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PRESENTATION



The ninth issue of the *Sur Journal* is dedicated to the commemoration of the sixty years of the Universal Declaration of Human Rights. The articles on this subject were chosen in collaboration with the International Service for Human Rights (ISHR). Two main issues were addressed in the selected articles: the indivisibility and the universality of human rights. These two issues were initially raised sixty years ago by the Universal Declaration of Human Rights as the pillars of international human rights law. In this ninth issue of the *Journal*, they are revisited under an especially critical light.

The issue of indivisibility is analyzed by both Eitan Felner and Fernanda Doz Costa. Felner adopts a pragmatic perspective: how can economic and social rights not only be recognized as human rights, but also be effectively implemented? The author proposes a methodological framework to assess whether or not a State has violated human rights obligations related to this set of rights. He also reveals some of the challenges in identifying violations of economic and social rights. Doz Costa approaches the issue from a conceptual perspective, discussing the possible connections between human rights and poverty.

Anthony Romero, Executive Director of the American Civil Liberties Union (ACLU), in an interview with Conectas Human Rights, sheds light on how important the human rights movement is for the protection of individuals in the currently most powerful country in the world, a country that has “seen a remarkable loss of human rights” in the last eight years. In Romero’s words: “[t]he existence of a global human rights movement is actually, for this very reason, vitally important. Even if one government of one country sets back human rights, there is a movement of leaders and human rights NGOs that can keep the pressure on and keep pushing for advances in human rights.”

Katherine Short’s paper analyzes to which extent the Human Rights Council has been successful in overcoming the over-politicized approach adopted by the former UN Commission on Human Rights. Short highlights, however, that the Council’s effectiveness has been partially “undermined by both its failure to implement mechanisms to prevent its own membership to include acknowledged human rights violators and its continuing inability to harness US support.”

This issue of the *Sur Journal* also includes an analysis of the UN human rights system from an internal perspective: the perspective of Paulo Sergio Pinheiro, former UN Special Rapporteur on the Situation of Human Rights in Myanmar (2001-2008), former UN Independent Expert for the Study on Violence against Children (2003-2006), and former UN Special

Rapporteur on the Situation of Human Rights in Burundi (1995-1999). Pinheiro is currently member of the Inter-American Commission on Human Rights.

This issue of the *Sur Journal* also includes three thought provoking articles by Barbora Bukovská, Jeremy Sarkin and Rebecca Saunders. Bukovská defends an idealistic view of human rights organizations, a view that is not content with mere normative achievements in the field. According to the author, as human rights should always result in concrete protection for victims of violations, Bukovská highlights the need to bridge the gap that frequently exists between international human rights organizations and the actual victims of violations.

Sarkin examines the historical development of African prisons from colonial to modern times, raising two issues: first, he understands that African prisons current conditions are in great part a legacy of colonialism; second, he argues that overcrowding and violence are a widespread problem in prisons all over the world.

Finally, Saunders criticizes the system of transitional justice established in South Africa after Apartheid. In her own words, her article addresses "what is gained and lost when expressions of human suffering are translated into a standardized language of human rights." The author also questions the priority given to national over individual forms of healing.

These three articles invite discussion. We therefore invite readers to respond either with another article or with a three-to-five-page essay. Articles and essays will be subjected to the *Journal's* selection process, and hopefully will encourage further discussion on these key issues.

We would like to thank the following professors and partners for their contribution to the selection of the articles for this issue: Andre Degenszajn, Andrea Pochak, Fabián Sanchez, Flavia Piovesan, Habib Nassar, Inês Lafer, Juan Amaya Castro, Kwame Karikari, Lucia Nader, Magdalena Sepúlveda, Mustapha Al-Sayyed, Olga Espinosa, and Richard Pierre Claude. We would also like to inform that Profesor Upendra Baxi (Warwick University) has accepted our invitation to join the *Sur Journal* Editorial Board.

Finally, we would like to announce that the next edition of the *Sur Journal* will be a special issue on "People on the Move: Migrants and Refugees", to be published in collaboration with the Office of the UN High Commissioner for Refugees (**UNHCR**). The journal will also carry articles on other human rights topics.

The editors.



REBECCA SAUNDERS

Rebecca Saunders teaches global literatures, theory, and African studies at Illinois State University. Her publications include *Lamentation and Modernity in Literature, Philosophy and Culture*, *The Concept of the Foreign: An Interdisciplinary Dialogue*, and numerous articles. She is currently writing a book on truth commissions entitled "Scenes of Interrogation: Literature, Philosophy, and the Challenge of Justice".

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ABSTRACT

This essay examines what is gained and lost when expressions of human suffering are translated into a standardized language of human rights. I argue that South Africa's Truth and Reconciliation Commission demonstrates the ways that this translation makes human suffering both legible and illegible. While the language of human rights functioned in powerful ways to establish a previously unacknowledged history in South Africa, identify and grant dignity to victims, and occasionally designate responsibility, I argue that it also disfigured the testimony of victims in ways that alienated them from their own experience and sometimes re-traumatized them, and that it often proved more useful to perpetrators than to victims. I also contend that the promise of healing in which the Commission wrapped its human rights message prioritized national over individual forms of healing, and allowed the South African government to substitute spiritual and symbolic forms of reparation for material ones.

Original in English.

KEYWORDS

Truth commission – South Africa – Human rights language – Trauma – Healing – Reparation



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LOST IN TRANSLATION: EXPRESSIONS OF HUMAN SUFFERING, THE LANGUAGE OF HUMAN RIGHTS, AND THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION

Rebecca Saunders

This essay examines what is gained and what is lost when expressions of human suffering are translated into a standardized and universalized language of human rights. South Africa's formidable venture in transitional justice, the Truth and Reconciliation Commission (TRC), I argue, demonstrates the ways in which this translation makes human suffering both legible and illegible, the ways in which the language of human rights may, paradoxically, be deployed toward both liberatory and oppressive ends. I contend that while the language of human rights functioned in powerful ways to establish a previously unacknowledged history in South Africa, assign meaning to cultural trauma, identify and grant dignity to victims, and occasionally designate responsibility, it often proved more useful to perpetrators than to victims, functioned to prioritize national over individual forms of healing, and allowed the South African government to substitute spiritual and symbolic forms of reparation over material ones. The latter has, unfortunately, abetted the ANC's conversion to a neoliberal economic model, a policy shift that perpetuates and legitimizes among the most deleterious of apartheid's human rights abuses—the systematic production of poverty.

Charged with the daunting tasks of bearing witness to human suffering, facilitating some form of transitional justice, and promoting a “culture of human rights,” The TRC was both post-apartheid South Africa's primary mechanism for promoting a new national identity and an extraordinary encounter between embodied local experience on the one hand and universalized and abstract human rights principles on the other. Ultimately, however, this scene was less one of dialogue and negotiation between material particularities and abstract human rights talk than a mandatory translation of the former into the latter, an obligatory exchange of

Notes to this text start on page 66.

particular facts and visceral testimony for a national idiom of reconciliation and respect for human rights. While this translation undeniably allowed for increased visibility of gross violations of human rights and a more precise adjudication of them, it was, in many instances, at the cost of appropriating and disfiguring victims' expressions of suffering for the purposes of national stability—or, a cynic might add, for an illusory “peace” sufficiently convincing to attract foreign investment. It was the Commission that translated victims' raw and fractured narratives of harm into the austere language of rights; in the final report, it is clear that this idiom is part of the analysis—of “findings”—rather than the record of testimony.

Victims' testimonies to the TRC were organized around the “dyslogic” of traumatic memory rather than the rationality of human rights principles, corresponding, in large measure, to the nature of testimony as psychoanalyst Dori Laub describes it:

As a relation to events, testimony seems to be composed of bits and pieces of a memory that has been overwhelmed by occurrences that have not settled into understanding or remembrance, acts that cannot be constructed as knowledge nor assimilated into full cognition, events in excess of our frames of reference [...] In the testimony, language is in process and in trial, it does not possess itself as a conclusion, as the constation of a verdict or the self-transparency of knowledge.¹

Victims' testimony was often filled with forensically irrelevant—but psychologically and mnemonically highly significant—details: the kind of soup a woman was making when the security police came to the door, the moment she suspected something was amiss, what her son was wearing when she last saw him. Sometimes, testimony faltered on the aspect of anguish where memory was stranded: they set my husband's body on fire after they killed him; I watched the police carry my son's intestines to the ambulance.² Sometimes, it focused on the agony of the unknown or the missing: how was he killed? Where is the body? Where testimonies did resolve into knowledge, they were largely factual reconstructions of events rather than ethical arguments, cut of a very different cloth than codified human rights discourse: fragmented and elliptical, filled with the kinds of unwieldy memories, perceptions, opinions, and emotion regularly expunged by the rationality of law.

The TRC often admirably facilitated such testimony.³ Less constrained by prosecutorial procedure, evidentiary rules, admissible forms of discourse, and conceptions of relevance than a criminal court, the Human Rights Victims' hearings regularly, and painfully, bore witness to this testimony. Moreover, in their nightly, televised version, the victims' hearings had an undeniable and significant impact on many South African minds. In the first year of the Commission, this testimony dominated televised and radio news and, as Robert Rotberg and Dennis Thompson contend, “educated the new society directly, well before [the Commission's] official findings could be represented to parliament and the president”.⁴ These hearings were widely viewed as a kind of cathartic ritual of healing, their emotional intensity counted upon to enact a symbolic reconciliation between individuals that would

function as vicarious therapy for the nation. However, if these hearings performed certain pedagogical and cathartic tasks, they nonetheless remained primarily expressive—a kind of “emotional window dressing”, as Richard Wilson puts it—rather than structurally transformative; they had little influence on reparation proceedings, the amnesty process, or subsequent national policy.⁵ Those more serious responsibilities were entrusted to the language of human rights.

Perpetrators of human rights abuses, moreover, were far more likely to invoke rights language than were victims. They routinely called on principles of due process, the right to counsel, the commission’s amnesty provision, and “the laws of the land” to protect themselves from prosecution.⁶ Many appealed to tired apartheid formulae which, after all, had long been clothed in the venerable robes of law and order. Amnesty applicants successfully used the Courts to suppress their names at hearings and keep families of victims from testifying; former President F.W. de Klerk, through an eleventh hour court injunction, censored two incriminating pages of the Final Report; and the National Party formally charged the TRC with inadequately upholding legal standards, inadequate examination of testimony, “undermining the ability of a legitimate political party to participate on an equal basis in the democratic process”, illicit intrusion into areas outside its jurisdiction (such as the medical profession and media), and failure to condemn the human rights abuses of the ANC and its allies.⁷ Indeed it is worthy of consideration that even in the Chairperson’s description of the “dual responsibility” of the Commission—to provide the space within which victims could share the story of their trauma with the nation” and to “recognize the importance of the due process of law that ensures the rights of alleged perpetrators”⁸—that “rights” and the protection of law are conceived as the privilege of “alleged perpetrators”, while victims are ostensibly to be content with “space for sharing”.

In addition to a translation into human rights discourse (and from multiple languages into English), victims’ testimonies to the TRC underwent a further series of selections and transformations: only a fraction of testimonies—usually of high-profile or “symbolic” cases—were chosen for inclusion in public hearings (about 8%); only certain “qualifying” submissions were selected by the Human Rights Violations Committee to be passed on to the Reparations committee; and, in the Final Report, testimony was excerpted and used as exemplary of a particular *type* of human rights violation (detention, banishment, torture, death in custody, etc.). This succession of translations meant that the majority of testimony was not publicly diffused, that some voices and themes were chosen for publicity over others, that individuals’ experiences were often broken down into apparently unrelated pieces of evidence, extracted from the messiness of their local milieu to be rearticulated in the controlled and cleanly context of abstract human rights statutes.

The technology employed to translate expressions of suffering into nationally useable human rights discourse was an information management system called Infocomm, adopted by the TRC in the latter part of 1996.⁹ Disciplined by Infocomm’s protocol, the TRC increasingly moved toward a data processing methodology and a “controlled vocabulary” determined by information coding requirements. The TRC,

to be sure, was confronted with an awesome deluge of sundry testimony which it was obliged to translate into something else: history, justice, a useable truth, a founding narrative for the new South Africa. The Commission hence instituted a format for recording victims' narratives and this form (which was revised four times over the course of the proceedings) gradually morphed into a mass survey-like checklist that could be efficiently deciphered by data processors and converted into statistical information by analysts. In the final version of the form, the opening narrative section of the deposition was eliminated and deponents' testimony was sometimes cut off when pages were full. The form could be completed in about thirty minutes by the deponent him or herself, such that a trained and attentive interlocutor—or any listener at all—was rendered unnecessary. With the imposition of the Infocomm protocol, the TRC offered a less and less hospitable environment for bearing witness to suffering, and, as Minow rightly contends, “the benefits of truth telling depend in no small measure on the presence of sympathetic witnesses [...] Acknowledgement by others of the victim's moral injuries is a central element of the healing process”.¹⁰

While the Commission's original statement-takers had been trained by psychologists to attend sensitively to victims' testimony, function as supportive counselors, respond to psychological needs, and facilitate an intersubjective process of narrative reconstruction, this procedure was deemed ineffective at extracting the factual information necessary to establish the broad patterns of human rights abuse the Commission was mandated to document. Under the new deposition protocol, accordingly, statement-takers were trained to be specialized and efficient components of a knowledge production system rather than to be responsive witnesses to traumatized people's testimony, as Thema Kubheka, chief data processor in Johannesburg, describes:

When we started it was a narrative. We let people tell their story. By the end of 1997, it was a short questionnaire to direct the interview instead of letting people talk about themselves [...] the questionnaire distorted the whole story altogether [...] it destroyed the meaning. [...] the emotional part of the story wouldn't go on the computer, remember it was just a machine. You'd lose a lot—we couldn't put style or emotion into the summary. We were inputting for counting purposes. We lost the whole of the narrative [...] we lost the meaning of the story. It was tragic, pathetic. It became dry facts.¹¹

Responses to the Commission's questionnaire (which could only grossly be called “testimony”) were subsequently passed on to data processors who translated them according to a classification system called the “controlled vocabulary”, comprised of forty-eight acts of violation and three subject positions (victim, perpetrator, or witness). Experience, perceptions, or emotion that did not conform to this classificatory system, were disregarded. This deployment of human rights language, refined and standardized into a legalistic technology of rights and the evidentiary information required to be eligible for them, ultimately rendered invisible numerous forms and aspects of suffering and was perhaps particularly deleterious precisely because it claimed to be exposing suffering. Aimed as it was at identifying *patterns* of

human rights violations, the TRC thus made visible the quantitative extent of certain categories of suffering, but left open little negotiation room for deciding what suffering would be eligible for this visibility; what “qualified” was predetermined by international standards of human rights rather than by local exigencies or something so paltry as human experience.

On the one hand, then, the TRC’s mandate to identify patterns of human rights abuse enabled acknowledgment of both the scale and systematic nature of the nation’s trauma. It also refocused analyses of the pathogenesis of traumatic symptoms, as Frantz Fanon urged a century ago, from the individual psyche to the pervasive and diffuse inhumanity of social mechanisms of oppression (such as colonialism, racism, or apartheid).¹² On the other hand, the rhetoric of healing on which the TRC relied, facilitated a slippery, and sometimes cruelly deceptive, substitution of this societal analysis for individual rehabilitation. In his opening address, Desmond Tutu averred that “We are a wounded people [...] We all stand in need of healing”—a formulation that, drawing on a long metaphorical tradition of an anthropomorphized body politic, expediently conflated the healing of the nation with the healing of individuals and suggested that the two would be coincident. As Martha Minow notes, such suggestions are not uncommon in the rhetoric of truth commissions. “The working hypothesis”, she writes, “is that testimony of victims and perpetrators, offered publicly to a truth commission, affords opportunities for individuals and for the nation as a whole to heal [...] Echoing the assumptions of psychotherapy, religious confession, and journalistic muckraking, truth commissions presume that telling and hearing the truth is healing”.¹³ Depicting the nation as injured by the atrocities of apartheid and debilitated by the illness of racism, the TRC’s promise of healing nonetheless remained ambiguous on whether the recovery aimed at was that of the nation as a political unit or of individuals. In fact, the Commission’s overriding imperative of reconciliation—of healing the body politic—routinely outweighed, and sometimes even impaired, the healing of individuals, many of whom were asked to sacrifice their personal recovery for the nation’s. While this ideology enabled a political stability that, at times, could pass for national reconciliation, it did little to ameliorate individuals’ psychological or physical misery.

Human rights discourse which focuses on freedom from tyranny and oppression, friendly relations among nations, a common standard of achievement for all peoples and nations, and a social and international order in which rights and freedoms can be fully realized, is aimed at monitoring political, rather than criminal, offenses.¹⁴ The U.N. Declaration of Human Rights, for example, excludes from the right to asylum “prosecutions genuinely arising from non-political crimes” and Article 29 stipulates that the exercise of rights and freedoms is subject to “the just requirements of morality, public order and the general welfare in a democratic society”.¹⁵ This language emphasizes the actions and accountability of nations and political leaders, rather than of individuals, and prioritizes public order and general welfare over individual justice or well-being; it conceives persons as national citizens or members of a “people”. The TRC followed suit, identifying deponents as members of political parties or racial groups, a categorization pursuant to the Commission’s mandate that

made “political motivation” a requirement for amnesty. On the one hand, it was clearly significant to both justice and history construction to recognize individuals’ imbrication in social and political systems. As Minow contends, “By identifying individual suffering as an indictment of the social context rather than treating it as a private experience that should be forgotten, a commission can help an individual survivor make space for new experiences”.¹⁶ On the other hand, the practice of sorting individuals in terms of party affiliation or apartheid-style race categories fed into a grossly inadequate historical and social analysis on several grounds: it made little attempt to understand human action outside of party and racial politics; it interpreted individuals as unalloyed manifestations of a political ideology; it failed to acknowledge and document the magnitude of suffering produced by only quasi-institutionalized forms of discrimination and injustice; it conceived of groups and individuals as bearing static identities rather than recognizing the shifting, evolving, interdependent and sometimes opportunistic processes of identity performance; and it paid little attention to local power dynamics which, in South Africa, were often more determinative than national politics.

If the TRC, then, was relatively successful at exposing and condemning the suffering produced by myopic adherence to a political ideology, it was much less adept at capturing the pervasive misery underwritten by a racist media and education system or conditioned by complex and often inextricably personal, political, familial, and/or social motivations. “In determining political motivation”, writes Wilson, “membership of a political organization came to outweigh all other factors. ‘Political’ relied on politics in the narrow liberal sense of formal membership of a political party”.¹⁷ Neither did the TRC possess an adequate mechanism for analyzing the vast field of injury that was a byproduct of the elaborate negotiations of identity, ideology, and pragmatic action that take place between individuals and groups, as well as *within* groups and individuals. Indeed, as Wilson has demonstrated, the TRC took little account of community networks and local political dynamics which, for many, were far more significant than national parties or racial affiliation. It paid little attention to the hermeneutic elaboration of party policies in different regions, settings, and personal circumstances and often assumed—and sometimes explicitly requested—that individuals speak on behalf of an entire group. Thus by suggesting (however deliberately or inadvertently) that a group’s or community’s suffering had been listened to and included in the national historical record, the TRC also thereby rendered invisible the distress of many associated (by themselves or others) with that group, whose suffering may not have conformed to the exemplar, or whose ideology, social position, or experience differed.

In the Human Rights hearings, moreover, victims’ testimony was regularly and promptly translated by Commissioners into the lesson that all South Africans had suffered under apartheid, that such suffering was necessary to the liberation struggle, and that reconciliation, if not forgiveness, was the proper outcome of participation in the TRC. As Wilson observes, while “individuals often stressed the singularity and specificity of their suffering in a way that precluded any wider meaning, in contrast, the commissioners told people in TRC hearings that ‘you do not suffer

alone, your suffering is not unique but shared by others”¹⁸ It is thus little wonder that many victims felt scant affinity with either the truth or the justice produced by the Commission, and indeed felt ultimately alienated from their own testimony.¹⁹ While victims’ testimony formulated justice in terms of community embeddedness and responsibility to others, and while victims constructed themselves as interdependent, emotive, and embodied subjects, the processes of translation we have been describing distilled and decontextualized that testimony into the disembodied domain of metaphysical statutes and calculability where victims, contrary to their own self-representations, became autonomous, strictly rational, and equally positioned legal subjects: forcibly removed from a home of personal relations, response, and *responsibility* to an alien place of metaphysical statutes, adequation, accounting, and *accountability*.

This alienation from one’s own words and experience is similar to the misrecognition that Julie Mertus contends is produced by tribunal justice:

*Tribunal justice may be meaningful to lawyers drafting pleonastic legal documents in The Hague, diplomats declaring success at stabilizing conflicts, and local politicians staking their claims to power amid the smouldering embers of destroyed communities. But little satisfaction will come to survivors [...] Even when the tribunal does name their crime, the survivor may barely recognize it as the process and language of law transmutes individual experiences into a categorically neat something else.*²⁰

The language of tribunal justice, like that of human rights, makes suffering available to certain national and international power-brokers, but by no means guarantees that it will be represented, used, or responded to in the way in which the suffering person needs or desires. Indeed once that suffering has been translated into an internationally standardized language that operates by its own rules, it is no longer in the sufferer’s hands; s/he has, willingly or unwillingly, ceded power over it to distant “authorities”.

Ironically replicating the split subjectivity characteristic of traumatic experience, this sense of alienation from one’s own experience and language—a misrecognition of one’s own identity as constructed by the Commission—meant that for many testifying to the TRC was neither a healing nor a cathartic experience. “The word catharsis gets used too often within the TRC”, writes Psychologist Brandon Hamber. “There is a perception that as long as a person is crying then healing must be taking place. But for the majority, crying is only the first step and there is no follow-up after the hearings. In fact, the adrenalin of giving testimonies on national television masked psychological problems which then surfaced later.”²¹ The Cape Town Trauma Center for Victims of Violence and Torture reported that 50 to 60 percent of the victims they had seen suffered serious difficulties after giving testimony.²² In his work with political detainees who had been tortured in custody, Psychologist Ashraf Kagee found that participation in the TRC did not reduce distress or alleviate traumatic symptoms, and that many respondents expressed “considerable resentment” at the TRC “for not appropriately addressing the needs of victims”.²³ Ruth Picker, in

conjunction with the Centre for the Study of Violence and Reconciliation, the Khulumani Support Group, and the KwaZulu Natal Programme for Survivors of Violence, found that while victims of human rights violations who participated in the TRC appreciated the disclosure of truth, the opportunity to tell their story, and the chance to confront perpetrators, many also felt as if they had been re-traumatized by the experience and underwent a “significant deterioration of overall physical and psychological health after testifying”. Specifically, Picker’s respondents felt that the TRC had broken its promises in regard to reparations, that this failure was an “act of disrespect, breach of trust, and exploitation”, that they had been rendered vulnerable by testifying in public and having their words and experience appropriated by the Commission and other “experts” for other purposes; that perpetrators often did not tell the truth and remained arrogant and unremorseful, and that the TRC had contributed to their trauma by failing to provide either follow-up information on their cases or psychological counseling services after they had testified.²⁴ A Khulumani press release put the matter bluntly:

The TRC has compromised our right to justice and to making civil claims. In good faith we came forward and suffered the re-traumatisation of exposing our wounds in public in the understanding that this was necessary in order to be considered for reparations. We now feel that we have been used in a cynical process of political expediency.²⁵

This sentiment was exacerbated by the not unreasonable perception that the TRC had rewarded perpetrators with amnesty but offered little compensation, justice, or chance of recovery to victims. Not surprisingly, the view was strongly expressed in victims’ workshops that the TRC had been more successful at a national than at a local or personal level.²⁶ What had been lost in translation was victims’ own healing; it had been sacrificed, many realized with a bitter hindsight, for the healing of the nation.

Another way of articulating the TRC’s discursive confrontation between the standardized language of human rights and individuals’ embodied and particular expressions of suffering would be through Patricia Ewick and Susan Silbey’s distinction between *hegemonic tales* “that reproduce existing relations of power and inequity” and *subversive stories* “that challenge the taken-for-granted hegemony by making visible and explicit the connections between particular lives and social organization”.²⁷ Examining how “narratives can function to sustain hegemony or, alternatively, subvert power”, Ewick and Silbey view hegemonic tales as those that not only reproduce existing ideologies and relations of power, but function as mechanisms of social control, organize experience into a coherent ideology that resists challenge, and “conceal the social organization of their own production and plausibility”.²⁸ Subversive stories they define, by contrast, as those that “do not aggregate to the general, do not collect particulars as examples of a common phenomenon or rule”, and that “recount particular experiences as rooted in and part of an encompassing cultural, material, and political world that extends beyond the local”.²⁹ From this perspective, I would argue that the language of human rights functioned initially in South Africa as an

important subversive story, but that it has, in the post-apartheid era, increasingly assumed the role of a hegemonic tale. The TRC was central to this change in status. For while it succeeded in dislodging the hegemonic tale of apartheid with a subversive story of violated human rights, it also functioned to establish a hegemonic narrative of a new South Africa based on restorative justice, reconciliation, a multiracial society, and inclusive citizenship. While an infinitely more benign hegemonic tale, this new ideology made it difficult for the TRC to incorporate and respond to stories that were non-conciliatory, that highlighted the social and economic exclusions perpetuated under the new terms of citizenship, or that provided evidence of the deep divisions and sharp inequalities that have persisted into, and in some ways been condoned by, the “new” South Africa.

The TRC was charged with “investigating and establishing ‘as complete a picture as possible of the nature, causes and extent of gross violations of human rights’ committed under apartheid between 1960 and 1994”.³⁰ While such violations were numerous and unquestionably merited investigation, exposure, and response, the Commission’s constrained focus on “gross human rights violations” and the restriction of the category of “victim” to those who had experienced exceptional acts of violence, meant that the TRC assessed only a fraction of those oppressed by apartheid and only a fragment of the harm it inflicted. The suffering validated as significant by the TRC—identified by its translatability into globally recognized standards of human rights—thus excluded the massive amount of affliction produced by the structural violence of apartheid itself. This unfortunately narrow conception of “victimhood” (and thereby of “suffering”) meant that many individuals were simply not eligible for an audience with the Commission; that numerous forms of persecution (such as detention without trial, forced removals, obstructed freedom of movement and assembly, systemic educational, economic, and legal discrimination), as well as numerous kinds of suffering (such as material deprivation and psychological trauma) were minimized if not tacitly excused; that persons were not held accountable for the acts, practices, and varieties of inaction that directly or indirectly caused such misery; that human rights were defined primarily as *freedom from* (torture or severe ill-treatment), rather than *access to* (resources, services, education, or opportunity); and that legalized oppression (which, under apartheid, as under other totalitarian regimes, comprised the major source of human suffering) fell outside the purview of accountability. A large body of the injustice and oppression of apartheid was not sufficiently translatable into the language of human rights and thus remained officially unrecognized.

Mahmood Mamdani has persuasively argued several crucial aspects of this case. He contends that turning “the political boundaries of a compromise into analytical boundaries of truth-seeking”, the TRC obscured the co-dependency of racialized power and racialized privilege, the simultaneous distinction and complicity between perpetrators and beneficiaries, and, thus, the basic structure of apartheid.³¹ Rather than defining perpetrators as “state agents” and victims as “political activists”, an ethically sharper approach, he argues, “would have gone beyond notions of individual harm and individual responsibility, and located agency within the workings of a

system. The result would have been to explain apartheid as an evil system, not just to reduce it to evil operatives”.³² He also charges the TRC with indulging in “the legal fetishism of apartheid” in such a way that it conflated the morally acceptable with the legal, discounted legalized forms of harm, and exculpated those who lawfully derived benefit from others’ suffering.³³ “The TRC invited beneficiaries to join victims in a public outrage against perpetrators”, writes Mamdani. “So, beneficiaries too were presented as victims.”³⁴ Not only did such a formulation absolve beneficiaries from responsibility for apartheid, it left their benefits and privileges, as well as the system that supports them, well intact.

If the TRC’s rhetoric of healing obscured its lack of ability to provide real therapeutic benefits to individuals, it also remained unclear on whether (national or individual) recovery would be accomplished by a program of psychological healing or by the restitution of lost goods and property. The word *recovery*, it bears emphasizing, signifies both (1) healing, the restoration of health and normalcy, and the process of a cure; and (2) repossession, the return of a missing object, repayment of a debt, indemnification or restitution. I would argue, in fact, that the TRC’s focus on repairing the nation’s soul has largely been at the expense of restoring its material body, as demonstrated by the Commission’s emphasis on spiritual reconciliation and the elimination of racist attitudes over providing reparations and remedying material inequity. What the TRC ultimately offered in terms of recovery for victims was a modicum of public recognition, occasionally pieces of knowledge, and a spiritual blessing, rather than psychological, medical, or material reparation. In other words, it largely substituted spiritual for material forms of justice and recovery, tacitly contending that truth would heal suffering, repair communities, and serve as compensation for victims.

The mandate and operations of the Reparations and Rehabilitation committee were clearly the frailest of the Commission’s three branches; it did not hold public hearings, could only make unbinding recommendations to Parliament, and could offer victims only a fraction of the compensation for which they would be eligible in a criminal court. Yet as the Commission’s Final Report acknowledges, when asked what they wanted from the TRC, “thirty-eight per cent of the commission’s deponents requested financial assistance to improve the quality of their lives. In addition, ninety per cent of deponents asked for a range of services which [could] be purchased if money [were] made available—for example, education, medical care, housing and so on”.³⁵ Victims further expressed strong feelings that perpetrators should be “made to contribute materially and financially toward the reparation and rehabilitation of victims. Most felt there could be no reconciliation with out reparation”.³⁶ These requests were largely unfulfilled, and victims’ disappointment, their sense that they were once again being treated with disdain, was exacerbated by the perception that perpetrators were not only *not* required to contribute to reparations, but made eligible for amnesty. “In this context”, writes Christopher Colvin, “reparations have come to mean much more than a means of support or a kind of recognition of suffering. They have become the unfulfilled answer to the question of whether or not justice has been done in the transition process”.³⁷

The TRC, to its credit, recognized this imperative and included in its Final Report the following elegant, if impotent, statement:

If we are to transcend the past and build national unity and reconciliation, we must ensure that those whose rights have been violated are acknowledged through access to reparation and rehabilitation. While such measures can never bring back the dead, nor adequately compensate for pain and suffering they can and must improve the quality of life of the victims of human rights violations and/or their dependants [...]. Without adequate reparation and rehabilitation measures, there can be no healing and reconciliation.³⁸

The Commission's recommendations included urgent interim reparation grants, community rehabilitation programs, symbolic reparations (such as monuments and the renaming of streets), institutional reforms, and individual reparation grants, as well as a once-off wealth tax on corporations to endow the reparations fund. Unfortunately, the ANC government into whose hands the TRC placed these recommendations was busy refashioning itself in the garb of neoliberal economic reforms pleasing to the gaze of transnational capitalist institutions but fundamentally at odds with the TRC's reparations proposals (as well as with longtime ANC policy).

It quickly became apparent in South Africa that neither the new nation nor the Truth Commission held a monopoly on human rights language, and indeed that the globally hegemonic neoliberal economic regime concurrently conquering the country could spout off a compulsory litany of human rights talk as well. If human suffering can be translated into a universalized idiom of human rights, so too, it appears, can a market ideology that produces widespread suffering and insouciantly tramples human rights. While membership in the global economy is made conditional upon a state's professed protection of human rights, under this regime, as Tony Evans points out, "human rights are conceptualized as the freedoms necessary to maintain and legitimate particular forms of production and exchange"³⁹ rather than as the socioeconomic rights warranted by the Universal Declaration of Human Rights to, for example, social security (Article 22), work (Article 23), education (Article 26), and a standard of living adequate for health and well-being "including food, clothing, housing and medical care and necessary social services" (Article 25).⁴⁰ Emphasizing property rights and freedom from governmental control (and often erroneously conflating "free trade" with the freedoms of people), this market hegemony is "rephrased into universalistic value formats"⁴¹ by institutions such as the IMF and World Bank, which stress freedom, liberalization, elimination of barriers, growth, efficiency, opportunity, discipline and stability—and clearly cast those that oppose, or construct stories subversive to, such policies as reprehensibly oppressive, exclusionary, inefficient, destabilizing, anti-democratic, and unethical.⁴²

In South Africa, it became clear that this neoliberal hegemonic tale had triumphed when, in 1996, the ANC converted from its original Reconstruction and Development Program (RDP)—which had largely followed through on the vision of the Freedom Charter and adopted a basic-needs oriented policy of growth from redistribution—to the Growth, Employment and Redistribution (GEAR)

policy which instituted aggressive neoliberal strategies of privatization, liberalization, and deficit reduction. Essentially a self-imposed Structural Readjustment Program, GEAR claimed, with the strong support of the World Bank, IMF, and South African business interests—but against overwhelming global evidence—that poverty and its attendant structures of suffering could be ameliorated through market-led economic growth and increased global competitiveness.⁴³ President Thabo Mbeki described this dramatic turnaround as “resist[ing] the temptation to succumb to a populist urge to attempt what would have been an adventurist and disastrous ‘great leap forward’”,⁴⁴ in language, that is, that implies that challenging the hegemonic neoliberal tale would not only be self-indulgent and irresponsible, but comparable to one of history’s most hideous scenes of human rights abuse. Yet the evidence adduced by the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), as well as by scholars such as Patrick Bond, Fantu Cheru, and Richard Peet, demonstrate that GEAR has made only meager progress in alleviating South Africa’s suffering—the country’s Gini-coefficient remains second only to Brazil as the most unequal society in the world—and has mostly functioned to enrich a minuscule black elite.⁴⁵ Indeed Black involvement in the economy has made only paltry gains since 1994 and represents the success of a small group of black businessmen working in alliance with apartheid era corporate monopolies. According to the Institute for Justice and Reconciliation’s “Economic Transformation Audit” of 2004, a comparison of the 1996 and 2001 censuses reveals that both income poverty and income inequality increased for the South African population as a whole during this period, though access to some basic services improved. Since 2001, it reports, social services to the poor have increased, but so has unemployment. The largest growth in employment, moreover, has been in the informal sector, which also experienced the largest fall in real wages.⁴⁶

Enacted as many South Africans had their gaze riveted on TRC proceedings, GEAR was patently ill-suited to carrying out the TRC’s reparation recommendations. As Cheru rightly insists, “heavy reliance on market forces to redress the legacies of apartheid is misguided and unsustainable in a society marked by extreme inequality and poverty. The gulf between the government’s macro-economic policy and its social policy is glaringly apparent.”⁴⁷ But the very fact that the government could defend GEAR with the language of human rights supports Wilson’s argument that human rights talk has become a dominant form of ideological legitimization in the new South Africa, and yet is sufficiently indiscriminate and elastic as to be able to accommodate multiple and even radically contradictory ideological positions. It also demonstrates Makau Mutua’s important critique of human rights language as a body of “frozen and fixed principles whose content and cultural relevance is unquestionable” and that “prematurely cut[s] off debate about the political and philosophical roots, nature, and relevance of the human rights corpus”.⁴⁸

While the TRC can by no means be held accountable for GEAR, I do think it is arguable that the Commission’s *publicizing* of a spiritual economy was ultimately collusive with the ANC’s *privatizing* of the literal economy. Having no force to

enact its recommendations, the Commission relied on a ritual enactment of reconciliation that, decked out in human rights language, did more to impress international well-wishers and reassure foreign investors than to alleviate South Africans' suffering. The TRC's emphasis on spiritual and symbolic forms of reparation—denouncing racist attitudes, exhibiting scenes of reconciliation and forgiveness, and celebrating a rainbow nation—has, however inadvertently, abetted the ANC's embrace of neoliberal economics. The Commission's focus on healing the nation's soul has been at the expense of repairing its material body; the material agony of damaged bodies, of lack of medical care, clean water, and adequate housing, of malnutrition and the ravages of poverty are daily experiences of suffering that were largely lost in translation.

In conclusion, the TRC evinces the way in which a language of human rights makes certain forms of suffering legible, while rendering others illegible. Its formidable powers of legitimization may incorporate certain kinds of harm, victims, and expressions of suffering into a hegemonic tale that makes recognition of other kinds of harm, other classes of victims, and other modes of expressing suffering more difficult and even threatening. While the TRC's use of the idiom of human rights enabled significant progress in correcting a skewed historical record, acknowledging and documenting the gross human rights violations of the apartheid regime, assigning responsibility for some of those violations, granting dignity to victims and sometimes providing them with information, it also functioned to disfigure the testimony of victims in a way that alienated them from their own experience and sometimes re-traumatized them. In order to translate traumatic testimony into statistical data and document "broad patterns" of human rights violations, it became necessary to retell subversive stories in a "controlled vocabulary", discard information that could not be adapted to that vocabulary, treat individuals as members of (political or racial) groups, and disregard their often complex negotiations of identity and self-representations. Where testimony was not translated into human rights talk, it remained primarily expressive, with little power to influence policy, reparations, or amnesty decisions. A large body of the injustice and oppression of apartheid was, moreover, simply not visible through the lens of human rights language and thus remained officially unacknowledged.

I have also argued that the Commission's overriding imperatives of facilitating reconciliation and establishing a culture of human rights were coated in a promise of healing that attended primarily to rehabilitating the body politic rather than to healing traumatized individuals, many of whom were asked to sacrifice their personal recovery for the nation's. That idiom of healing, I've suggested, was also sufficiently slippery as to allow spiritual and symbolic forms of compensation to eclipse demands for material reparations. In inadvertent alliance with the ANC's conversion to neoliberalism, the TRC's emphasis on healing the nation's soul undermined the task of repairing its material body. In its translation of South African's suffering into the language of human rights, the TRC thus sustained serious losses, among them processes of individual psychological healing, the material repair of bodies, homes, and communities, and alleviation of debilitating poverty.

BIBLIOGRAPHY

- ALEXANDER, N. The 'Moment of Manoeuvre': 'Race,' Ethnicity, and Nation in Postapartheid South Africa. In: Kaiwar, V. & Mazumdar, S. (eds.). **Antinomies of Modernity: Essays on Race, Orient, Nation**. Durham: Duke University Press, 2003.
- AMADIUME, I. & AN-NA'IM, A. (ed.). **The Politics of Memory: Truth Healing and Social Justice**. New York: Zed Books, 2000.
- BOND, P. **Elite Transition: From Apartheid to Neoliberalism in South Africa**. London: Pluto Press, 2000.
- BORAINE, A. **A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission**. Oxford: Oxford University Press, 2000.
- BUFORD, W. & van der Merwe, H. Reparations in Southern Africa. **Cahiers d'études africaines**, Johannesburg, v. 444, n. 1-2, 2004.
- KROG, A. **Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa**. New York: Random House, 1998, p. 40
- Centre for the Study of Violence and Reconciliation & Khulumani Support Group. **Survivors' Perceptions of the Truth and Reconciliation Commission and Suggestions for the Final Report**, 1998. Available at: <www.csvr.org/za/papers/papkhul.htm>. Last accessed on: Aug. 2005.
- CHERU, F. Overcoming apartheid's legacy: the Ascendancy of Neoliberalism in South Africa's anti-poverty strategy. **Third World Quarterly**, London, v. 22, n. 4, 2001.
- FANON, F. **Black Skin, White Masks** (trans. Charles Lam Markmann). New York: Grove, 1967.
- EVANS, T. International Human Rights Law as Power/Knowledge. **Human Rights Quarterly**, Baltimore, v. 27, 2005.
- EWICK, P. & SILBEY, S. S. Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative. **Law & Society Review**, University of Massachusetts, v. 29, n. 2, 1995.
- FANON, F. **The Wretched of the Earth** (trans. Constance Farrington). New York: Grove, 1963.
- FELMAN, S. & LAUB, D. **Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History**. New York: Routledge, 1992.
- GUTMANN, A. & THOMPSON, D. The Moral Foundations of Truth Commissions. In: Rotberg, R.I & Thompson, D. (ed.). **Truth v. Justice: The Morality of Truth Commissions**. Princeton, 2000.
- HAMBER, B. Repairing the Irreparable: Dealing with Double-binds of Making Reparations for Crimes of the Past. **Ethnicity and Health**, Routledge, v. 5 n. 3-4, 2000.
- HAMBER, B.; Nageng, D. & O'Malley, G. 'Telling it Like it Is (...)': understanding the

- truth and reconciliation commission from the perspective of survivors. **Psychology in Society**, Congella (South Africa), v. 26, 2000.
- HAYNER, P. **Unspeakable Truths: Facing the Challenge of Truth Commissions**. New York: Routledge, 2002.
- South African Press Association. “‘We’re on the high road’, says”. **Independent Online**, South Africa, 12 Aug. 2005. Available at: <http://www.int.iol.co.za/index.php?set_id=1&click_id=594&art_id=qw1123851240475B22>. Last accessed on: 4 Oct. 2008.
- Institute for Justice and Reconciliation. **South African Reconciliation Barometer**, Cape Town, v. 2, n. 4, 2004. Available at: <www.ijr.org.za/politicalanalysis/reconbar/newsletters>. Last accessed on: Aug. 2005.
- KAGEE, A. The relationship between statement giving at the South African Truth and Reconciliation commission and psychological distress among former political detainees. **South African Journal of Psychology**, South Africa, v. 36, n.1, 2006.
- KAGEE, A. Conducting Research with South African Survivors of Human Rights Violations: Some Considerations. **International Journal for the Advancement of Counselling**, New York, v. 26, n. 2, 2004.
- KLAAREN, J. A Second Look at the South African Human rights commission, Access to Information, and the Promotion of Socioeconomic Rights. **Human Rights Quarterly**, Baltimore, v. 27, 2005.
- KROG, A. **Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa**. New York: Random House, 1998.
- MAMDANI, M. The Truth According to the TRC. In: **The Politics of Memory**, London: Zed books, 2000, p. 177-78.
- MINOW, M. The Hope for Healing: What can Truth Commissions Do?. In: Rotberg, R.I & Thompson. D. (ed.). **Truth v. Justice: The Morality of Truth Commissions**. Princeton, 2000.
- MINOW, M. **Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence**. Boston: Beacon Press, 1998.
- Mutua, M. **Human Rights: A Political and Cultural Critique**. Philadelphia: University of Pennsylvania Press, 2002.
- PEET, R. Ideology, Discourse, and the Geography of Hegemony: From Socialist to Neoliberal Development in Postapartheid South Africa. **Antipode**, UK/US: Blackwell publishing, v. 34, n. 1, 2002.
- PICKER, R. Victims’ Perspectives about the Human Rights Violations Hearings. **Research report written for the Centre for the Study of Violence and Reconciliation**, 2005. Available at: <www.wits.ac.za/csvr/papers/pappick.htm>. Last accessed on: July 2005.
- REID, F. & Hoffmann, D. (directors). **Long Night’s Journey into Day** [documentary]. Production of: Iris Films/Cinemax Reel Life, South Village, 2000, 94 minutes.

- SOUTH AFRICA. Office of the President. **Promotion of National Unity and Reconciliation Act, 1**, 1995. Available at: <<http://www.doj.gov.za/trc/legal/act9534.htm>>. Last accessed on: July 2003.
- SAUNDERS, R. *Disgrace* in the Time of a Truth Commission. **Parallax - Special Issue on Visceral Reason** edited by Karyn Ball, New York, Routledge, v.11, n.3, 2005.
- SAUNDERS, R. **Lamentation and Modernity in Literature, Philosophy, and Culture**. New York: Palgrave, 2007.
- SAUNDERS, R. *Uncanny Presence: The Foreigner at the Gate of Globalization*. **Comparative Studies of South Asia, Africa and the Middle East**, Durham (US): Duke University Press, v. 21, n. 2, 2001.
- SOUTH AFRICA. **Second Submission of the National Party to the Truth and Reconciliation Commission**. 23 Mar. 1997. Available at: <<http://www.doj.gov.za/trc/submit/np2.htm>>. Last accessed on: Sept. 2008.
- SOUTH AFRICA. **Truth and Reconciliation Commission of South Africa Report**. Truth and Reconciliation Commission: Cape Town, v. 1, 1998.
- SOUTH AFRICA. **Truth and Reconciliation Commission of South Africa Report**. Truth and Reconciliation Commission: Cape Town, v. 5, 1998.
- UNITED NATIONS. **Universal Declaration of Human Rights**, Paris, 1948. Available at: <<http://www.un.org/Overview/rights.html>>. Last accessed on: 4 Oct. 2008.
- WILSON, R.A. **The Politics of Truth and Reconciliation in South Africa**. Cambridge: Cambridge University Press, 2001.

NOTES

1. FELMAN, S. & LAUB, D. *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*. New York: Routledge, 1992, p. 5.
2. The former example is drawn from Nomonde Calata's testimony in: REID, F. & HOFFMANN, D. (directors). *Long Night's Journey into Day* [documentary]. Production of: Iris Films/Cinemax Reel Life, South Village, 2000, 94 minutes. The latter from an anonymous testimony recorded in: KROG, A. *Country of my Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*. New York: Random House, 1998, p. 40.
3. On the differences between truth commissions and criminal trials, see HAYNER, P. *Unspeakable Truths: Facing the Challenge of Truth Commissions*. New York: Routledge, 2002, chaps. 7 and 13; and MINOW, M. *The Hope for Healing: What can Truth Commissions Do?*. In: ROTBERG, R.I & THOMPSON, D. (ed.). *Truth v. Justice: The Morality of Truth Commissions*. Princeton, 2000, p. 235-260.
4. GUTMANN, A. & THOMPSON, D. *The Moral Foundations of Truth Commissions*. In: ROTBERG, R.I & THOMPSON, D. (ed.). *Truth v. Justice: The Morality of Truth Commissions*. Princeton, 2000, p. 5.
5. WILSON, R.A. *The Politics of Truth and Reconciliation in South Africa*. Cambridge: Cambridge University Press, 2001, p. 38. While the TRC officially recognized four kinds of truth—

- factual or forensic; personal or narrative; social or dialogic; and healing and restorative—these forms of truth were rarely brought into dialogue with each other, and it was ultimately forensic truth that was judged of the greatest epistemological value. See SOUTH AFRICA. **Truth and Reconciliation Commission of South Africa Report**. Truth and Reconciliation Commission: Cape Town, v. 1, 1998, p. 110-114.
6. Many South Africans saw amnesty as an obstruction of their right to a fair trial and the families of Steve Biko and Griffiths Mxenge et. al. legally, albeit unsuccessfully, challenged its constitutionality. While the Commission was perceived as handing out a better deal to perpetrators than to victims, the vast majority of amnesty applications were, in fact, denied (5,287 denied to 568 granted).
7. See TRC Report, 1998, v. 1, p. 185; TRC Report, 1998, v. 5, p. 225-6; and SOUTH AFRICA. **Second Submission of the National Party to the Truth and Reconciliation Commission**. 23 Mar. 1997. Available at: <<http://www.doj.gov.za/trc/submit/np2.htm>>. Last accessed on: Sept. 2008.
8. TRC Report, 1998, v. 1, p. 2.
9. Ibid, p. 158-164 and Wilson, 2001, ch. 2.
10. MINOW, 2000, p. 245.
11. Qtd. Wilson, 2001, p. 46.
12. See FANON, F. **The Wretched of the Earth** (trans. Constance Farrington). New York: Grove, 1963; and Idem, **Black Skin, White Masks** (trans. Charles Lam Markmann). New York: Grove, 1967. See also SAUNDERS, R. **Lamentation and Modernity in Literature, Philosophy, and Culture**. New York: Palgrave, 2007, p. 13-15.
13. MINOW, M. **Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence**. Boston: Beacon Press, 1998, p. 61.
14. This language is drawn from the United Nations: UNITED NATIONS. **Universal Declaration of Human Rights**, 1948. Available at <<http://www.un.org/Overview/rights.html>>. Last accessed on: Aug. 2005.
15. Ibid.
16. MINOW, 2000, p. 246.
17. WILSON, 2001, p. 86.
18. Ibid, p. 111.
19. A further problem with this construction, as Wilson and others have pointed out, is the moral equalizing of pain, which sometimes met with fierce resistance at HRV hearings. See WILSON, 2001, p. 111-114.
20. MERTUS, J. Truth in a Box: The Limits of Justice through Judicial Mechanisms. In: AMADIUME, I. & AN-NA'IM, A. (ed.). **The Politics of Memory: Truth Healing and Social Justice**. New York: Zed Books, 2000, p. 142-150. On the translation of visceral testimony into abstract value, disembodied meaning, and immaterial recovery, see also SAUNDERS, R. *Disgrace in the Time of a Truth Commission*. **Parallax - Special Issue on Visceral Reason**, New York, Routledge, v.11, n.3, 2005, p. 99-106.
21. Qtd. WILSON, 2001, p. 121.
22. GUTMAN & THOMPSON, 2000, p. 30.
23. KAGEE, A. Conducting Research with South African Survivors of Human Rights Violations: Some Considerations. **International Journal for the Advancement of Counselling**, New York, v. 26, n. 2, 2004, p. 196. See also KAGEE, A. The relationship between statement giving at the South African Truth and Reconciliation commission and psychological distress among former political detainees. **South African Journal of Psychology**, South Africa, v. 36, n. 1, 2006, p. 10-24.
24. PICKER, R. Victims' Perspectives about the Human Rights Violations Hearings. **Research report written for the Centre for the Study of Violence and Reconciliation**, 2005. Available at: <www.wits.ac.za/csvr/papers/pappick.htm>. Last accessed on: July 2005. Similar results are arrived at by HAMBER, B.; NAGENG, D. & O'MALLEY, G. 'Telling it Like it Is (...)': understanding the truth and reconciliation commission from the perspective of survivors. **Psychology in Society**, Congella (South Africa), v. 26, 2000, p. 18-42.
25. Qtd. WILSON, 2001, p. 22.
26. See HAMBER, B. **Repairing the Irreparable: Dealing with Double-binds of Making Reparations for Crimes of the Past**. **Ethnicity and Health**, New York: Routledge, v. 5 n. 3-4, 2000, p. 215-226.
27. EWICK, P. & SILBEY, S. S. Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative. **Law & Society Review**, University of Massachusetts, v. 29, n. 2, 1995, p. 1.
28. EWICK & SILBEY, 1995, p. 214.
29. Ibid, p. 219.
30. SOUTH AFRICA. Office of the President. **Promotion of National Unity and Reconciliation Act. 1**, 1995. Available at: <<http://www.doj.gov.za/trc/legal/act9534.htm>>. Last accessed on: July 2003.

31. MAMDANI, M. The Truth According to the TRC. In: AMADIUME, I., and AN-NA'IM, A. (eds.), *The Politics of Memory*. London: Zed Books, p. 177-78. Neville Alexander develops a related and equally important point, arguing that the TRC's dogma of nonracialism functioned as an instrument of the bourgeoisie, obscuring and impeding the class interests of workers. See ALEXANDER, N. The 'Moment of Manoeuvre': 'Race,' Ethnicity, and Nation in Postapartheid South Africa. In: KAIWAR, V. & MAZUMDAR, S. (eds.). *Antinomies of Modernity: Essays on Race, Orient, Nation*. Durham (US): Duke University Press, 2003, p. 180-195.
32. MAMDANI, 2000, p. 180.
33. Ibid, p. 181.
34. Ibid, p.182.
35. TRC Report, 1998, v. 5, p. 68.
36. See Centre for the Study of Violence and Reconciliation & Khulumani Support Group. *Survivors' Perceptions of the Truth and Reconciliation Commission and Suggestions for the Final Report*, 1998. Available at: <www.csvr.org/za/papers/papkhul.htm>. Last accessed on: Aug. 2005. See also BORAINÉ, A. *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*. Oxford: Oxford University Press, 2000, p. 333-339.
37. Qtd BUFORD, W. & van der Merwe, H. Reparations in Southern Africa. *Cahiers d'études africaines*, Johannesburg, v. 444, n. 1-2, 2004.
38. TRC Report, 1998, v. 5, p. 174-5.
39. EVANS, T. International Human Rights Law as Power/Knowledge. *Human Rights Quarterly*, Baltimore, v. 27, 2005, p. 1057.
40. *Universal Declaration of Human Rights*, 1948. It is perhaps worth noting that Section 184(3) of the South African constitution includes rights of access to housing, water, nutrition, and health that have been successfully litigated through the Constitutional Court in three recent cases. See KLAAREN, J. A Second Look at the South African Human rights commission, Access to Information, and the Promotion of Socioeconomic Rights. *Human Rights Quarterly*, Baltimore, v. 27, 2005, p. 539-561.
41. PEET, R. Ideology, Discourse, and the Geography of Hegemony: From Socialist to Neoliberal Development in Postapartheid South Africa. *Antipode*, UK/US: Blackwell publishing, v. 34, n. 1, 2002, p. 58.
42. For an elaboration of this critique of the language of transnational financial institutions, see SAUNDERS, R. *Uncanny Presence: The Foreigner at the Gate of Globalization. Comparative Studies of South Asia, Africa and the Middle East*, Durham (US): Duke University Press, v. 21, n. 2, 2001, p. 88-98.
43. Following consultations with President Thabo Mbeki in 2000, both the World Bank and IMF gave the ANC government high marks on its macroeconomic policy, advising it to intensify the pace of reform through reduced government spending, increased wage restraint, and abrogation of the labor law. The World Bank has been giving South Africa policy advice since the early 1990s and before leaving office, De Klerk commissioned numerous "planning documents" that, as Patrick Bond has shown, not only emphasized stability, resisting populist pressure, achieving consensus, but became a discursive device for implanting long term neoliberal economic ideas. See BOND, P. *Elite Transition: From Apartheid to Neoliberalism in South Africa*. London: Pluto Press, 2000.
44. South African Press Association. "'We're on the high road', says". *Independent Online*, South Africa, 12 Aug. 2005. Available at: <http://www.int.iol.co.za/index.php?set_id=1&click_id=594&art_id=qw1123851240475B22>. Last accessed on: 4 Oct. 2008.
45. See BOND, 2000; Peet, 2002 and Cheru, F. Overcoming apartheid's legacy: the Ascendancy of Neoliberalism in South Africa's anti-poverty strategy. *Third World Quarterly*, London, v. 22, n. 4, 2001, p. 505-527.
46. See Institute for Justice and Reconciliation. *South African Reconciliation Barometer*, Cape Town, v. 2, n. 4, 2004. Available at: <www.ijr.org.za/politicalanalysis/reconbar/newsletters>. Last accessed on: Aug. 2005.
47. CHERU, 2001, p. 521.
48. MUTUA, M. *Human Rights: A Political and Cultural Critique*. Philadelphia: University of Pennsylvania Press, 2002, p. 4.

RESUMO

Este ensaio analisa os prós e contras decorrentes da tradução de demonstrações de sofrimento humano para uma linguagem padronizada de direitos humanos. Defendo que a experiência da Comissão de Verdade e Reconciliação da África do Sul evidencia de que maneira tal tradução torna o sofrimento humano tanto inteligível, quanto ininteligível. De fato, a linguagem de direitos humanos se mostrou significativamente útil ao viabilizar o reconhecimento, outrora inexistente, de eventos pertencentes à história sul-africana, além de ter identificado as vítimas, proporcionado-lhes dignidade e, eventualmente, reconhecendo a responsabilidade de certos agentes. Não obstante, defendo que esta mesma linguagem desfigurou o depoimento das vítimas de tal maneira que as afastou de suas próprias experiências, além de, por vezes, tê-las traumatizado novamente, o que se revelou, freqüentemente, mais conveniente aos perpetradores do que às vítimas. Afirmando, ainda, que a promessa de reabilitação, sob a qual se reveste o discurso de direitos humanos apresentado pela Comissão, priorizou formas nacionais ou coletivas de reabilitação, em detrimento de reabilitações de caráter individual, bem como possibilitou que o governo da África do Sul substituísse mecanismos incorpóreos e simbólicos de reparação por mecanismos materiais.

PALAVRAS-CHAVE

Comissão de verdade – África do Sul – Linguagem de direitos humanos – Trauma – Reabilitação – Reparação

RESUMEN

Este ensayo analiza lo que se gana y lo que se pierde cuando las expresiones referidas al sufrimiento se traducen al lenguaje normalizado de los derechos humanos. La autora sostiene que la Comisión de Verdad y Reconciliación de Sudáfrica demuestra de qué manera esta traducción torna tanto legible como ilegible el sufrimiento humano.

Mientras que el discurso de derechos humanos fue muy importante para establecer en Sudáfrica una historia no reconocida antes, identificar y garantizar dignidad a las víctimas y hasta para determinar responsabilidades en algunos casos, la autora afirma que, a la vez, este lenguaje desfiguró el testimonio de las víctimas en el sentido de que las alienó de su propia experiencia y, en ocasiones, las retraumatizó; por lo que a menudo resultó ser más útil a los autores que a las víctimas. También sostiene que la promesa de sanación —en la cual la Comisión envolvió su discurso de derechos humanos— priorizó lo nacional por sobre las necesidades individuales y permitió que el gobierno sudafricano sustituyese las medidas simbólicas y espirituales de reparación por las materiales.

PALABRAS CLAVES

Comisión de verdad – Sudáfrica – Lenguaje de derechos humanos – Trauma – Sanación – Reparación

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