

A Culture of Reconciliation in Africa:
The South African Truth and Reconciliation Commission -
Transformative Justice, the Restoration of Dignity and Reconciliation. ¹

“Truth commissions can and do change the frame of public discussion and public memory. A truth commission cannot overcome a society’s divisions. It can only winnow out the solid core of facts upon which society’s arguments with itself should be conducted. But it cannot bring those arguments to a conclusion.

“The past is an argument and the functions of truth commissions, like the function of honest historians, is simply to purify the argument, to narrow the range of permissible lies.”

Michael Ignatief. ²

¹ Many of the ideas and issues raised in this talk are the product of numerous discussions and shared thinking with many people. I would in particular like to acknowledge Richard Lyster, with whom I have shared the experience of working in the Human Rights Violations Committee and without whose friendship and support I doubt that I would have been able to have seen the process through for as long as I have. The same applies even more to my wife Louise Hall and my family. I recently saw the text of a talk Richard gave in Australia and was struck by the many similarities in what we both have to say.

² In Index on Censorship 1996.

INTRODUCTION:

The South African Truth Commission does offer an example of how conflicts can be resolved in a new way. It also offers a way of facilitating reconciliation in such situations. However, much depends on the nature of the conflict, the prevailing balance of power and whether the parties to the conflict have the necessary political will to examine and learn from their past.

BACKGROUND:

The Truth and Reconciliation Commission ("TRC") was established in terms of the Nation Unity and Reconciliation Act 34 of 1995 in December 1995. The statute was the end product of a process that started at the protracted Codesa (multi-party) negotiations. It then found expression through the Postamble in the then Interim Constitution and was promulgated into law by the first democratic parliament. We are told, by those who were there, that the Amnesty provisions were the most lengthily debated aspects of those negotiations. Similarly, the passage of the Bill through our Parliament was one of the longest of any statute passed prior or since.

The main protagonists in this debate were: The liberation movements, who were pushing for a Nuremberg-type process of criminal prosecutions. The previous regime led by the then National Party and its allies, were hoping for a general amnesty, which would have the effect of simply leaving the past behind.

THE PAST:

Most South Africans have already forgotten what it was like living in the early nineties, with the tensions of a country being torn apart by political intolerance and brinkmanship.

South Africa's divisions are etched in the experiences of its colonial past. The Apartheid era, its legislation and practises merely gave expression to an underlying set of values that were dominant and pervasive in White society. The Apartheid era succeeded in exaggerating and entrenching such divisions resulting in a most pernicious and insidious form of oppression. This also resulted in the creation of separate realities for South Africa's citizens. ³

REBUILDING:

The challenge facing the new democratic government was how to transform the country and its peoples and how to deal with the legacy of inequality. The government itself, the civil service and the economy, the courts and other institutions all required transformation. The fledgling democracy also required new institutions to signify a break with the past

³ This notion of separate realities was borne out repeatedly in the stories told by various people. Some testified to horrors happening close to towns and cities where the other sectors of our society continued to be oblivious to such abuses. Others testified to their lack of awareness of these matters. Some had the courage to admit that they although they suspected, they simply did not want to know what was happening.

and to act as a safeguard to prevent the reoccurrence of previous abuses. Hence, we created a Constitutional Court and the other structures like the Human Rights and Gender Commissions and the Public Protector. In addition, enormous resources were channelled to begin the process of changing the conditions under which the vast majority of our people lived. These included health services, shelter, education, land reform, development and the like. Without these basics in place, the new democracy can have very little meaning for most South Africans. This remains a fundamental challenge for us.

Having sketched this background, I will briefly set out the structure and operation of the commission and then examine what the sorts of conditions have resulted in the choice of the TRC process. Thereafter I will examine whether this approach can offer any advantages for the resolution of other similar conflicts and what possible contribution it could make to reconciliation elsewhere in Africa.

STRUCTURE OF THE COMMISSION:

The Commission was comprised of 17 Commissioners, chosen by the President after a transparent public process. It consisted of people from various political backgrounds, human rights activists and others including, lawyers, theologians, historians, social workers and psychologists. The Commissioners were divided into three Committees: a Committee on Human Rights Violations, a Committee on Amnesty, and a Committee on Reparation and Rehabilitation. There was also an Investigation Unit, which supported the Human Rights Violations Committee and the Amnesty Committee. The Commission then appointed other people as Committee members, to assist the commissioners with the work of each committee.

The country was divided into four regions, Western and Northern Cape, Eastern Cape, KwaZulu Natal and Free State and a region covering what was previously know as the

"Transvaal". The Commissioners were allocated responsibility for those regions, where they opened offices, and in some instances, sub-offices, and employed staff.

Thus in March 1996 I started working in the TRC's KwaZulu Natal and Free State Regional office in Durban. There were four or five of us in the office at the time and we had to do everything from hiring staff to organising furniture and other logistical resources. We were up and running within a matter of weeks. Each region had a component of the Investigation Unit, consisting of seconded police officers and former non-governmental organisation activists.

OBJECTIVES OF THE COMMISSION:

In summary, there are six main objectives of the TRC:

1. To generate a detailed record of the nature, extent and causes of human rights violations that occurred in South Africa during the period 1960 -1994, and to document the context in which those violations occurred;
2. To name the people, institutions, organisations, political parties, etc. responsible for gross violations of human rights;
3. To provide the victims of gross human rights violations a public platform to express themselves in order to allow them to regain their human dignity;
4. To make recommendations to the government on how to prevent the future commission of gross violations of human rights;
5. To make recommendations to the government on the measures to be adopted regarding reparations and the rehabilitation of victims of human rights violations;
6. To facilitate the granting of amnesty to individual perpetrators of human rights violations.

Thus, the primary job in each region was to hold public hearings to allow victims of human rights violations to tell their stories, to investigate allegations of gross human rights violations and to make findings thereon, to receive applications for amnesty from perpetrators and to hold public Amnesty hearings.

TRC DISTINGUISHED FROM OTHER COMMISSIONS:

It is particularly this last feature of the South African Truth and Reconciliation Commission, which distinguishes it from other previous similar commissions. It was the first Commission to be given the power to grant amnesty to perpetrators. No other state had combined this quasi-judicial power with the investigative tasks of a truth-seeking body. In other countries, where amnesty was introduced to protect perpetrators from being prosecuted for the crimes of the past, the provision was broad and unconditional, with no requirement for individual application or confession of particular crimes. The South African format had the advantage that it elicited detailed accounts from perpetrators and institutions, unlike commissions elsewhere, which have received very little co-operation from those responsible for past abuses.

The South African Truth Commission has been criticised for denying justice to the victims of human rights violations. Some say that a moral compromise was reached, which has forever and irrevocably undermined the position of victims. While there may be some truth in this, we must not lose sight of the fact that the country was able to avoid an escalation of the armed struggle and secure relative peace through this compromise. Furthermore, the Commission as a creature of statute, can hardly be criticised for something that the parties to the political settlement determined.

AMNESTY BRIEFLY:

The basic requirements for granting amnesty are in brief summary the following:

- the application must comply with the prescribed formalities;
- the act, omission or offence must be one associated with a political objective;
- the applicant must make full disclosure of all relevant facts; and
- the applicant should not have been motivated by personal gain or malice.⁴

I have been struck by the distinct lack of support at Amnesty hearings for many perpetrators who were members of the previous regime's security forces and other structures. Few family members attend in solidarity with the applicants. This is in stark contrast to the situation of victims and their families and perpetrators from the liberation movements.

HOW TO DEAL WITH THE PAST?

One of the crucial issues facing the new order was how to confront the abuses and differing realities that resulted from the practices of the previous regime and the liberation struggle. What should the parameters of the enquiry or process be and what form should it take?

Some of the factors that seem to have contributed to choosing, what in the eyes of many commentators has been, a unique and ground breaking set of processes were:

⁴ See Section 20 (3) of the Act for a detailed elaboration of the criteria applicable in this regard.

- The nature of the balance of forces at the particular historical juncture: i.e., nobody won the war and the parties were forced to accommodate each other in differing respects. Thus, it was simply not possible for one side to try the other. However, the balance was weighted enough for the one side to resist the call for a general amnesty. See for example the discussion on what happened in Argentina, Chile, and Uruguay. Contrast this with what happened in Zimbabwe and Namibia. ⁵
- The difficulty of successfully prosecuting offenders. We need only look at e.g., the “Malan Trial” ⁶ and those of other political leaders in other similar scenarios to realise the pitfalls of failure in this regard.
- The lengthy delays and the high cost of litigation were also an important factor. The War Crimes Tribunal in The Hague, which despite some recent successes has made very little headway in its

⁵ In Uruguay, there was a plebiscite by the general population approving a general amnesty. In Chile the security forces remained intact and so much in control, that their demands were acceded to in the interests of democratic progress. In Argentina only certain figurehead Generals were prosecuted and people lower down the chain of command were granted immunity from prosecution. The generals were in fact released under a general pardon after serving about five years of their sentences. It is interesting to note that there are recently new moves to bring criminal prosecutions and civil actions in both Chile and Argentina.

In Namibia, the past was simply left behind. However, a process aimed at evaluating the conduct of alleged political prisoners took place, so that those who had committed acts of a political nature could be freed. Some of the jurisprudence developed in this exercise was used in developing aspects of the definition of "acts associated with a political objective" as used in our process. In Zimbabwe there was no commission dealing with the liberation struggle. However, a commission that looked into the abuses that occurred in Matabeleland after liberation took place. The report of the commission has never been made public.

⁶ This was a criminal trial where the state charged a range of people including the previous Minister of Defence. Although the case revolved around one instance of murders, it highlighted a conspiracy that included the secret para-military training and deployment of IFP people by the Directorate of Special Tasks of the South African Defence Force's Military Intelligence Unit.

work after many years and many millions of dollars, also evidences this difficulty. ⁷

- There was seen to be a need to promote reconciliation and national unity through the telling of the truth about human rights abuses. It was hoped that reflecting these violations within the context of the different perspectives of the perpetrators on the one hand and the victims on the other would begin to facilitate a process aimed at achieving an understanding the different realities held by South Africans. It was believed that the public and “official” acknowledgement of the abuses and injustices suffered by victims would contribute to restoring their dignity while at the same time, giving perpetrators the opportunity to come to terms with their own past. ⁸

There is an extensive debate around the international obligations of a state to prosecute offenders in terms of the regime of international humanitarian and human rights law. In the interests of time, I do not intend to traverse that ground here. ⁹

THE QUESTION OF JUSTICE:

For many people the need for justice is paramount. They want to see offenders prosecuted and punished. However justice and punishment

⁷ Another factor, which is worthy of mention, is the question of the disparity between the legal tribunals, regimes and jurisdiction at an international level and those at national or domestic levels.

⁸ Some writers have included a further factor, viz., the specific choice or approach of the new leadership.

⁹ See for example the views of writers like Nino and Orentlicher who represent, inter alia, different perspectives and approaches to this debate.

serve a number of different objectives: they can be restorative, rehabilitative retributive or act as a deterrent. Hopefully these purposes are achieved at the same time although to a greater or lesser extent depending on the circumstances of each case and each offender.

One of the critical issues is whom does one prosecute and how far up or down the hierarchy does one go? If for example we were to prosecute every person who committed a gross violation of human rights, our courts would be busy for decades. What about all the defences which would be raised: obedience to orders, lack of choice or no other alternative, bona fide belief in the lawfulness of the order, etc? The list is endless and one need only look at the Nuremberg trials and the jurisprudence that flowed from the judgements of the Tribunal to get some idea of how courts deal with these matters. However the problem remains, who should be scrutinised and how to do it?

Would a purely criminal justice process suffice? Some of the consequences of justice based processes include amongst others, the following:

1. The making of specific factual findings about abuses narrows the space for political speculation. These findings are less open to challenge than prior "public knowledge" of "what went on". The longer and the more open such issues remain open to debate the greater is the opportunity for politicians to justify and obfuscate their role and positions.
2. Institutional disapproval of abuses helps distinguish the new dispensation from the previous regime and helps make the public

aware of whom and what conduct is criminal, thus ascribing stigma to certain persons, organisations, structures and behaviours.

3. The like treatment of perpetrators helps build or rebuild general confidence in public institutions and structures, thereby breaking down the culture of impunity and the notion of continuity of the past. This also serves to facilitate a certain deterrence factor. ¹⁰

There is very little evidence that retributive criminal justice - the imprisonment of perpetrators, would achieve anything more than a short term need for revenge. The failure of the Nuremberg trials in Germany to deal adequately with Germany's past suggests that even if such trials were possible in South Africa, they would not have served the national reconciliation process where victims and perpetrators continue to live together after the conflict. Do capital punishment and retributive prison sentences contribute to promoting respect for human dignity, or do they vindicate those who promote revenge and violence as the answer to human conflict? In general, I think not.

Furthermore, the long term imprisonment of political criminals most often elevates them to a romantic and heroic status, which clearly does not serve the reconciliation process. As Jorge Correa said, writing about Chile, "ideological fanaticism cannot be ameliorated or countered through a prison sentence. If anything, it motivates the person involved to pursue his or her aims on release from prison." ¹¹

¹⁰ Jaime Malamed-Goti: "Transitional Governments in the Breach: Why Punish State Criminals?" in *Human Rights Quarterly*, vol.12, No. 1 at pp. 1 to 16.

There is much more that one can say about the demerits of retributive justice in this context - such as the financial burden on the state, the need to rehabilitate and restore perpetrators, but we do not have time for that.

In the light of these issues, one can see why we in South Africa opted for a TRC-type process. Although many of the justice-based consequences are present in varying degrees in the TRC's processes, the sanctions are of a different nature to punishment per se:

- Perpetrators are in the public spotlight and their past actions are made the focus of public awareness.
- In many cases people who know the perpetrators but never realised their participation, will come know about their past activities. Such people include those who know the perpetrators' families or socially or in other contexts like churches and community structures.
- Children of perpetrators will want to know the details and context of these allegations and will probably see their parents in a different light as a consequence.

COMPLICITY:

¹¹ This quote comes from a paper written by a colleague. He has been unable to

“Irony is a scissors, a divining rod, always pointing in two directions. If the evil act can’t be erased, then neither can the good. It’s as accurate a measure as any of a society: what is the smallest act of kindness that is considered heroic?”

Complicity is not sudden, though it occurs in an instant.

An extract from “Fugitive Pieces” by Anne Michaels published by Bloomsbury.

I was recently travelling with my eight-year-old daughter through a rural area near our beautiful Drakensberg Mountains. As we passed a communal village in the foothills, she asked me “Why do black people live in all the poor areas?” I then began to try to explain some of our history, how the situation came about, what Apartheid was about, and how it affected people’s lives. After about a twenty-minute discussion she bluntly asked: “Daddy, why did you let this happen?”

What this raised for me was the issue of complicity. I occasionally get a sense when sitting in Amnesty hearings of “there but for the grace of God go I”. By this I refer to the fact that many of the perpetrators are no different to the rest of us and I am sometimes left wondering about the attitudes, justifications and the kinds of choices people have ended up making that result in the abuses we in the TRC end up having to consider. This feeling must in some respects occur to most South Africans when listening to the harrowing accounts of victims and perpetrators.

provide me with the source, which he didn't quote and I have been unable to trace it.

So many South Africans of every background and persuasion were made complicit simply because we were unable to be sufficiently courageous and risk the consequences of the state's draconian laws and powerful security establishment. When people talk about "the beneficiaries of Apartheid" each one of us needs to understand that despite one's own contributions we nevertheless are complicit to some extent. ¹²

REPARATIONS AND RESTORATION OF DIGNITY:

The process of truth telling has had a profound effect on the nation as a whole. There are very few people who have not been exposed in one way or another to the various processes of the Commission. It assumed a public profile and for the best part of two years received extensive radio, television and press coverage. In the next two and a half years it has received less coverage but has still remained prominently in the broader public domain.

One would hear people talking about the process and discussing details of the stories told and the implications of who knew what and how "no-one" realised how "bad" and extensive the abuses had been. Many people were in denial with regard to the Commission. Some examples of the sorts of things people have said are: "It's just a pack of lies." "Its just a waste of money...another opportunity for people to get on the gravy train." " They are just out to bash the "X, Y or Z group".

The fact is however that many people were deeply touched by the Commission's work. The stories which were told publicly were chosen to

¹² See the discussion around some of this under Reconciliation below.

be representative in nature, political party, demographics and situation. This meant that many more people were able to relate to the narratives and the experiences related by those who testified before the commission. Thus, a large number of people had their experiences validated and acknowledged, albeit vicariously.

It is this recognition of the "truth" of their experiences and thus of their realities which offers victims a real basis for restoration of dignity. To deny a person the reality of their experience is a fundamental abuse that goes to the core of that person's being. To be able to ameliorate that abuse offers such person a path to regaining their dignity. To be able to tell one's story before an "official" body or to vicariously share in this process seems to have been an effective mechanism to achieve this.

The question of reparation remains unresolved. The Commission made its recommendations more than a year ago and the response by Government has been slow. This issue is fundamental to the validation of the whole TRC process. As was said, by the late Mr. Justice Didcott, in the Azapo case, reparations offers "some quid pro quo" for the loss of ... legal claims." The failure to put in place a credible and viable reparation mechanism will have the effect of undermining all the gains achieved by the Commission to date.

RECONCILIATION:

Reconciliation formed part of the title of our statute "The **Promotion** of National Unity and **Reconciliation** Act" (My emphasis). From this, I believe it is clear that the role of the TRC was to **promote** national unity and reconciliation. Reconciliation is not an event. It is a process. It is

a long and difficult journey that can sometimes end quite suddenly for some or last centuries for others. It often means different things to different people.

Our Chairperson, Archbishop Tutu speaking of reconciliation said this: "the trouble is there are erroneous notions of what reconciliation is all about. Reconciliation is not about being cosy; it is not about pretending that things were other than they were. Reconciliation based on falsehood, on not facing up to reality, is not true reconciliation and will not last." He goes on to say "it is only on the basis of truth that true reconciliation can take place."¹³ This has been the gist of our work.

From the TRC's point of view, the effect of our work has affected people's approach to reconciliation in different ways. The need for reconciliation and the different levels of complexity at which the concept operates include:¹⁴

- Coming to terms with the painful truth. In this sense we are talking about the individual's ability to be reconciled with the fact that e.g., a loved one who "disappeared" is actually dead and thus the potential for closure is facilitated. Sometimes this can lead to denial and the need for revenge. We have seen little of this in our process. Most people are satisfied with finding out the truth of what happened.¹⁵ Another aspect this is the difficulty some perpetrators had in coming

¹³ See the Commission's Report: Volume 1, Chapter 1 at pages 17 and 18.

¹⁴ See the Commission's Report: Volume 1, Chapter 5 at pages 106 to 110 and Volume 5, Chapter 9 at pages 350 to 435. I have drawn on some of the frameworks but also added other aspects.

¹⁵ Of course, where victims feel that the truth has not been forthcoming they are usually reluctant to be reconciled with the perpetrators but this is different to closure or accepting the painful truth.

to terms with their guilt or accepting moral responsibility for their actions. In our amnesty process remorse is not a requirement for being granted amnesty.¹⁶

- Reconciliation between victims and perpetrators. Although the actual number of instances of this kind of scenario were limited because of the relatively small number of cases which received a public hearing, a fairly large number of instances of reconciliation took place. The primary issue here is that victims generally express a sentiment that "I am ready to forgive, but I need to know who to forgive and for what." This is common to the attitude of victims in many other jurisdictions. Victims need to believe they are hearing the full truth. If they remain unconvinced, they will be reluctant to reconcile with perpetrators.
- Reconciliation at a community level. The nature of the conflict led to huge divisions within communities. These occurred at various levels, young and old, men and women, neighbours, families, as well as between ethnic and racial groups. To some extent, the commission was able to facilitate reconciliation meetings where such elements found common ground. However, often the truth telling led to people seeing each other in a different light.
- Promoting national unity and reconciliation. The work of the Commission highlighted the different understanding people have of this notion. It also focussed attention on differences between

¹⁶ Perpetrators who applied for amnesty were required to categorically accept responsibility for their actions in the sense of admitting guilt. However, the issue of

individual responses often based in personal religious notions of reconciliation and those that have a political application to a society in transition or transformation. In this sense, some of us believed that the difficulties of a truth finding process with its robust and legalistic processes were not suited to facilitating reconciliation. Nevertheless, we sought to conduct ourselves in a manner that would facilitate a perception of even-handedness and allowed the parties a measure of latitude if we thought this would promote reconciliation.

One aspect which proved useful was the public hearings into various sectors of society, e.g., the legal system, health sector, etc. Here leaders and other prominent people sometimes made public apologies, which had the effect of opening the potential for reconciliation. These gestures coupled with the restoration of dignity that the public acknowledgement of victims represents were fundamental to ensuring that people begin to own the new culture of democracy and human rights and restoring credibility to state structures.

Added to the above are the public and inclusive nature of the commission's work and that many previously unknown facts were made public. These small beginnings coupled with the other transformations taking place in our country represent a substantial shift away from the deprivations of the past.

- Reconciliation, redistribution and reparation. The challenge facing us as a nation is how to ensure that the vast majority of our people who were victims of Apartheid become beneficiaries of the new order.

moral responsibility and acknowledging that their actions were morally reprehensible was a difficult issue.

In this regard, we struggle with gross disparities and structural inequalities. The Commission found its terms of reference restricted its focus primarily to looking at gross violations of human rights and thus it was unable to look more widely at the whole gamut of the effects of Apartheid. Nevertheless, the measures which were recommended to the President for reparation and the ongoing transformation taking place could go a long way to assisting promote reconciliation in this sense.

Although reconciliation is part of the Commission's brief, many of the critics of the Commission have complained that it has failed to bring this about. I do not believe that it was up to the TRC to be the sole agent for reconciliation. As indicated above our role has been to help facilitate, along with others, a beginning to the process. It is the task and responsibility of society at large to pick up the process and continue with it.

DOES THE TRC REPRESENT A NEW CONFLICT RESOLUTION APPROACH AND CAN IT FACILITATE RECONCILIATION?

What the TRC represents is a *via media* between a strictly justice based approach and one where the past becomes a chapter in a book which is seldom looked at or examined. As outlined earlier above, much depends on the context and nature of the particular conflict and more importantly the manner in which the conflict comes to an end.

Has there been a negotiated settlement or a military victory? Does the conflict drag on for centuries, with various degrees of hostility and peaceful intervals? What is the balance of forces at the end of

hostilities? Is there a total victory or a stonewalled stalemate? What are the underlying issues, which provide the causes for the conflict and what kinds of resources will be needed to address such issues? Are such issues framed as ethnic, cultural or religious matters? What are the structural inequalities that underpin that society's conflicts? Are the divisions a product of pre-colonial, colonial or post-colonial issues like, the artificial determination of borders or the division of clans or ethnic groups?

If we look at the Rwandan situation, we are struck by the fact that even though they had a "Truth Commission" during 1992, the violence escalated and resulted in the now notorious genocide of 1994. The present ruling party (RPF) who were the rebels at that time, won the war and then formed the present government, thereby putting an end to the genocide and most of the conflict. It is worth mentioning that the genocide happened towards the end of the conflict. It was then decided to prosecute the offenders most of whom were known and except for a few ringleaders, had been arrested and were in custody. The process adopted entailed prosecutions, but with the prospect of a partial amnesty, in that perpetrators could be downgraded in terms of punishment provided they confessed their participation. The death penalty is a possible sanction faced by such people.

In terms of the parallel process under international auspices, some of the major role players are being prosecuted in very different circumstances and with quite different sanctions being applied. In particular, the death penalty is not a sentencing option in that tribunal. The disparities between the two judicial regimes have created tensions and dissatisfaction.

The differing conditions prevailing in Rwanda thus resulted in a different process being applied. It also resulted in a different approach to reconciliation as many attacks and acts of violence continue to plague the country and the sub-region.¹⁷

In the former East Bloc countries the transition from authoritarianism to democracy was marked on the whole by a very different approach which, was determined by the context and conditions prevailing at the time. Unlike Rwanda and some other African scenarios, war or serious violence did not accompany many of the transitions. The previous regimes were in such a state of decay that they imploded without much conflict. However the legacies of oppression remained.

While there were some prosecutions, for example, in Germany, the majority of these states opted for what has become known as a Lustration process. In essence, after an investigation by a quasi-judicial or administrative tribunal, people found to have been connected to the previous regime and its abuses are disqualified from holding office or serving in certain positions of responsibility. This may also entail the loss of certain civil or political rights.

In some rare cases, e.g., Romania, there have been summary trials and executions.

¹⁷ I was privileged to go to Rwanda in 1996 as part of a TRC delegation tasked with helping them draft reparation legislation. Discussions with some of the role-players there made it clear to me that they had rejected our TRC-type process out of hand and were only interested in prosecuting offenders and reparations for the benefit of victims.

In looking at these issues, it is quite difficult to draw any hard and fast conclusions. Each situation is different and the kinds of solutions relevant and appropriate to the people involved will have to be found. Such solutions or processes will need to be grounded and based in the specifics of their social fabric and structures, culture, politics and philosophy. However, our experience of the TRC has shown that it is possible to use the process to begin to arrive at solutions to conflict situations and to start the journey towards reconciliation.

CONCLUSION:

For me the TRC represents but one of the pillars of transformation that are required to help us move South African society from the deeply divided past with its manifest inequalities to a future founded on a human rights culture and mutual respect. This requires transformation at every level, political, social, structural and economic.

Reconciliation without transformation is a meaningless notion while victims and the majority of South Africans continue to live in conditions not much better than those of the past. The process of reconciliation must continue to go hand in hand with these other aspects of transformation.

In the same way, for a TRC-type process to have application elsewhere it needs to be rooted organically in the transformations required in the relevant country or conflict scenario wherever it might be. In other

words, whatever the genesis of the conflict, the resolution must lie in developing as complete an understanding or picture as possible of the causes, nature and extent, of the abuses committed. This would also include the antecedents, circumstances, factors and context thereof, as well as the perspectives of the victims and the motives and perspectives of those responsible for such activities. ¹⁸

For this to happen however requires the political will of all the parties involved. The hardest part will always be to help them understand that a TRC-type process can represent the win-win scenario that successful dispute resolution requires. However, at the same time we need to be mindful of what it is that Truth Commissions can do. It is in this regard that the quote from Michael Ignatief ¹⁹is so useful because he highlights the fact that that the function of TRCs represents a society's discourse with itself. If such discourse can develop hand in hand with the necessary transformations required to build the bridge from the divided past to the future, reconciliation must surely follow.

SOME USEFUL STATISTICS:

Approximately 22,000 people made statements to the Truth Commission regarding allegations of human rights violations. Most were on their own behalf, but some people made statements on behalf of friends, relatives or neighbours. In most of these cases (+/- 18 000), after corroboration by the Investigation Unit or other staff had taken place, the people were found to be victims, and are now accordingly eligible to receive reparation from the government. The balance (+/_ 5000) were either refused on the basis that people had made false allegations or because it was not possible to verify the allegations.

¹⁸ This is a paraphrase of section 3 (1) (a) of our statute and the first objective of the TRC.

¹⁹ See the quote at the beginning of this paper.

Based on present statistics 7113 people applied for amnesty. To date, approximately 950 have received amnesty either complete or in part. (+/_ 30 people have received partial amnesty so far.) Approximately 5500 people have been refused amnesty and 200 applications were withdrawn or were duplications. Of the remaining approximately 660 pending applications: 300 are matters which will be decided in chambers, 360 are to be decided at public hearings, or are part heard or are outstanding decisions. Thus, the vast majority of people who applied for amnesty for politically motivated crimes have not received amnesty. (77.3%)

Approximately 17 000 applications for Urgent Interim Reparation ("UIR") have been sent out to date. This is the approximate number of people presently eligible for UIR. R35 000 000,00 had been paid out to victims as UIR up to the present time. These payments involved +/_1000 individuals who have been assessed and referred to the President's Fund. The final figure is presently not certain because victims are still being referred as part of the Amnesty and HRV processes.