

The South African Truth and Reconciliation Commission



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Areas to be covered:

1. Brief overview of TRC
2. Dealing with systematic racial and ethnic oppression and discrimination
3. Enforced Disappearances and missing persons

History of racialised violence in South Africa

- Population classified as 80% black, 12 % white and 8% 'mixed'.
- 450 years of Dutch and British colonial rule, land dispossession, slavery, forced labour and genocide of indigenous people.
- Formal government policy of **apartheid** from 1948: a form of legalised racism excluding black South Africans from access to land, work, economy.
- Decades of non-violent resistance ended in 1960 when state banned all black resistance organisations and forced them into exile. A limited armed campaign was then launched by exiled organisations.
- NOTE: Oppression of women in ALL communities: Patriarchy is the only non-racial institution in South Africa!

1960 – 1994 : Main period of resistance and repression

- 60 000 detained without trial
- 30 000 political prisoners sentenced to long prison terms
- 150 sentenced to death and hanged for political offences
- 25 000 deaths in different forms of violence:
 - * “riot control”,
 - * Clashes between guerillas and security forces,
 - * AND clashes between civilians groups
- Torture became common practice
- Extra-legal executions of activists and guerillas
- Severe internal conflicts within communities and between different political parties

Creation of TRC

- **Political Negotiations to end the conflict:** it was agreed by the parties to the conflict at the last minute that there would be some form of unspecified amnesty.
- After the 1994 democratic elections, it was decided to make this amnesty part of a wider truth process that would include the victims: a “truth commission”.
- **Two years of consultation process** with civil society and debate in parliament and committees about this truth commission and its work.
- Strong single united **victim organisation** was formed and managed to lobby effectively for their interests.
- **Promotion of National Unity and Reconciliation Law** passed in 1995.

Sixteen Commissioners chosen through public nominations followed by interview process by Parliamentary committee, approved by President.
TRC was funded by state but independent.



Chairperson:
Archbishop
Desmond Tutu

Key qualities:
integrity,
credibility,
ability to be
independent,
and broad
representation
of society

MANDATE OF TRC

- Investigate and establish as complete a picture as possible of the NATURE, CAUSES and EXTENT of gross human rights violations committed during the conflicts of the past from 1960 to 1994.
- Gross Human Rights violations defined as:
 1. **Killings**
 2. **Torture**
 3. **Severe ill-treatment**
 4. **Abduction and disappearances**

Three areas of TRC work

- **Human Rights Violations (HRV) Committee** to focus on victims experiences
 - 22 000 victim statements received
- **Amnesty Committee** to receive and hear applications for amnesty from perpetrators. First and only TRC to include an amnesty component.
 - 2 000 amnesty applications received
- **Reparations Committee** to develop a reparations and rehabilitation proposal for government to consider.

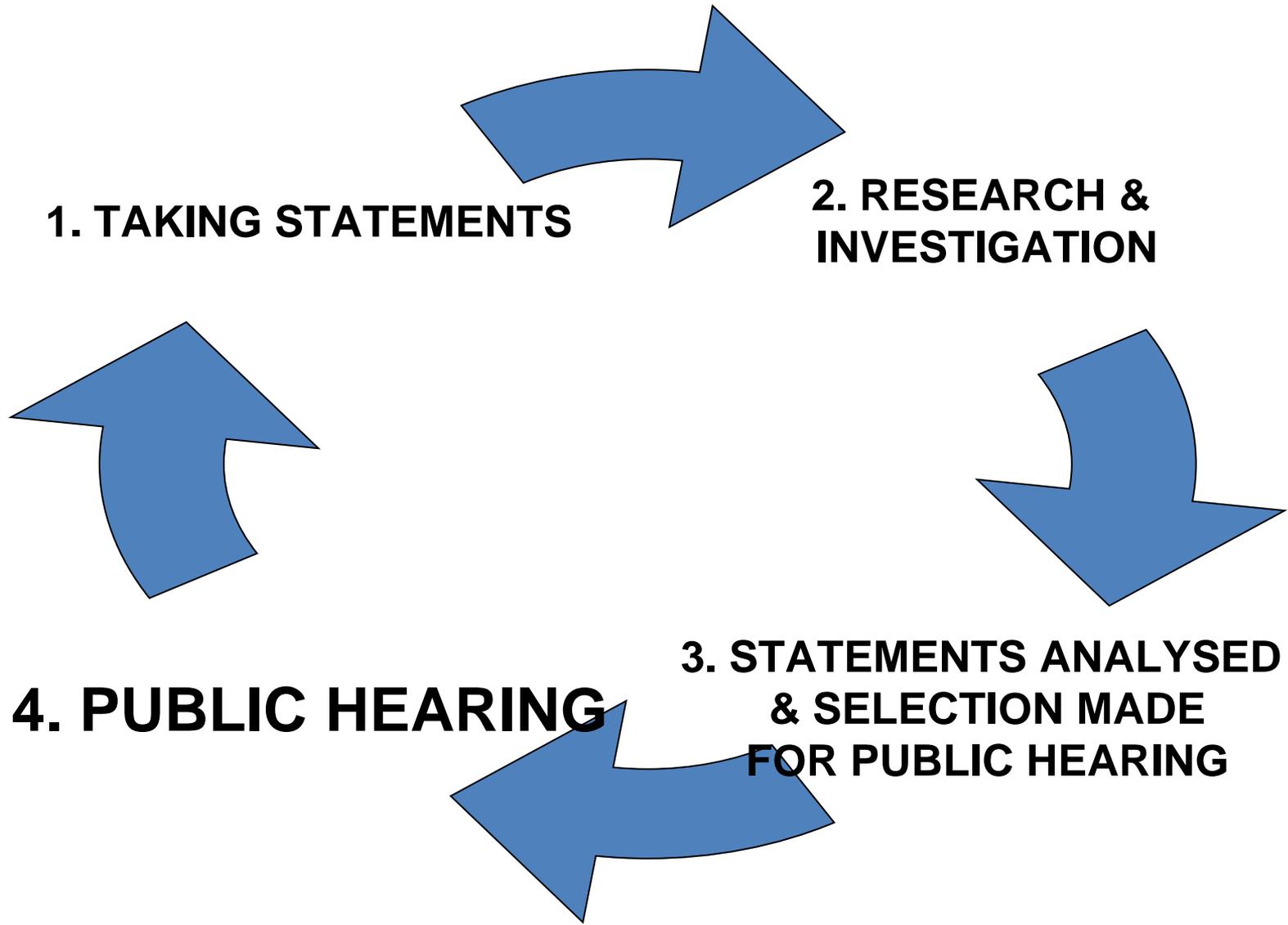
Statement taking by TRC staff at advertised places and dates



STRUCTURE OF TRC

- Four (4) national offices in main cities
- 16 Commissioners
- 30 – 40 statement takers
- 60 investigators
- 12 researchers
- Data processors and data analysts
- 400 staff in total
- Divided into **regional teams**

3 MONTH CYCLE in each region by regional team



Public victim testimony



Three days of testimony in each area

Between 10 – 30 people testified each day

The selected victims met each other before and built group support and solidarity

Each had a trained 'briefer' or support person meet with them before

De-briefing and support after testifying

PUBLIC VICTIM HEARINGS: ASSERTING CITIZENSHIP

2000 victims testified in public before the TRC, the media and an audience.

Official acknowledgement of victims by the state .

The hearings were covered live on TV and radio, and special programmes.





INCLUSIVITY AND REPRESENTATION

Great emphasis placed on translation of testimony and respecting the indigenous languages spoken by victims

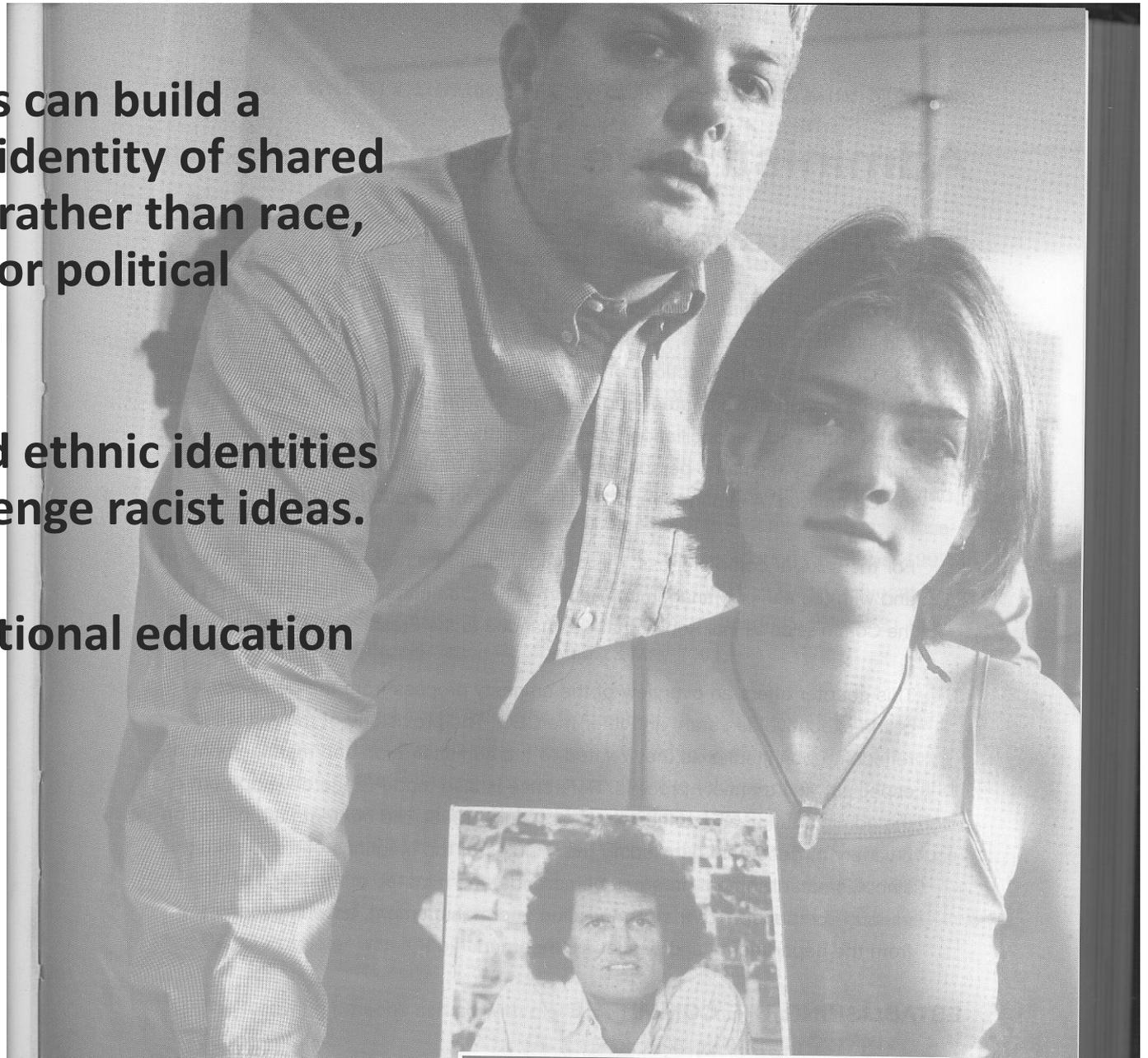
Public Hearing: Victim demonstrating the torture he experienced



The hearings can build a common identity of shared suffering rather than race, ethnicity or political affiliation

Reshape old ethnic identities and challenge racist ideas.

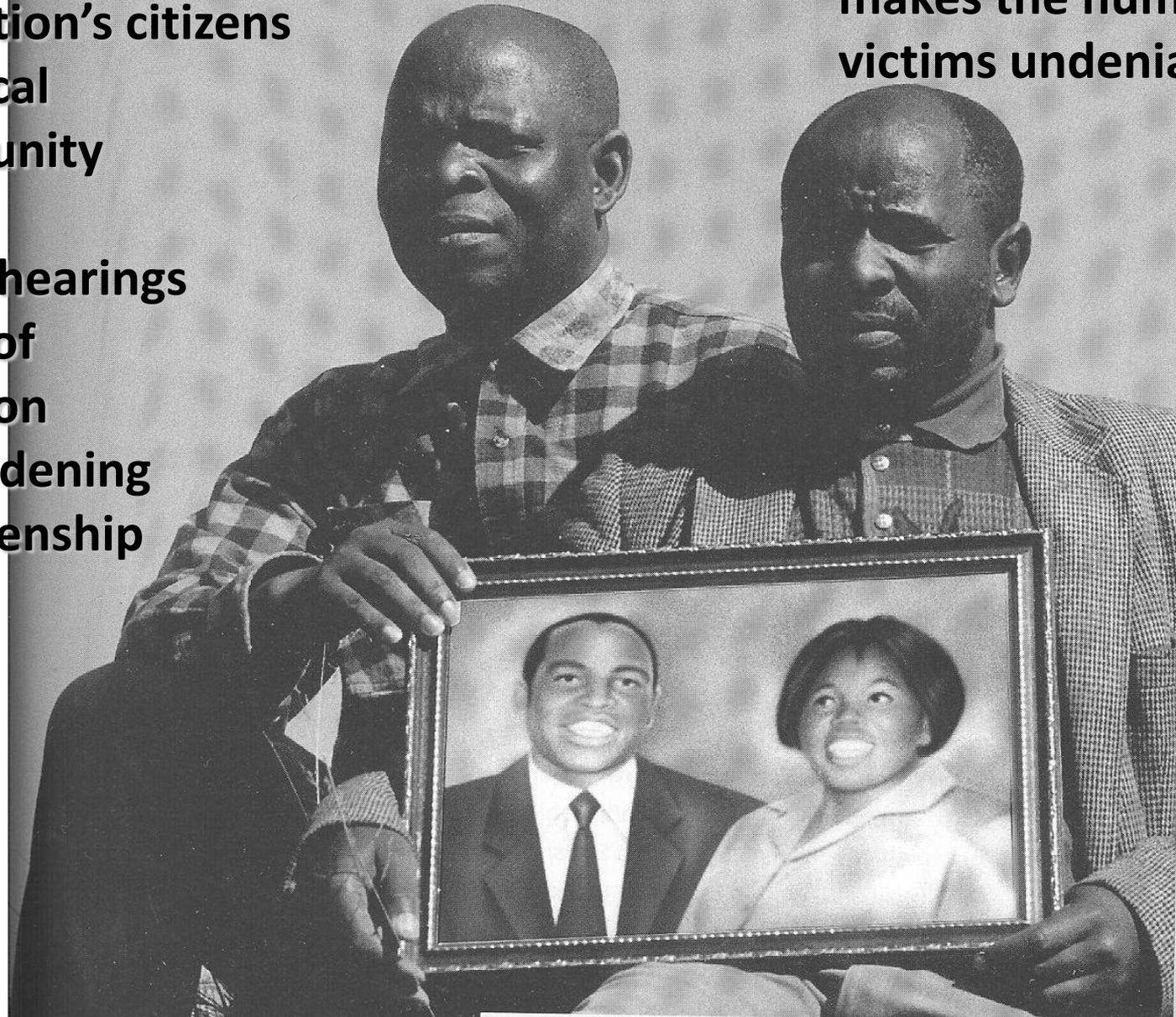
Powerful national education process.



**Listening and acknowledgement
of victims by the state,
the nation's citizens
and local
community**

**Public hearings
as act of
inclusion
and widening
of citizenship**

**Authenticity of emotion
makes the humanity of
victims undeniable**



OTHER TYPES OF HEARINGS

- **Event hearings:** defining moments or important to particular communities.
- **Special hearings** for affected groups: women, children
- **Social sector hearings:** complicity and role of : media, judiciary, religious groups, business etc
- **Political parties hearings:** questioning political leaders about their policies, language and practices.
- **Armed forces hearings:** Questioned on their policies and practices, command and control responsibility.

There could be also be 'in camera' hearings behind closed doors: questioning of perpetrators in certain cases, victims who wanted confidentiality



Leadership of the ANC (liberation movement) about to be questioned by the TRC about their policies and practices that led to violations: unexpected accountability

AMNESTY HEARINGS



- Not a general or blanket amnesty
- An individual amnesty based on public disclosure of each violation
- Public hearings for each perpetrator or incident, attended by affected victims, the media and the local community. Broadcast on TV and radio.
- Had to meet certain criteria to get amnesty: full disclosure, political objective, proportionality.

Public amnesty hearing

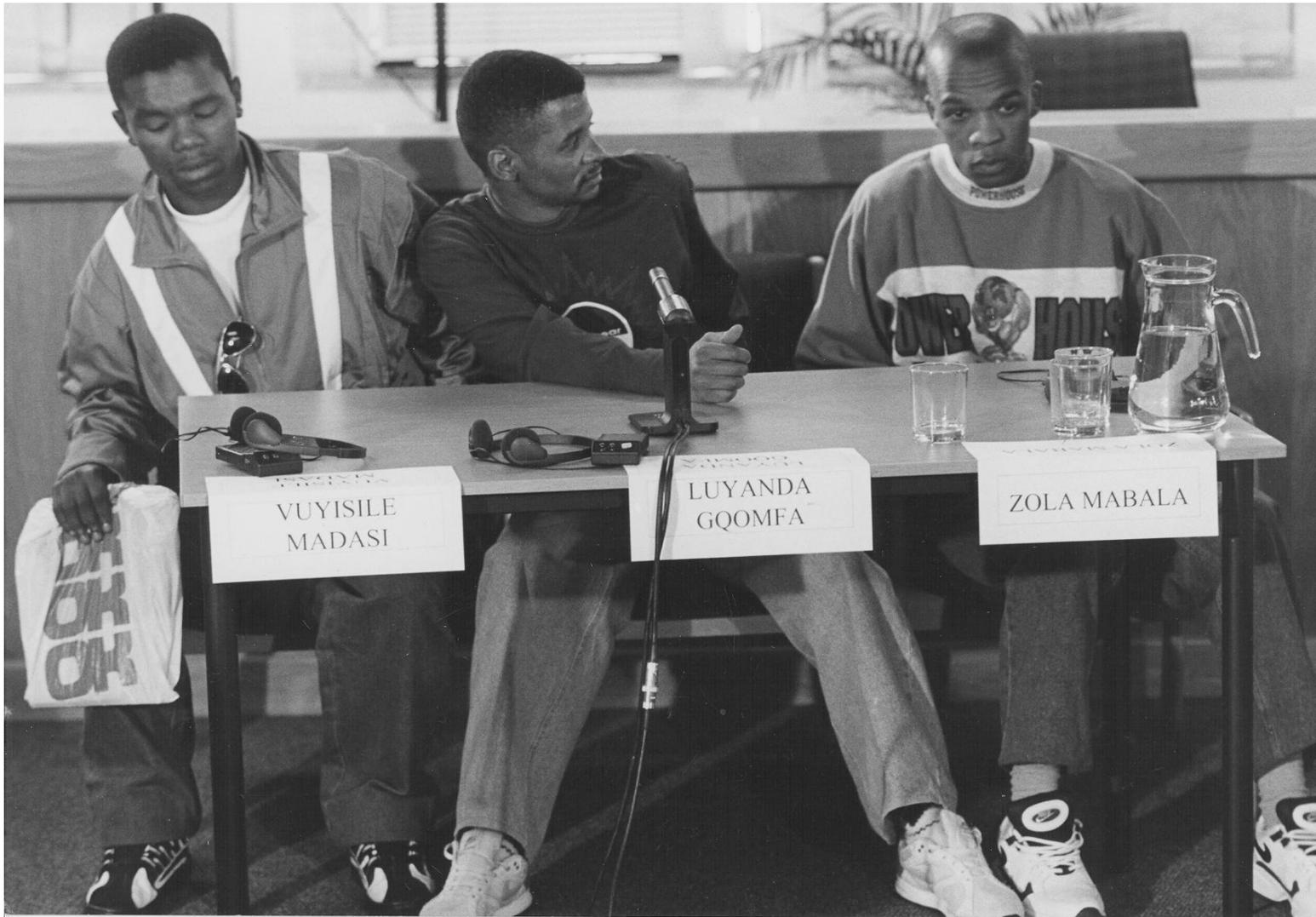


PUBLIC NAMING AND SHAMING & INDIVIDUAL ACCOUNTABILITY



Public amnesty hearings:

all perpetrators from all sides of the conflict





**Victim speaks to his torturer:
personal accountability disrupts official identities**



Amnesty applicant
demonstrating the
'wet bag' method
of torture he used
on detainees

NO MORE DENIAL



**Members of the right wing are confronted at a hearing:
Perpetrators being forced to account.**

Positive and negative aspects of amnesty hearings

- Voice of the perpetrator describing what he did extremely powerful in destroying denial. Shocking impact.
- Personal accountability to the victims who could question the perpetrator.
- Equation of all perpetrators was problematic.
- Focus on trigger pullers rather than leaders.

REPARATIONS

TRC developed a reparations proposal to government.

PROBLEM: TRC did not have the power to implement the proposal. It was up to government to accept and implement.

The TRC reparations and rehabilitation proposal:

1. Individual reparations (payments for six years) including education, health, housing assistance.
2. Community reparations and reconstruction
3. Symbolic reparations – death certificates, exhumations and return of remains, renaming places and streets
4. Institutional reform and policy changes for security forces, health, media, justice sectors etc.

EVALUATING THE TRC

- Enormous public impact of the public process: victim and amnesty hearings more powerful than the Report. Lasting legacy of the TRC.
- **INSIGHT INTO THE EXPERIENCE OF THE OTHER: AS FELLOW CITIZENS**
- Came to understand the culture of war that enabled violence
- Ended ongoing denial about the violence of the past. No one in South Africa can deny that torture and secret killings took place.

BUT

- Limited implementation of the reparations recommendations by government. This has left some victims feeling betrayed.
- Only a handful of prosecutions have taken place since the TRC - very controversial.

Time constraints: on research, investigation, reports to victims



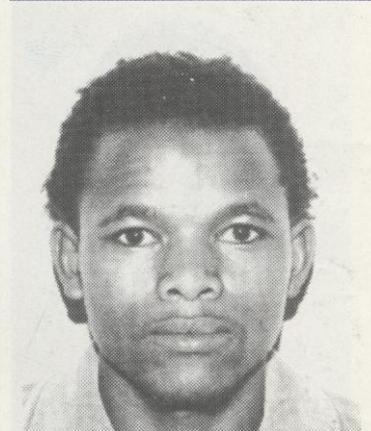
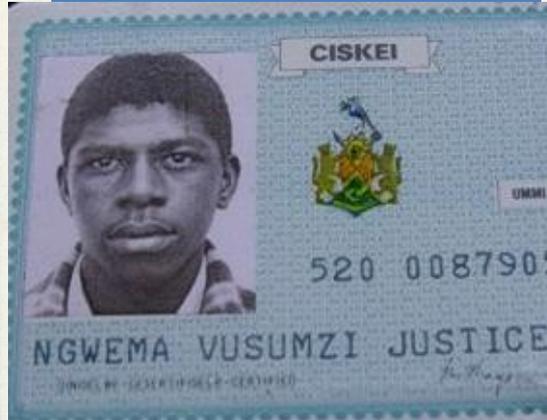
KEY PROBLEM:

TRC DID NOT LOOK AT 'APARTHEID'

- TRC did not examine the larger picture of racial discrimination and economic privilege that lay at the heart of violence. TRC only addressed acts of physical violence that affected a limited number of people.
- The TRC specifically excluded race-based violations in favour of 'political' violations. Racism not regarded as 'political' but individual beliefs. This affects our understanding of citizenship.
- The TRC did not look at how ALL black South Africans were affected by apartheid and how ALL white South Africans benefitted from it. Violence was separated from race.
- But since the TRC, ongoing racial discrimination and economic privilege according to race is the MAIN debate in South Africa.
- **As a result, the TRC is invisible in public debate today!**

AFTER THE TRC: TRACING DISAPPEARED AND MISSING PERSONS

With the use of forensic anthropology, archaeology and DNA



BACKGROUND: INTERNATIONAL CONTEXT

- Mobilization and demands by family and victim groups mainly in Latin America: pressure on the United Nations and international community in 1980s.
- **FEDEFAM** (Latin American Federation of Associations of Relatives of Disappeared Detainees) campaigned regionally and internationally.

First excavations to find the remains of those who disappeared took place in Latin America: Argentina, Chile, Guatemala, El Salvador
Forensic anthropology teams (NGOs) formed to provide technical support to families tracing their loved ones



WAR IN FORMER YUGOSLAVIA resulted in 40 000 missing persons and multiple mass graves



- **Introduction of systematic tracing of those who disappeared**
- **First mass use of DNA to identify remains exhumed from mass graves**

UNITED NATIONS

- In 1980, a **Working Group on Enforced and Involuntary Disappearances (UNGWEID)** was established under the UN Commission on Human Rights (UNCHR).
- On 20 December 2006 the UN General Assembly adopted the :

International Convention for the Protection of All Persons from Enforced Disappearance.

International Convention for the Protection of All Persons from Enforced Disappearance

Four main aspects

- 1. Combating impunity:** puts obligation on states to bring offenders to justice; include in national laws as prosecutable offence
- 2. Prevention:** procedural safeguards for detainees
- 3. Rights of victims:** recognises relatives as victims. Right to know fate of relatives and to reparations.
- 4. Enforcement:** International committee to monitor compliance. Habeas corpus procedure.

INTERNATIONAL RED CROSS/RED CRESCENT



THE MISSING

- ❖ Developed general principles, minimum standards and best practices for work in the field of missing persons and exhumations.
- ❖ Broader notion of missing persons: Captured, arrested, abducted, mass killings, MIAs, displaced persons and refugees, poor post-mortem ID processes.

THE MISSING
end the silence



ICRC

THE RIGHT TO TRUTH

The 'right to truth' includes the right to a **proper investigation**.

The human rights community must ensure that this also includes the recovery of remains and identification.

How can tracing missing persons contribute to transitional justice initiatives?

TRUTH - adding to the historical record, establishing what happened to whom, where, etc.

JUSTICE - legal evidence for courts, tribunals

REPARATIONS - restitution of remains and acknowledgement

HERITAGE AND MEMORIALISATION

TRC'S WORK ON CASES OF DISAPPEARANCES



50 individual human remains exhumed by TRC.

Certain TRC exhumations did not follow proper forensic procedures – some wrong remains given to families.

Recovery of human remains as a form of truth testimony that can recover the citizenship of the dead. Powerful images that destroy old denials (“our people wouldn’t do that”).

After the TRC

- The TRC recommended setting up a Task Team in the National Prosecuting Authority (NPA) to continue investigations into the fate of those who disappeared between 1960 and 1994.
- The **Missing Persons Task Team** began working in 2005. It has an official list of 500 missing persons cases reported to the TRC, but there are many more cases.
- The main goal is to recover remains, but prosecutions are possible if evidence is available.

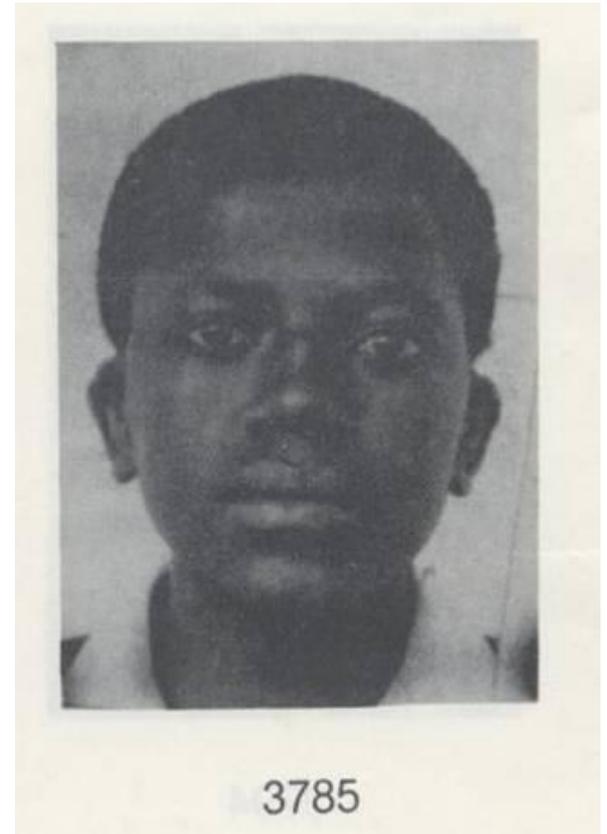
Establishment of Missing Persons Task Team

- First government initiative on the continent to trace those who disappeared as a result of the conflicts of the past
- Also aims to build the forensic capacity in the region to trace, excavate, exhume and identify victims of political conflict, including the use of DNA.
- Re-integrate the disappeared as citizens

DIFFERENT TYPES OF DISAPPEARANCES in South Africa

1. Enforced disappearances

Several hundred enforced disappearances at the hands of state agencies – not as many as Latin American countries and elsewhere.



Gwaza Twalo
disappeared in 1981 while
in police detention

Types of disappearances

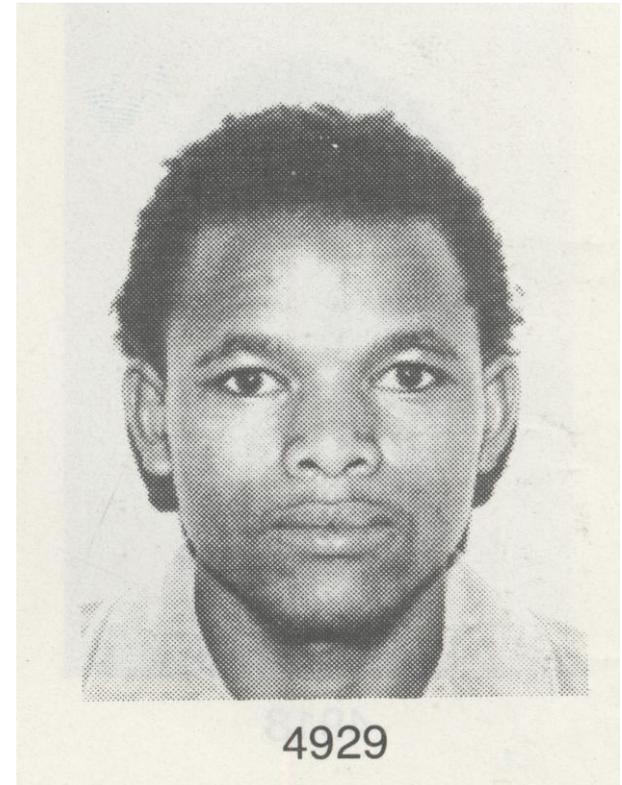
2. Exile Disappearances

Thousands of people left South Africa and joined the liberation movements based in other Africa countries.

Many died in conflicts or of natural causes while in exile.

Others died in combat operating inside South Africa and were buried as unidentified paupers.

Their families do not know what happened to them or where their remains are.



Sydney Mavuka left South Africa in 1980 and became a trained guerrilla. He disappeared in 1982 while operating inside South Africa.

Types of disappearances

3. Conflict between political organisations

Thousands of civilians died during local conflicts between rival organisations. Some people disappeared during the violence, probably buried by mortuaries in mass graves of unidentified bodies.



RECOVERY OF REMAINS

- Bodies may have been left in streets and then collected by mortuaries, and buried as unidentified people.
These can usually be traced and exhumed in cemeteries.
- Bodies may have been secretly buried by perpetrators. Only they know where the graves are.
How to secure their co-operation?
- Bodies may have been forcibly or hastily buried by families under pressure from the state, leading to inaccurate identification.
- Bodies may have been disposed of in ways that makes recovery impossible (dumped in river or ocean) or very difficult (burnt).
- In South Africa we have burial sites inside AND outside the borders of the country (exile cases and neighboring states)

PREPARATION

Families are briefed about the exhumation process



Mothers of the Mamelodi 10 in Winterveldt cemetery

PREPARATION

Taking family to see the burial site before exhumation



Family members of Looksmart Ngudle at his presumed burial site in Mamelodi. Ngudle was the first political detainee to die in police custody in 1963.

INFORMATION

Reporting back to families



Families discussing and reviewing the exhumation and forensic analysis photographs

INFORMATION

Families viewing commingled remains at the lab



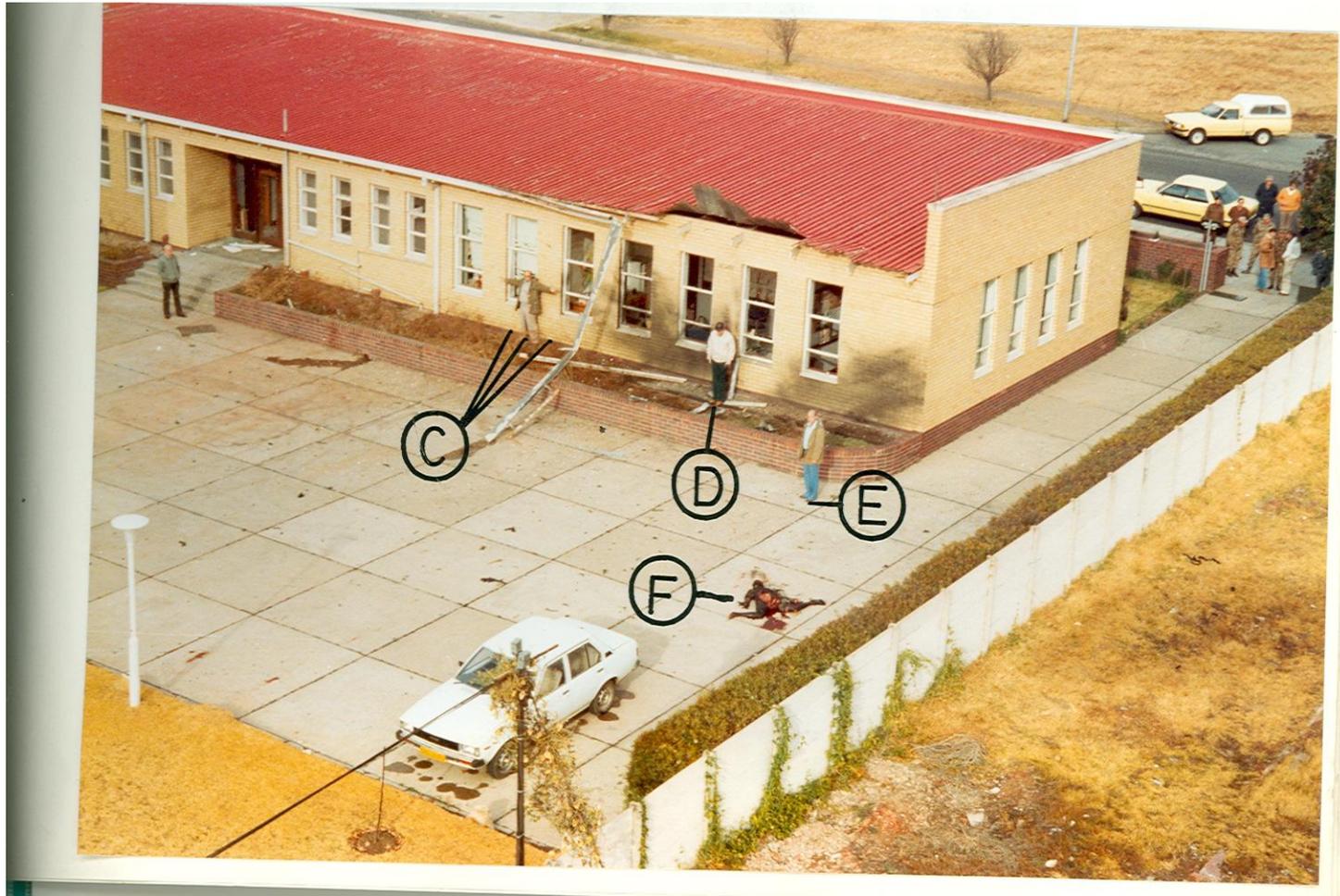
C. INFORMATION

Families watching a presentation by Dr Steve Symes on the results of the forensic examination



INFORMATION

Families are given recovered documents & photographs



Police photograph from 1984 showing body of deceased guerrilla

PARTICIPATION

Family members visiting the shallow pit where the burnt bone fragments of three activists were excavated



PARTICIPATION

Family members view burnt bone fragments at the site





PARTICIPATION

Assisting families to perform cultural rituals such as taking families to site of death to take their spirit home



Family members perform rituals at the site where two guerrillas were shot dead in an ambush on 4 May 1983 near the Botswana border



PARTICIPATION

Family members
at the
exhumation

*Exhumation of Karabo
Madiba and Peter Johnson
at Mmabatho cemetery,
Mafikeng
4 July 2006*



PARTICIPATION

Prayers at the
graveside during the
exhumation

*Winterveldt Cemetery,
Mamelodi 10
exhumation,
March 2005*

PARTICIPATION

Families are transported to and speak at a ceremony at the exhumation hosted by the Dept of Justice





OFFICIAL RECOGNITION

Honouring the
families and the
deceased at the
handover of
remains

Official acknowledgement of families' experiences



Mrs Madiba speaks about the death of her son Karabo at the exhumation hosted by the Mayor of Mafikeng (July 2006)

OFFICIAL ACKNOWLEDGEMENT

Government honors those who died: Provincial Minister hands over remains of George Ramudzuli to family at Freedom Park Memorial



RETURN OF REMAINS

The Department of Justice and members of the Defence Force return the remains to families at a special ceremony



Official Handover Ceremony at Freedom Park, the new national heritage memorial site



REBURIALS

These are done by families and political organisations, but we attend these as part of ending the relationship with the families.



Memorialisation

We link families with memorials, museums and other heritage structures in their areas so that their experiences may be included





MEMORIALISATION

Clothing, bullets and coins found in the grave.

The families donated these items to the Freedom Park Memorial for display, along with the stories of what happened to their loved ones.

CHALLENGES FOR STATE WORK ON DISAPPEARANCES

- Impartiality and independence – especially in cases where current officials are implicated
- Slow inflexible government bureaucracy, policies and processes that are distant from families
- Not accountable to families but to government
- Dependent upon political approval of government for allocation of resources
- Only supposed to work on TRC cases
- Not permitted to work outside of South Africa yet

POSITIVE ASPECTS OF STATE WORK ON DISAPPEARANCES

- Official acknowledgement of the families and their rights as citizens and victims
- Access to state resources and reparations
- Able to draw upon other government departments for support & assistance
- High level authorization for investigations and access to documents

Missing Persons Task Team

NUMBERS OF EXHUMATIONS: 72 INDIVIDUALS

- 53 returned to families
- 3 cases ready for return to families
- Others still undergoing identification.

MEANS OF IDENTIFICATION:

- Half were identified through DNA
- Others identified through investigation, forensic anthropology, matching of pre-mortem information, photographs etc.
- 14 cases could not be individually identified due to degree of burning: group burials.