

## **The South African Truth and Reconciliation Commission: Looking back, moving forward - revisiting conflicts, striving for peace**

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The story of the South African Truth and Reconciliation Commission is usually told starting with the negotiation process of 1993 that led to the country's first democratic elections in April 1994. This chapter proposes to begin earlier than that, with the announcement by then President FW de Klerk on 2 February 1990, that the political parties and organisations which had been banned would be allowed to operate once again. Within ten days Nelson Mandela was set free, and the process of talks began, leading to several major agreements and the lifting of the state of emergency.

That was the moment of public recognition by the rulers of the time that the system of apartheid could no longer withstand the continued assault of internal resistance and international rejection. The price being paid, in economic and societal terms, had become too high. The sheer force of powerful military and police units could not control the country any more. The escalation of the conflict, and the increasing impact of economic and diplomatic isolation, contributed to the growing awareness that a small privileged minority could not continue to rule over a poor and disenfranchised majority.

From that moment on, in spite of delays, frustrations, disagreements and setbacks, the political terrain was irreversibly changed. The new questions were about how to share power and privilege, how to manage the transition, how to shape the future. At this stage, the more painful questions about how to deal with the past were muted - but they would not go away.

The exiled political movements returned, their supporters were able to demonstrate their support (and their occasional disagreements), and over the next few months the liberation movements formally revised their commitment to an armed struggle. Eventually the negotiations began. It was a year before the National Party agreed to the concept of a constituent assembly, and almost another year before the first meeting of the Conference for a Democratic South Africa was held in December 1992.<sup>1</sup>

Even then, the path was not always smooth. Negotiations broke down and were rescued by, for example, the 'sunset clauses' which provided for a government of national unity for the initial period of transition. The negotiations were also often at risk as violence continued to rack the country throughout the period.

Despite these breakdowns, an Interim Constitution was agreed to by the negotiating parties on 17 November 1993 and enacted by Parliament on 18 December 1993. The first fully democratic elections ever held in South Africa took place on 27 and 28 of April 1994. They were hailed as a 'miracle'. They may indeed have been one, but it was an exhilarating, confusing, problem-riddled sort of miracle, and one which was only achieved thanks to the goodwill, patience and tolerance of the majority of the people - all of them. With the inauguration of Mandela as President on 10 May 1994 the new government has begun to build on a solid foundation. The infrastructure of the previous government remained intact, and would be transformed by an influx of people who had previously been excluded.

It is important to recognise not only the role played by the supporters of the parties now represented in Parliament, particularly the majority party, the African National Congress, but also that of a variety of non-governmental organisations (NGOs). During the negotiation phase, NGOs played a valuable role in raising issues, monitoring the process of agreements, and putting forward claims of particular sectors of the society. The existence of a strong civil society should not be overlooked in South Africa's

transition. Much of the leadership of the NGO community was taken up into national, provincial or local government after the elections. This weakened the organisations for a period, but meant that many of their concerns were addressed within government.

Among the issues attracting the attention of concerned organisations was whether the new government was going to fulfil its commitment to dealing with the injustices of the past. Implementing the agreement on amnesty, and dealing with inequalities of access to education, land, and employment opportunities were the most urgent. The establishment of a Land Claims Court,<sup>2</sup> an overhaul of the education system, a Reconstruction and Development Programme (RDP),<sup>3</sup> and the integration of government services, including the national security forces, were speedy indications of the government's intentions.

The establishment of the Truth and Reconciliation Commission was only one of these steps. It was developed on the principles articulated in the epilogue to the Interim Constitution, which had been added on in the final days of the 1993 negotiations. This expressed a vision of national unity and the hopes of overcoming the conflicts of the past and offered a guarantee of amnesty for violations of human rights. The Interim Constitution states:

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The adoption of the Constitution laid the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights and a legacy of hatred, fear, guilt and revenge. The Interim Constitution clearly expresses that the divisions of the past needed to be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu*<sup>4</sup> but not for victimisation. The Interim Constitution further noted that in order to advance reconciliation and reconstruction, amnesty would be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament had to adopt a law determining a firm cut-off date for amnesty and provide for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with. The Interim Constitution concludes with the words:

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

The *Promotion of National Unity and Reconciliation Act* (also referred to here as the TRC Act), the founding legislation for the Truth and Reconciliation Commission, was promulgated in 1995, and the Commission of 17 members was appointed in December of that year. Within weeks staff were appointed and offices were opened in four cities, i.e. Johannesburg, Durban, East London and Cape Town. Cape Town served as the national head-office. The three committees were established; these were the Amnesty Committee, the Reparation and Rehabilitation Committee, and the Human Rights Violations Committee.

One of the first tasks, amongst many, was to develop a mechanism for recording accounts of 'gross violations of human rights' committed. These were defined in the TRC Act as 'killing, torture, abduction, or severe ill-treatment'. A statement form was drafted (and went through several versions) and statement-takers were trained to record the accounts given by deponents, i.e. those wishing to tell their story to the commission about past violations. Deponents came to the offices of the TRC, or to central points in outlying areas. The Research Department of the TRC identified areas and historic events that required attention and the Investigation Unit provided corroboration of the

representative selection of deponents who had given statements to testify in public, and the first public hearings were held in East London in April 1996.

The process was, of course, more detailed than this and made up of an extraordinary range of experiences. In the first place, Commissioners and staff members embarked on a process of public information, relying on the support of NGOs and faith communities to arrange public meetings and discussions about the TRC. The statement-takers were an essential part of the process. They were drawn from all sectors of the society, and between them could speak all the eleven languages of the country. The deponent could speak in his or her own language, but the statement form was completed in English so that it could then be uniformly captured onto the database. The statement-takers needed to be accurate and meticulous with recording the information, but at the same time they were required to bring to the interview the qualities of respect and empathy with which the TRC constantly strove to address victims of violations. For thousands of people the interviews (i.e. the statement taking) would be the only face-to-face encounter with the Commission, and the goal was to ensure that they were a positive experience.

In total the Commission received over 20,000 statements. The Human Rights Violations Committee then had to assess them and make findings in each and every case. Questions have been asked about the veracity of the statements made to the TRC, but it is a great reassurance that the Investigation Unit subjected the majority of them to investigation. This Unit was made up of people drawn from the South African Police Services as well as from the ranks of supporters of the liberation movements. Skilled personnel seconded from other countries as part of the international support for the Commission also strengthened the unit. It must be acknowledged that corroboration was not possible in every case, and in such instances the Commission was obliged to state that it was 'unable to make a finding'. All too often, the necessary documentation to prove that incidents had taken place had been destroyed.

The Reparations and Rehabilitation Committee's main task was to recommend policy to the government regarding the measures that the government should take to provide reparation to victims of gross human rights violations. It has done so, and the government is to consider these, and has already indicated that 'urgent interim reparation' will be made as soon as the necessary documentation is processed. Longer-term reparations are still under debate, as are the recommendations that focus on rehabilitation in a broader sense, and policies of redress to entire communities and ways of ensuring that such violations can never occur again.

However, the Reparations and Rehabilitation Committee did more than consider policy. It explored links with organisations providing care and counselling to victims of trauma and violations, and referred people needing urgent care to them. It enabled some people to obtain access to medical care that might otherwise have been out of their reach. It provided 'briefers' who assisted and cared for those people who were asked to testify in public. The 'briefers' went through the process with them, explaining beforehand what would happen. They then sat with them through the hearing, and accompanied them afterwards. It would have been very good indeed if this kind of care and attention had been available to all the people who came forward to make statements, not just those who spoke publicly.

The TRC Act stipulated that the Amnesty Committee was to be made up of two Commissioners, plus three other people appointed separately by the State President. Of these three, one was to be the Chairperson and must be a judge, and another the Vice-Chairperson. In fact the President appointed three judges. In the first few months the process of amnesty work began slowly, but the number of applications eventually swelled to over 7,000. The legislation had to be amended to provide for an enlarged Committee, up to a total of 19.<sup>5</sup> Even so, there remain hundreds of amnesty applications still to be considered. To accomplish this, the Amnesty Committee's life was extended beyond that of the other arms of the Commission.<sup>6</sup>

The goals of the Commission are truth and reconciliation, and it is against these objectives that its achievements will be measured. The exposure of a great deal of the truth will surely be acknowledged. The processes of public testimony of victims and survivors of gross human rights violations alone have painted a vivid and unforgettable record of atrocities of the past, committed by perpetrators on both sides of the political divide. The hearings were held all over the country, in small rural towns as well as in the major cities. They were accompanied by astonishingly comprehensive media coverage, maintained over the whole period. Some of this was made possible by international assistance with funding, but even without it the newspapers and the electronic media have held a steady mirror to the proceedings of the Commission. This has sometimes fed into negative perceptions of divisiveness and bitterness, but it has made it impossible for anyone to deny the extent of the abuses that took place. Radio especially, with its ability to reach people of all the language groups, has served the Commission's aim of exposing the truth extremely well.

In addition to the public hearings concerning individual human rights violations, the Commission also organised hearings aimed at understanding the broader context within which such abuses took place: the political parties, the media, the judiciary, the business and the health sectors, as well as the prisons and the faith communities, all came forward to explain, accuse, defend or justify their roles in the apartheid past.

Submissions from different special interest groups, such as those working with land issues, language and educational programmes, and those organisations which had monitored human rights in the past, all served to enrich the Commission's understanding of the context and climate during the period of its mandate.

When an overall assessment of the Commission is carried out in the future, one of the issues which will surely receive attention, is the breadth of its interpretation of the definition of 'severe ill treatment'. Other Commissions have looked more specifically at killings and disappearances. The inclusiveness of the South African Commission has resulted in a mass of statements, which has been a real challenge to process. On the other hand, it has resulted in a huge and rich body of evidence that has enhanced our understanding of the past and provided a rich source for future researchers.

The applications for amnesty were also heard in public if they concerned gross human rights violations, and these too have contributed to a clearer understanding of the truth. They have often provided answers to the questions asked by the survivors and families, e.g. 'Who was responsible? Why did this happen?'

It is important to try to convey the impact of these exposures on those survivors and families; also on the Commission itself and on those close to it, as well as the public. Staff members, perhaps more than the Commissioners themselves, have borne the brunt of a good deal of this. The statement takers, the 'briefers', the people dealing with the investigations, information and research, and also the interpreters, have had to absorb thousands of statements and the pain and anger that accompanied them. Journalists too, listening and telling and re-telling the stories - all of us are in one way or another changed by what we have vicariously experienced.

There can be no doubt that all this has had an indelible effect on the public as well, and has powerful consequences that have to be taken into account. Many of the revelations have been dramatic and the public hearings filled with emotion. Public reactions vary from horror, guilt and shame, to attitudes of denial and irritation. The truth is extremely painful and hard to bear, for those who suffered, and also for those who were responsible for the violations, or even those who benefited, however unintentionally, from the policies which led to them.

What have been the effects of this search for the truth? Sometimes, we can say with honesty and humility, the generosity of forgiveness has astonished us all. Sometimes, at least, speaking out has provided a kind of catharsis, or perhaps a safe channel for long submerged anger. The right to be heard and acknowledged, with respect and empathy, did contribute to a process of healing in many cases. People have told us that being enabled to set out their own understanding of events has been a relief to them. For some, the exhumation of the bodies of their family members has brought much comfort. The opportunity to observe traditional burial ceremonies has brought a degree of closure to the

The detailed accounts of these events will also contribute to the historical record, and help to achieve one of the goals of the Commission, i.e. that such atrocities should never happen again. The documents of the TRC will go into the national state archives, and will be accessible to researchers and the public.

However, we need to acknowledge the real difficulty of helping people to come to terms with the past. Reopening of old conflicts without providing an adequate mechanism for dealing with them is traumatic for victims and perpetrators alike. The Commission has been accused of carrying out a witch-hunt aimed particularly at Afrikaners, a perception that will not assist future reconciliation.

At the same time, considerable anger is directed by victims and survivors towards the concept of amnesty. Such people have a profound sense of being deprived of their rights, the right to justice and the right to bring civil claims. Amnesty was the price paid for peace. Full disclosure is the cost that must be paid for amnesty. If this does indeed lead to national reconciliation the costs will have been worthwhile, but it is important to recognise that individuals' rights have been sacrificed for the good of the nation.

These matters have prompted growing discussions about concepts of restorative justice as opposed to retribution, and this brings us back to the importance of reparation and rehabilitation. The Reparations and Rehabilitation Committee's proposals for individual reparations packages for victims need urgent implementation, and must be accompanied by broader programmes of economic and social development, as well as peace-building initiatives to be taken by the government and by NGOs. Memorials and symbolic ceremonies must be developed. Some organisations have developed valuable 'Healing of the Memories' projects which should be made widely available. Most importantly, resources will have to be directed towards impoverished communities still suffering the effects of past discrimination and repression. There can be no real reconciliation while there remain huge discrepancies between the relatively privileged sectors and the vast number of desperately poor, unemployed and unhoused people.

From the testimonies heard, it seems that the majority of victims of the conflicts of the past have been those who suffered at the hands of persons acting on behalf of the apartheid state. It is natural then that much of the thrust towards reparation and reconciliation is directed towards that sector of the society. Nevertheless, it is necessary to recognise that abuses were perpetrated by resistance movement supporters against those who were seen as agents of the state, or their collaborators. Abuses were also committed against other people who were either innocent bystanders or targeted simply because they were white and therefore seen as part of the oppressive regime. On both sides we have witnessed moving scenes of meetings, forgiveness and understanding. Much work remains to be done, however, before reconciliation on any major scale can be achieved.

Most people classified as white can be considered to have been 'beneficiaries' of the apartheid system, even if they were never perpetrators of any abuses nor even supported the policy. There is a sense in which they need to be seen to acknowledge this, and express it in a way that can be heard and received by the once disenfranchised majority. The Commission has established a 'Reconciliation Register' in which people who wish to indicate their regret for specific actions, or their commitment to the new non-racial democracy, can make a formal demonstration of this commitment. This can be accessed in each of the Commission's offices, or on the Internet, and has attracted considerable support. Well after the life of the Commission this is the kind of action which can be undertaken by other organisations. A number of churches have expressed interest. The concept of public listening has been put to use in another context. The South African NGO Coalition,<sup>7</sup> together with the churches and with the particular blessing of the Anglican Archbishop of Cape Town, His Grace Njongonkulu Ndungane, have organised country-wide public hearings on poverty. This has succeeded in drawing attention to the urgent need to take steps to alleviate this.

There remains a great deal to be done. One of the things which would make a real contribution would be for those who were responsible for the decisions and policies which led to the abuses of the past, or created the climate in which they could take place, would acknowledge this responsibility. This has happened to some extent, and may still

which were carried out in the belief that they were acting on instructions, and now feel abandoned by their superiors.

This was the basis of one of the confrontations that severely challenged the Commission. Ex-President de Klerk, in the National Party submission to the Commission, made one of the most sweeping apologies ever made by a member of the party for the pain caused by apartheid policies. However, this was overshadowed by the fact that he was unable to acknowledge any responsibility for offences committed by agents of the security forces. Yet such members, even senior members of the security forces, have alleged that they believe that leaders such as Mr de Klerk and Mr PW Botha either gave the orders or implicitly sanctioned such acts. The Commission has had to weigh up the evidence brought before it, but already the prospect of reconciliation has been seriously set back by these acrimonious differences.

South Africa has benefited at critical moments in its recent history by important steps taken by significant leaders. The reconciliation process will require equally important leadership from people who have the trust of the different sectors of a still-fragmented society. White South Africans, Afrikaans-speaking and English-speaking alike, are in need of inspired and inspiring example and direction to help them to overcome resentment, guilt and mistrust. Only by participating fully and enthusiastically in processes of reconciliation and reconstruction will they find themselves at home in the new society.

A sign of hope in this regard has been the very recent reconciliation debate initiated in Parliament by Deputy President Thabo Mbeki, eliciting frank and heartfelt responses from the opposition. It may be true that many white people are more concerned with admittedly serious problems of crime and the economy than with issues of reconciliation. It may also be true that the right wing, mainly, but not solely Afrikaans speaking, probably commands the support of only 2 or 3% of the electorate. Yet even if they do not have the power to wreck the peace, as long as they remain bitter and disillusioned, their attitudes are a barrier to reconciliation.

The two and a half years of the Truth and Reconciliation Commission have enabled the country to hear the accounts of many thousands of people who experienced and caused great suffering during the conflicts of the past. Developing a common understanding of how and why this happened is an important ingredient of creating new ways of looking at our society and seeing beyond the narrow confines of individual or group identities. The pieces of the jigsaw puzzle have been taken out of the box and shaken up. Now they need to be put together to create a picture in which all will be able to see themselves reflected, and all will be able to find a place for themselves.

## Notes

<sup>1</sup> The Conference for the Democratic South Africa or CODESA was the official beginning of formal all party talks process in South Africa. Nineteen parties took part in the two day plenary in December 1991 and a further plenary was held in May 1992.

<sup>2</sup> A process was set-up in South Africa to deal with land rights lost during the racially discriminatory laws passed since 1913. The Land Claims Court, as well as the Restitution of Land Act of 1994, were the instruments set-up to restore and to compensate for the loss of land rights under apartheid.

<sup>3</sup> The RDP was the new government's programme aimed at providing social and economic reconstruction in South Africa.

<sup>4</sup> *Ubuntu* is synonymous with the African sense of 'humanness' and 'connectedness', 'that my humanity is tied up with your humanity', see Archbishop Tutu's brief explanation of this in Brian Frost, *Struggling to Forgive: Nelson Mandela and South Africa's search for reconciliation* (Great Britain: Harper Collins Publishers), p.25.

<sup>5</sup> It is important to note that amnesty is not automatic in South Africa. Amnesty will only be granted on condition that the act was political in nature and that all the details of the act are given to the commission. In this sense truth is traded for formal justice.

<sup>6</sup> The TRC handed its report, without the report on amnesty which is to be published in a separate volume, to the President at the end of October 1998.

<sup>7</sup> The South African National NGO Coalition (SANGOCO) is a rapidly growing umbrella body of South African NGOs. The Coalition was formed in August 1995 to co-ordinate NGO input into the

Reconstruction and Development programme. It consists of provincial and sectoral affiliates, working in a wide range of development fields including land, health, urban and rural development