

Reconciliation: Truth and Consequences

By Anne Adelson

South Africa's Truth and Reconciliation Commission (TRC) was created by the Promotion of National Unity Act of 1995 and instructed to investigate the period of time between the Sharpeville massacre of 1960 (in which 69 people were shot while peacefully protesting the demolition of their homes) and the inauguration of President Nelson Mandela. During this massive undertaking over 20,000 testimonies were collected and a 3,500-page final report was produced. Though it draws on the experiences of other nations in transition from tyranny to democracy, the Commission was historically unique in its mandate and its transparency, for it allowed millions of people all over the world to follow its work.

The sheer drama of the proceedings was beyond the realm of the everyday. There were prayers and songs, people on hand to comfort the witnesses, and tears from Commission chair Archbishop Desmond Tutu, from the witnesses, even from the interpreters and transcribers. The crucial names in South Africa's recent history are all in the report: Black Consciousness leader Steve Biko, who died in police custody; Communist Party leader Chris Hanani, gunned down while jogging; Winnie Madikizela Mandela, former wife of the President, implicated in kidnapping and murder through the innocently named Mandela United Football Club; former prime minister P.W. Botha, who supplied a doctor's certificate to explain why he couldn't appear in court; Chief Mangosuthu Buthelezi, president of the Inkatha Freedom Party, guilty of human rights abuses relating to attacks on the African National Congress (ANC) and other political opponents and of involvement in the notorious "Third Force" - a secret political group in collaboration with the government that tried to foment conflict among opposition groups. And the famous names are not limited to South Africa's borders. The report deals with Samora Machel, former president of Mozambique who died under suspicious circumstances in a helicopter crash and Dag Hammarskjöld, then Secretary-General of the United Nations, whose plane was shot down.

The subject matter of the hearings is nothing short of incredible. The TRC heard details of the government's chemical and biological weapons program, a program targeted at the country's black people with attempts to poison Mr. Mandela and to reduce the fertility of black women. There was the dramatic moment when a security policeman demonstrated the use of a torture device remarkably effective in eliciting false confessions but leaving no traceable signs - a wet bag placed over the prisoner's head and drawn tight. Many victims had described this form of torture, but until this testimony and confession, its use had never been verified. The sheer "banality of evil," as Hannah Arendt called it, was evident in the testimony of Special Branch police, who were issued equipment to have a *braai* (barbecue) on the river banks while they burned the bodies of victims they had "eliminated or neutralized."

It's hardly surprising that the TRC was no ordinary tribunal. So much about South Africa seems larger than life. In its legally sanctioned apartheid, every aspect of life was governed by the issue of race. Arbitrary arrests, detention without trial, torture, and forced removals of whole communities made South Africa a pariah state. The "new South Africa" that replaced the apartheid regime also captured the attention of the world. The ANC, the party that won the first free multi-racial elections in South Africa's history, adapted for their constitution the visionary Freedom Charter that had been their moral signpost during the long years of

struggle. Its emphasis on human rights, democracy, peace and the satisfaction of the basic needs of all citizens makes it the most progressive constitution in the world today.

How was it possible to move from one of the most heinous regimes in the world's history to a recognition of human rights, democracy, peaceful co-existence, and development opportunities irrespective of color, race, class, belief or sex?¹ A historic bridge was needed from the troubled past to the hopeful future, an opportunity for healing, reparation and transformation. The TRC was part of that bridge.

The Creation of the TRC

The transition from apartheid to the new South Africa occurred after a decades-long struggle for liberation, non-violent for much of its history, but involving an armed struggle and international sanctions and condemnation. When it finally came, the transition was a negotiated one which required something like the TRC for moving from white minority rule to a democratically elected government. Negotiations took place between representatives of the ANC including Mandela, still a prisoner because of his refusal to accept the conditions offered for his release. On the other side was the government that had created a complex infrastructure to maintain the apartheid system.

Speaking in Toronto recently, Albie Sachs, veteran ANC freedom fighter and political prisoner and now a South African Constitutional Court Justice, related that the transition had almost fallen apart.² After the late night session that finally agreed upon the 1993 Interim Constitution of the Government of National Unity and plans for elections, Sachs flew to a meeting in England, only to receive a fax that the plans were in jeopardy. Looking in the Constitution and not seeing the promised provisions dealing with amnesty, the security forces understandably threatened to boycott the process. Why would they oversee the smooth hand over of power if they feared being arrested and convicted immediately afterwards? A postscript dealing with the creation of the TRC was hurriedly added. The political accommodation dealt with amnesty for perpetrators, but it did not give them the blanket amnesty the National Party wanted. Instead, requests were to be dealt with on a case by case basis, with certain conditions attached. For its part, the ANC insisted on getting as full an account of the facts as possible and reparation for victims.

The TRC sought "understanding, but not vengeance, reparation without retaliation,"³ and the principle of *Ubuntu* - a fundamental concept of interconnectedness, mutuality and community.

Structure and work of the Commission

The Commission had three committees: the Committee on Human Rights Violations, the Committee on Amnesty, and the Committee on Reparation and Rehabilitation of Victims. Each committee worked independently from the others and from the TRC as a whole. This led to occasional problems, such as when the Amnesty Committee granted a blanket amnesty to 37 members of the ANC in contravention of the Commission's mandate. The Committee on Human Rights Violations listened to over 20,000 statements from people about atrocities that had happened to them or their family members. One of the hardest tasks the Committee had to face, according to member Mary Burton, was having to make a decision that what someone had suffered was not a "gross violation of human rights," and thus not eligible for compensation.⁴ Claims could be rejected for a number of reasons, such as falling outside the time frame or not fitting the description of a gross violation.

The Committee on Reparation and Rehabilitation expressed similar frustrations at not being able to do enough for victims. While a small amount of money was allocated for urgent interim relief, designed to allow victims to access counseling services, victims' rights to recompense were deferred and the Committee was limited to making recommendations for the future. Amnesty, however, if granted, came into effect immediately. Committee chair Hlengiwe Mkhize flagged this as a structural flaw for those planning truth commissions in the future.⁵ Of all the committees, the Amnesty Committee's work has been most controversial, since many people feel that the right to amnesty amounts to impunity and the denial of justice. Over 7,000 people have applied for amnesty and the committee is still hearing cases.

Reconciliation

The four objectives of the Commission correspond with the four concepts peace educator John Paul Lederach has identified as the dynamic process of reconciliation: truth, mercy, peace and justice.⁶ People's assessment of the success of the TRC depends very much on their emphasis on one or more of these four concepts to the exclusion of the others. Thus for the family of Steve Biko, the commission's work was measured against the yardstick of justice and found wanting; many members of the former government, on the other hand, would have liked to see mercy emphasized in the form of a blanket general amnesty.

Truth was one of the four objectives - to give as complete a record of gross violations of human rights as possible. In practice, an important distinction was made between information (the facts of the case) and acknowledgment (the bearing of responsibility). Mercy, the granting of amnesty, was also a key element, but the way it was done took into account the needs of the victims. In this way, South Africa's TRC differed from the truth commissions that preceded it.

According to the principles of conflict resolution, the four concepts are in dynamic tension. One of the keenest paradoxes of the process has been the relationship between justice and truth. Far more information emerged with the TRC than could have under a punitive justice system, as was in the case of the Craddock 4 (four young organizers from the United Democratic Front). Testimony to the Amnesty Committee produced the identity of the killers and other evidence that two inquests had failed to generate. However, this information could not be used to convict anyone.

The healing effects of reconciliation were often noted, especially by Commission chair, Archbishop Desmond Tutu, who referred to himself and his fellow commissioners as "wounded healers." Some witnesses spoke of the relief of finally being able to tell their stories. For families of some victims, finding the bones of their loved ones and giving them a decent burial was extremely important. Within the report can also be found the "miracles of reconciliation," as commissioner Mary Burton called them, such as the parents of Amy Biehl, a slain Rhodes scholar from Newport Beach, forgiving their daughter's killer.

Was Justice Served?

When the drafters of the TRC set about their task, they had two main options. One model was the Nuremberg tribunal, the prototype of the punitive justice system in cases of gross human rights violations, but it was rejected for several reasons. Unlike Nuremberg, there was no victor to set the terms of the agreement. Adopting such a model would have made impossible

a negotiated solution, and the country lacked the resources to prosecute the thousands of cases, even if the political will had existed.

The model of justice the TRC embraced is much closer to that of restorative justice, emphasizing the harms done to people and the resulting needs, rather than the laws and rules that were broken. Much of the TRC's focus is on meeting the needs of the victims by validating their stories, by monetary and symbolic reparation for the victims or their families, and by facilitating the acknowledgment of wrongs by perpetrators.

While the prime focus of the TRC approach rejects the punitive model of criminal prosecution, there are nevertheless elements of retribution. The intense public scrutiny helped to bring the perpetrators' crimes into the spotlight, effecting punishment through shame and exposure. An investigative unit was attached to the Human Rights Violations Committee, and amnesty can be seen as the "carrot," as contrasted to the "stick" of criminal prosecution, for cases where amnesty was denied or not sought.

A further concept of justice emerged, one that could be coined "redistributive justice." While the primary task was to address the moral, political, and legal consequences of the apartheid years, there is also a need for economic processes that redress past wrongs as a basis for reconciliation. This would require the participation of all who benefited from apartheid, not only those whom the Act defines as perpetrators. The business community was particularly singled out and several suggestions were made, including a wealth tax and a one-time levy.

Apartheid as a crime against humanity

The Commission confirmed a principle that has become well-established in international law: that apartheid is a crime against humanity. The TRC looked at how all apartheid-era political players were guilty of abuses. This did not suggest equivalence; the former government and its agencies were named responsible for the vast majority of the gross violations of human rights and for creating the prevailing "culture of human rights abuse." In this culture, all major political groups committed abuses, including the ANC and other movements for black liberation, the Inkatha Freedom Party, which opposed the ANC, and various white right-wing groups.

The TRC also looked at how civil society was implicated. Sectors examined and found wanting included health, faith communities, business, the media, and the judiciary. In pointing out how these institutions failed to oppose the unjust status quo, the TRC moved beyond the principle established at the Nuremberg trials, that people should be accountable for perpetrating offences even if under orders to do so. Suggestions on how these sectors could work to redress past wrongs were made by the Commission.

Now what? Conclusions and further directions

The TRC has already achieved some notable results, including the report itself, a far-reaching, insightful document on a vital part of the country's history.⁷ For many, the process has provided healing and reconciliation. For others, however, the TRC has failed by forfeiting justice for truth or because those at the highest levels of government have not admitted responsibility for their crimes.

The real implications of the TRC depend on what happens next. Much needs to be done just to complete the Commission's amnesty hearings and to follow up its recommendations for reparations, institutional reform, and criminal investigations. The needs of victims and their families need to be addressed immediately, along with those of a new category of victims that has emerged—the families of the perpetrators—many of whom had not known what was happening. Efforts must also be made to reintegrate perpetrators into society in a socially constructive way instead of continuing the cycle of violence.

President Nelson Mandela called the Commission report "an aid that the TRC has given us to help reconcile and build our nation."⁸ In other words, the TRC has created, not reconciliation, but the basis for reconciliation. Can South Africa use the work of the TRC to move toward a culture of human rights, as the report calls for? Can it transform its ways from a culture of violence to a culture of peace? In calling for a National Conference on Reconciliation and for a series of Moral Summits, the government is providing a platform, and groups at every level of society are taking up the challenge, some by initiating their own TRC-type processes. Albie Sachs suggested that the work of the TRC is to create a single large narrative for the whole country, to "put everyone on the same map."⁹ But without a narrowing of the enormous socio-economic inequities between racial and class groups, there will probably be no reconciliation. The TRC process has not achieved national unity, reconciliation, the culture of peace, or *Ubuntu*, but it has provided the map pointing out the direction. Reaching the goal is the next challenge for South Africa—one that the whole world will be watching.

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Note: The final report of the TRC, many background documents, and press releases are available on the Commission's website, <http://www.truth.org.za>. You can order the report on CD-ROM or hard copy, and support the President's Fund for reparations.

References 1 Government of South Africa, *Constitution of the Republic of South Africa*, Act. 200, 1 93.

2 Albie Sachs, "Albie Sachs speaks on the Truth and Reconciliation Commission," Lecture at Osgoode Hall Law Society, Toronto, November 5, 1998.

3 Government of South Africa, *Constitution of the Republic of South Africa*, 1993.

4 Mary Burton, "Why Some Claims have to be Rejected," in *Truth Talk*, July 1998.

5 Mbuleleo Sompetha, "Interview with Hlengiwe Mkhize," in *Truth Talk*, July 1998.

6 Andries Odendaal, "For All its Flaws: The TRC as a Peacebuilding Tool," *Track Two*, Vol. 6, 3 & 4, December 1997, p.4.

7 The TRC report can be found on-line through the Commission's website, www.truth.org.za.

8 "Tutu hands over TRC report to President Mandela," *Electronic Mail & Guardian*, October 29, 1998.

9 Albie Sachs, *ibid.*

