their collaboration with the Nazis during the Holocaust.

Reflecting on Baines' theory of complex political perpetrators, like those children in Uganda, it is undeniable that black South Africans too lived in chronic crisis during apartheid; although in this case a strong state existed, it was unwilling to provide protection or basic services to those affected. Agency does not exist for this figure, or their agency is so severely limited to the point where it can no longer be considered agency. Thus, the askaris, as has been shown, constitute a strong case of complex political perpetrators, being presented with very little choice as to whether they would become askaris or not. The theory is very useful for a study like this and can be extended far beyond her example of a child soldier. She brings important attention to the case of child soldiers like Dominic Ongwen, and in doing so highlights the fundamental complexity that exists between perpetrators and victims in situations of conflict. However, the theory could be benefited by using it for different cases, showing its further applicability.

This thesis makes a contribution to the overall historiography of this topic, of complex political perpetrators, by bringing a new case to the table, and bridging the gap between complex political perpetrators and processes of transitional justice which focus on restorative justice via truth mechanisms. Moreover, there is great potential for this field to grow even more, as many conflicts of the past, and likely those of the future, will see the existence of such figures. Additionally, the historiography on perpetrator-victims in South Africa is significantly deepened by the work presented above. As stated, there exists very little academic writing concerning the askaris. This thesis adds to Dlamini's book, *Askari*, in establishing an academic tradition about the askaris, with the hope that future scholars and policymakers will engage with the topic as a means to better address these figures and reintegrate them in the post-conflict space.

However, there are limitations to this work. Firstly, most studies which concern apartheid, the apartheid government and particularly the private ongoings of the secret police are subject to the limitation of very little existing documentation. As we know, when it became clear that apartheid was coming to an end in South Africa, the NP and high-ranking apartheid officials saw to the systematic destruction of documents, and so the archive of apartheid, beyond what was learnt from the TRC, is severely limited. Thus, we only know as much as those who came before the TRC were willing or able to share. Insights from official Vlakplaas documents, for example, may have revealed events and affairs happening differently compared to how they were described to the TRC. However, any such documents have been mostly destroyed, and so this is impossible to ever know. Additionally, and perhaps as a consequence of this first limitation, this thesis is limited in that there is little academic writing

on the topic of askaris. Thus, while there is a broad foundation for the perpetrator victim studies and the TRC, there is little foundational work supporting writing on this uniquely South African case. Another limitation of this thesis lies within the researcher's own proximity to the case studies, as someone who has grown up in South Africa. This, at times, made it difficult to study and remain "distant" from. The findings of this thesis are also limited in that there were a number of other askaris who did not apply for amnesty, and so the cases explained above cannot be considered universal. Finally, this thesis is limited by its own research boundaries. It is, of course, also worth asking if there are other cases of perpetrator-victims that existed in South Africa during apartheid, however this is beyond the scope of this research project. Nonetheless, it would be useful to research this, and undertake a comparison of other potential apartheid-era perpetrator-victims to the askaris.

As mentioned, further research could examine other figures from apartheid who could be understood as perpetrator-victims, or complex political perpetrators. This would be a good starting point from which to further the field of complex perpetrator studies; in comparing additional case studies from other countries. Additionally, further research into the lives of the former askaris years into democratic South Africa would be valuable. In other words, how have their lives been shaped by being public figures who perpetrated gross human rights violations on behalf of the apartheid regime, and have they found their place and settled into the democratic South Africa? Such research could provide significant insight into how we can further communal reconciliation after a conflict. This kind of research with those who were involved in the apartheid regime is time sensitive; as of now there are still surviving people, but as the years pass this is naturally changing. It is important that we document those lives that were so impacted by the regime, and the events that occurred, while it is still possible to do so.

It is notable that some of the former askaris have been in and out of the media spotlight in South Africa; recent years have shown an interest in "cold" TRC cases, and a number are being prosecuted, such as the killing of Nokuthula Simelane and the case of the COSAS Four. The ongoing COSAS Four case, in which three student activists were brutally killed by the security branch with one survivor, sees former askari, Ephraim Mfalapitsa, on trial for their murder.<sup>243</sup> Mfalapitsa's amnesty application, as well as the applications of the Vlakplaas officers above him, were rejected in 2001 on account of a lack of political objective.<sup>244</sup> Only Mfalapitsa and one other amnesty applicant are on trial as the rest of the perpetrators have since died, and it has taken 21 years for the prosecution to get underway. What is also notable is that, despite being known to have been involved in the killing

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<sup>243</sup> Schmidt, Micheal. "Police slammed for delaying trials of cops who killed anti-apartheid activists decades ago." The Daily Maverick. 10 October 2022. <https://www.dailymaverick.co.za/article/2022-10-10-police-slammed-for-delaying-trials-of-cops-who-killed-anti-apartheid-activists-decades-ago/>.

<sup>244</sup> Truth and Reconciliation Commission Amnesty Committee, (2001), Amnesty Decision case no. AC/2001/198, <https://www.justice.gov.za/trc/decisions/2001/ac21198.htm>, accessed 18 September 2022.

of the COSAS Four and still being alive, Joe Mamasela has never been charged.<sup>245</sup> This raises a question about the nature of prosecution after a truth commission, which is beyond the scope of this thesis but represents another potential avenue for future research. Given that, more often than not, truth commissions have taken place in countries that may not have the most resources, exemplified by the fact that it took 21 years to prosecute the killers of the COSAS Four, it would certainly be valuable to study how best judicial systems can work with truth commissions in prosecution after the fact.

The South African TRC set a global precedent for truth commissions, and is held up as an example. Recent years have, however, seen an increase in criticism of the process, and while it should still certainly be seen as something of a miracle, which greatly aided the transition from apartheid to democracy, the state of the country today demands a re-engagement with the processes of transitional justice. Clearly, there were those who were left out of the processes that occurred. The TRC report refers almost exclusively to victims and perpetrators, who are dependent on one another for their status, but of whom there can never be any overlap. In reality, this is not the case. This thesis further blurs the lines between perpetrating and being a victim, demonstrating that these concepts are fundamentally nuanced, and if we see things only in black and white, in terms of “victim” and “perpetrator” as dependent but separate entities, we are stunted in our understanding of apartheid specifically, and conflict broadly. Moreover, it hinders our ability to wholly reconcile. It is speculative, but not without grounds, to state that there was probably resentment, anger and a sense of betrayal amongst the black communities who were affected by the actions of the askaris, and therefore moving forward demands totality in dealing with perpetrators post-conflict situations. In other words, once again, the whole picture is vital. Although the TRC, in its mandate, set out to gain as complete a picture as possible about the gross violations that occurred during apartheid, their failing to do this when dealing with the askaris represents this failure as a whole. In other words, the failure to establish as complete a picture as possible. And while it is certainly easier to think of these difficult things in terms of universals or absolutes, in post-apartheid South Africa, the pursuit of unequivocal reconciliation and a better future is benefitted if we transcend the binary understanding of victims and perpetrators and move towards a nuanced acceptance of the differing shades of grey that outweigh black and white.

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