

Editorial

The Truth and Reconciliation Commission

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The predominant portion of gross violations of human rights was committed by the former state through its security and law-enforcement agencies. Moreover, the South African state in the period from the late 1970s to early 1990s became involved in activities of a criminal nature when, amongst other things, it knowingly planned, undertook, condoned and covered up the commission of unlawful acts, including the extra-judicial killings of political opponents and others, inside and outside South Africa. In pursuit of these unlawful activities, the state acted in collusion with certain other political groupings, most notably the Inkatha Freedom Party. (TRC's primary finding, 1998, vol 5, ch 6:212)

...the majority of the victims of the South African government's attempts to maintain itself in power were outside of South Africa. Tens of thousands of people in the region died as a direct or indirect result of the South African government's aggressive intent toward its neighbours. The lives and livelihoods of thousands of others were disrupted by the systematic targeting in some of the poorest nations in the world. (TRC finding on gross human rights violations committed outside South Africa, 1998, vol 2, ch 2:42)

Part of the genius of South Africa's transition from apartheid to democracy lay in the numerous constitutional and institutional innovations devised as a means to either unjamming the roadblocks to change or assuaging the desire for vengeance or retribution. Amongst these were the government of national unity – the power-sharing arrangement which covered the first five years of the transition – and a number of tribunals – short-term and permanent – established to deal either with specific grievances (land, human rights abuse) or the societal disadvantages confronting such groupings as youth and women.

Of these instruments, probably none has impacted as much on the public consciousness or been as controversial as the Truth and Reconciliation Commission. Few in this country are neutral about the TRC. It evokes powerful emotions in even the normally apathetic. Vilified in some quarters, despised in others, it has also its admirers and passionate partisans. Rarely out of the news since its inception in 1996, it still today evokes powerful passions and strident editorials as its amnesty committee passes down a series of controversial decisions.

Like many things South African, it is an instrument probably more widely admired abroad than at home. It has won for this country much credit and admiration for the attempt to wrestle with an hideous past, a task for which few other societies – even those with the most palpable need – have had the stomach. Others willing to take the plunge have sought to learn from the TRC experience. Recently a 35-strong Indonesian delegation spent three weeks in South Africa as part of the preparation for the establishment in that country of a commission to come to terms with its decades of horror at the hands of its military rulers. Elsewhere from Namibia and Burundi in Africa to Bosnia and Kosovo in the Balkans, those recently freed from authoritarian tyranny demand truth commissions on the South African model.

This edition of *Transformation* focuses on aspects of the TRC's work. It does not pretend to be an all-inclusive and comprehensive look. That would in any event be too large a task for a journal of modest editions, as well as probably premature given the still ongoing nature of the amnesty and reparations processes. What it seeks to do is highlight aspects of the TRC's work and its finding in regard to the state and the ANC, as well as assess its contribution to the development of international law and the responsibilities of nations in the arena of accountability for gross human rights abuse.

One of the most extraordinary features of the TRC process in South Africa has been the *volte face* in the attitude of the ANC government to the Commission. Very much its progenitor, the African National Congress (ANC) seems now to wish it away, perhaps even to regret it ever brought it into being. It increasingly gives off an impression of regarding it as a wearying millstone around its neck. But it was not always so. First mooted as an idea by Professor Kader Asmal in his inaugural lecture as Professor of Human Rights Law at the University of the Western Cape in 1992, the proposal was embraced by the ANC and became a key component of its

early post-apartheid legislative programme. After a gruelling 18 months or so in committee, the Promotion of National Unity and Reconciliation Act was passed in late 1995 and its first public session in the Eastern Cape (selected because of its role as 'the womb of apartheid resistance', as the SABC's Annalies Burgess put it in one of her broadcasts) in early 1996 was an occasion of much national and international fanfare.

Virtually alone of the major political parties, the ANC initially embraced the TRC. Defending it from its Inkatha Freedom Party (IFP) and white right-wing detractors, the ANC leadership blazed the trail. Its senior political and military leaders appeared willingly in public before the Commission, volunteering information on its past actions and accepting responsibility for past misdeeds. Hitherto secret documentation was passed over to the Commission and extensions in time to the Commission's tenure were easily granted.

But that attitude changed as the time neared for the publication of the Commission's report in October 1998 and the TRC provided – as was its legislated requirement – advance notice to the ANC of some of its findings on the organisation. Failing to take advantage of the again legislatively-ordained opportunity to respond through written submissions to these preliminary findings, the ANC first demanded a meeting to discuss the findings and then when that failed, sought on the very eve of the release of the report a court injunction to prevent publication. That failed too and the result was a very strained public handover to President Mandela of the first five volumes of the report. What should have been a celebratory occasion, a human rights landmark in the arena of accountability, turned instead into a case of sour grapes.

Little has changed on the part of the ANC since that day. Half a year on from the report's release, Parliament assigned a paltry half day to a debate on the report which produced nothing of substance. Few of the speakers seemed to have read even a part of the admittedly lengthy document and the debate comprised largely choreographed recitations of party-political positions. Significantly, no comment was passed – negative or positive – on even one of the many recommendations contained in the report.

Not a single prosecution has arisen out of the report's findings and none is likely, even though the Directorate of National Prosecutions claimed soon after its inception to have set up a special TRC unit within it. This is perhaps less surprising than the extraordinary meanness the government has displayed to the paying of the modest and affordable (for the state

fuscus) financial reparations recommended by the Commission to those found to have been victims of apartheid abuse.

The recent public furore over the Helderberg air crash well illustrates the government's disdain for, or ignorance of, the contents of the TRC report. The TRC conducted in-camera hearings on both the Helderberg crash and the air accident which killed President Samora Machel of Mozambique. Two chapters of the report (vol 2, ch 6&7) were given over to these two investigations. In regard to both, it found that there were sufficient grounds for disquiet over the inquests – both conducted by the late Justice Cecil Margo – to merit new investigations. It took revelations by the *Beeld* newspaper, of all sources, to seemingly make the government even aware of the Commission's finding and the existence of a significant body of evidence to justify a re-opening of the case. The penny has not yet dropped in regard to the Machel aircrash and Margo's possible role in both.

In our lead article, Janet Cherry, who was a member of the TRC's research department and who worked on the liberation movements, takes a fresh look at the TRC's findings on the ANC. It was the TRC's criticism of aspects of the ANC's conduct of its armed struggle and of its treatment of detainees in its Angolan camps which so outraged elements of the ANC's leadership and led to the souring of relations between it and the TRC. After an extensive review of the TRC's position and a discussion of both the ANC's critique and those of others like Anthea Jeffery, Cherry concluded that the TRC's findings were both sound in terms of international law and correct in terms of the Commission's interpretation of the 'justice in war' thesis.

In retrospect, it is hard to understand the vehemence of the ANC's response to the findings on it. As the quote at the head of this editorial indicates, the TRC did not hold all parties to the conflicts of the mandate period equally culpable and assigned primary responsibility to the National Party government and its security agencies and allies like the IFP. It also accepted the international law position that apartheid was a 'crime against humanity' and the ANC's argument that its struggle against apartheid was 'a just war'. The gist of its criticism was simply that a distinction existed between means and ends and that 'a just cause' did not exempt an organisation from always employing just means. What makes the ANC's attack on this commonsensical position so extraordinary is the fact that those acts which the TRC found to be 'unjust' were the very ones for which many ANC and MK members applied for amnesty.

The unfortunate aspect to this unnecessary spat is that it deflected public attention from the many weighty findings the TRC made in regard to the state's consciously planned extra-judicial killings of its opponents and its many war crimes committed in the wider region. The ANC's refusal to accept the TRC's findings in regard to it, could also, as Cherry notes, have negative implications for the standing of the report as a whole, for the reconciliation process, for the building of a consensus in regard to our recent history, and finally, for the building of a respectful human rights culture and practice in this country.

The second article in this edition, by a senior official of the National Archives, Verne Harris, looks at an important corollary to the TRC's investigation of human rights abuse, namely, the orgy of document destruction which accompanied the transition. The investigation of this phenomenon was one of the TRC's most difficult tasks but, ultimately, one of its most successful. Harris was seconded to the TRC task team for this enquiry. What the team found (see vol 1, ch 8) was that the destruction was systematic, planned, directed from the top and probably illegal in terms of the Archives Act. It also reported the astonishing fact that in 1993 alone, 43 tons of public records were incinerated, including the entire archive of Military Intelligence's Directorate of Special Tasks, that arm of the state which directed South Africa's surrogate wars in Angola, Mozambique, Zimbabwe and Lesotho.

Harris in his article takes the issue further, locating it within the terrain of social memory and the struggle of remembering against forgetting, 'of oppositional memory fighting...against a systematic forgetting engineered by the state'. He identifies a clear chain of command of responsibility for what he terms the state's 'large-scale sanitisation of its memory resources'. He also reflects upon the lost opportunity when in 1993 Lawyers for Human Rights agreed to an out-of-court settlement with the state in which the latter agreed that no destruction of public records would be undertaken outside of the provisions of the Archives, an agreement which Harris shows the state never adhered to – the shredders just kept on whirring away.

Our third article is a review of the final report by the distinguished Africanist scholar, Stephen Ellis. Originally produced for the French publication *Critique internationale*, it is reprinted here with their permission. In stark contrast to the ANC and some academic critics like Mahmood Mamdani, Ellis' view of both the report and the TRC process is favourable. In a global context, Ellis regards the TRC as 'probably the most far-

reaching attempt by an official body to come to terms with the human rights abuses committed by a previous government anywhere in the world since the Nuremberg trials of the late 1940s'. The report itself he describes as 'a major historical document' and 'as full a description as we are ever likely to have of individual human rights abuse in regard to the period 1960-94'.

While he discusses numerous aspects of the Commission's work and its conclusions, one of Ellis' prime concerns is its findings in regard to apartheid South Africa's destabilisation of the region. He clearly concurs with the second of the findings cited at the head of this editorial, noting 'that the struggle for control of the South African state was actually fought to a large extent outside of South Africa's borders'. Even so, Ellis is critical of the insufficient space accorded to this regional dimension in the report which he feels, overall, was excessively centred on events inside the country. He laments the lack of detail accorded to the fact that the Pretoria government was 'involved in a great deal of fighting or other forms of violence in other countries where the vast majority of combatants and victims were not South Africans'. By so doing, Ellis suggests that the TRC 'could be said to have diverted attention from some of the greatest abuses of human rights inflicted by the South African state', and created thereby a risk of 'perpetuating a version of history which fails to attach due weight to the regional dimension'.

The editors of this journal share this concern, and the alarm at the growing xenophobia of South Africans towards particularly their neighbours. Hence our decision to reprint this important essay. It is crucial, we believe, for South Africans to know that the worst massacres of the apartheid era were not committed at Sharpeville, Boiphatong or Swanieville but at Kassinga and Chetequera in Angola; and that five times as many Angolans died at the hands of the SADF or its UNITA allies between 1980-85 than were killed inside South Africa as a result of security force action in the entire apartheid era of some 46 years.

The TRC has begun to spawn a literature, as well as other media forms, around its workings and findings. In this latter regard, Max du Preez's 81 'Special Reports' - produced for SABC TV and amounting to some 100 hours of documentary time - are a priceless treasure. Also emanating from the SABC's archives is Anjie Kapelianis' remarkable six-volume CD collection of audio highlights from the thousands of hours of radio reports on the TRC process.

Notable as these contributions are, it is doubtful that they will attain the international acclaim accorded Antjie Krog's *Country of My Skull* published by Random House in 1998. Based on the 18 months of human rights violations hearings which Krog covered for the SABC, this is a not uncontroversial work which has nonetheless picked up more national and international awards than any other recent South African literary work. As our fourth contribution, we reprint a shortened version of a look at the TRC's final report through a very post-modernist analysis of Krog's book by the American scholar, Mark Sanders. Based at Cornell University, Sanders spent some time in South Africa in 1997 researching the Commission. A longer version of the article appeared originally in the US journal *Modern Fiction Studies*.

Our final article is a commentary piece structured around an intervention by the US-based human rights group, Human Rights Watch, at the time of the medical visit to South Africa in late 1999 by the former Ethiopian dictator Mengistu Haile Mariam. Written at the time of the detention in England of the former Chilean dictator, General Augusto Pinochet, the intervention takes the form of a plea to the South African government to act similarly against Mariam. Written by the Director of the Africa division of Human Rights Watch, Peter Takirambudde, a one-time refugee from the Amin tyranny in Uganda and former Dean of the Law School at the University of Botswana, the letters to the South African Ministers of Justice and Foreign Affairs amount to a powerful plea for the South African government to meet its obligations in terms of international humanitarian law. They fell, however, on deaf ears and were not even accorded the courtesy of an official response. As we note in our introduction to the commentary, the result was a missed opportunity to strike a telling blow both for human rights practice in this continent and in regard to Africa's wretched human rights record.

The Truth Commission process has been a powerful moment in South Africa's post-apartheid experience. It impacts daily on the lives of South Africans and will continue to do so for months and years to come. Despite its flaws and shortcomings, it achieved, in our view, much. At an individual level, the relatives of numerous victims of apartheid's outrages now know the truth of what happened to their loved ones. The parents of the murdered ANC cadre Phila Portia Ndwandwe now know that their daughter was not an agent and died at the hands of apartheid's assassins true to her beliefs and principles; the three young children of Petros and Jabu Nyawose, who

witnessed their parents die in a car-bomb explosion in Swaziland, now know the identities of their killers. I personally experienced their satisfaction at learning that truth after a wait of 17 years.

I can personally testify too, to the relief of Patricia Beech who had been haunted for close on 18 years by a lie put out by the SADF that her son, Robert, killed in a cross-border raid into Zimbabwe in 1982, had been on a 'private trespassing mission'. Words cannot capture her feelings when Minister Lekota personally visited her home in January this year to present her with a statement of exoneration of her son's action and to acknowledge that he died in the line of duty, however misplaced that was. I can imagine too, that the parents of assassinated SWAPO activist Anton Lubowski feel much the same way after the TRC found that their son had not, as the National Party alleged at the time of his death, been their agent. As the American journalist, James North, put it 'The Truth Commission crushed that lie'. And so one could go for a huge number of such cases. The fact of such truths revealed must count for something.

In a celebrated article in *Index on Censorship* in 1996, the Canadian journalist Michael Ignatieff argued that all that truth commissions could achieve was 'to winnow out the solid core of facts upon which society's arguments with itself should be conducted' and that the function of truth commissions was 'to purify the argument, to narrow the range of permissible lies'. Whether that is true or not is debatable, but the fact is that as a result of the Truth Commission process, it is no longer possible for the apologists of National Party rule – be they Pik or PW Botha, FW de Klerk or Niel Barnard – to deny that the Party in which they were central figures did not venture into the realm of criminality and that it was not state policy in their time in office extra-judicially to neutralise or permanently remove from society or eliminate or, to put it simply, kill certain of its political opponents. That is now an established factual truth and in the wider context of South African history that must be worth something too.