
The South African Truth Commission

Human beings suffer,
They torture one another,
They get hurt and get hard.
No poem or play or song
Can fully right a wrong
Inflicted and endured.

The innocent in gaols
Beat on their bars together.
A hunger-striker's father
Stands in the graveyard dumb.
The police widow in veils
Faints at the funeral home.

History says, *Don't hope*
On this side of the grave.
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up.
And hope and history rhyme.

So hope for a great sea-change
On the far side of revenge.
Believe that a further shore
Is reachable from here.
Believe in miracles
And cures and healing wells.

Call miracle self-healing;
The utter, self-revealing
Double-take of feeling.
If there's fire on the mountain
Or lightning and storm
And a god speaks from the sky

That means someone is hearing
The outcry and the birth-cry
Of new life at its term.

—Seamus Heaney
from *The Cure at Troy*

INTRODUCTION

I accept the report as it is, with all its imperfections, as an aid that the TRC has given to us to help reconcile and build our nation.” So said President Nelson Mandela of South Africa at the October 29, 1998, ceremony at which Archbishop Desmond Tutu, chairperson of the South African Truth and Reconciliation Commission (TRC), handed over the commission’s Final Report.¹ Mandela went on to observe that

the wounds of the period of repression and resistance are too deep to have been healed by the TRC alone, however well it has encouraged us along that path. Consequently, the report that today becomes the property of our nation should be a call to all of us to celebrate and to strengthen what we have done as a nation as we leave our terrible past behind us forever.

With characteristic grace and style, Mandela set the tone for a ceremony that was mired in controversy and could have been a disaster—for the TRC as well as for his party, the African National Congress (ANC). While Mandela took the moral high road in accepting and publicly releasing a report that the ANC had launched an eleventh-hour court interdict to block, his heir apparent, then deputy president Thabo Mbeki, along with several other senior ANC officeholders, did not bother to make an appearance at the ceremony.² The ANC was not alone in its indignation, nor were its leaders alone in boycotting the ceremony. Naysayers from the right—from the National Party (NP) to the Inkatha Freedom Party (IFP) to the Freedom Front (FF)—all found fodder in the Final Report for public denunciation.³ For its part, the Democratic Party (DP) was content to focus its admonitions on the reactions of its political opponents, rather than on the TRC itself.⁴

Meanwhile, Tutu, ever the proselytizer of truth and reconciliation, intoned, "Let the waters of healing flow from Pretoria today as they flowed from the altar in Ezekiel's vision, to cleanse our land, its people, and to bring unity and reconciliation." And so the spectacle of the handover of the TRC's Final Report epitomized in many ways the politics that characterized the TRC process as a whole.

How, one might ask, did such a noble exercise degenerate into such naked political maneuvering? This dénouement was a far cry from the dignified solemnity that characterized the human rights violations hearings, at which victims testified about the abuses they had endured. The commissioners had wisely decided to launch the TRC process in April 1996 with these hearings to set a victim-centered tone for the commission's work. Held in civic centers, town halls, and churches across the country, these hearings always featured a lighted candle to memorialize South Africa's victims of political violence. Opened with prayers and accompanied by hymn singing, the human rights violations hearings represented the commission's—and the country's—attempt to restore honor and dignity to the victims and survivors, by giving them a platform from which to tell their highly emotive stories. In the process, South African audiences heard firsthand from victims of torture, rape, and abductions, and they heard from widows, widowers, and surviving family members about the loss of their loved ones.

Stories like that of Joyce Mthimkulu, who testified at one such hearing, have become part of the national consciousness in South Africa. Ms. Mthimkulu testified about her son, Siphwe Mthimkulu, a political activist in the Eastern Cape who was detained on a number of occasions, tortured, poisoned with thallium (which resulted in the loss of hair and confinement to a wheelchair), and ultimately disappeared. Ms. Mthimkulu bemoaned the fact that she had never been able to give her son a proper burial (this became a common refrain in victims' hearings) and she showed the commission all that she had left of him—a clump of hair that had fallen out as a result of his poisoning.

Stories like this remind one of what the TRC process was all about. Although nothing can undo the harm that was done, these stories underscore the importance of ensuring that such abuses never recur. This book is written with the victims of South Africa's political violence in mind—recognizing that deliberation on the subject of the TRC will

amount to little if it is not informed by the sacrifices made by such victims and society's debt to them.

Much has already been written about truth commissions in comparative perspective, and about the TRC in particular.⁵ This study assumes some familiarity on both counts. Truth commissions, it seems, are in vogue. Priscilla Hayner, an independent researcher and noted scholar of truth commissions, has identified twenty-odd variations of this kind of mechanism in the past twenty-four years.⁶ Of those, some are more noteworthy than others. The South African commission is one of the best-conceived, best-funded, and well-staffed mechanisms of its kind, and the media attention it has received is unrivaled. It is also the most ambitious truth commission to date, with a mandate that includes taking measures to restore dignity to victims and granting amnesty to eligible perpetrators of gross human rights violations, in addition to establishing as complete a picture as possible of the nature, causes, and extent of gross human rights violations that took place inside and outside of South Africa's borders between 1960 and 1994.⁷ The TRC's relative success or failure, therefore, offers significant indicators of the extent to which truth commissions will persist as a tool for future transitioning societies trying to come to grips with past abuses.

This position is based on the assumption that if truth commissions collectively are perceived to be little more than feel-good exercises—if they fail to produce concrete results in terms of establishing as complete an account as possible about past abuses, restoring dignity to those who were victims of those abuses, and charting a credible course for moving beyond those abuses as a society—then those assuming power in transitioning societies will be less willing to countenance such mechanisms, regardless of how strenuously those who were responsible for atrocities under the former dispensation might lobby for them.⁸ By the same token, Western donors who are asked to underwrite future truth commissions will consider the track record of previous commissions and, in the event of disappointing results, will be less inclined to fund similar endeavors in the future. Given the unprecedented media attention the TRC has received, it will likely serve as an important point of reference for both transitioning societies and Western donors.

Beyond questions about support and funding for future truth commissions looms the prospect of external meddling. Extradition and trials

in foreign countries may await those who benefit from domestic amnesties, as demonstrated by the recent case of former Chilean dictator General Augusto Pinochet, whose extradition to Spain on counts of torture was recently considered by the English courts.⁹ Similarly, although the Rome Treaty, which established the new International Criminal Court (ICC), does not explicitly address recognition of domestic amnesty programs, most observers anticipate that the court will, at a minimum, preserve its prerogative to intervene in cases where international humanitarian law has been violated with seeming impunity.¹⁰

There is no clear road map as to how judgments such as these ultimately will be made. Hayner has noted the need for international standards for credible, effective truth commissions.¹¹ Such standards, if and when they are agreed on, could not only serve to guide architects of future truth commissions but also serve as benchmarks for *post facto* quality assessments. They could also help the ICC navigate the murky waters of amnesties and truth commissions. In the meantime, this study draws from and expands on Hayner's proposed guidelines to assess the South African TRC process. While it is still several generations too early to judge the TRC's ultimate success or failure, it would be irresponsible not to step back and look at the TRC's broader implications. In so doing, it should be emphasized that the conclusions drawn are, by necessity, of a preliminary nature.

For all the flaws in the TRC process, it is no great stretch to credit the TRC—even at this early stage—with providing a remedy to the persistent ignorance and denial in South Africa about apartheid-era atrocities. Many commentators have pointed out that, after two years of a daily barrage of media stories generated by TRC hearings, it is no longer possible for the average South African credibly to deny the nature and extent of the gross human rights violations that took place under the old regime and during the country's transition to democracy. This in itself is a remarkable achievement, and it is one that should be kept in mind as the TRC process is subjected to critical scrutiny in the following pages and elsewhere.

In that vein, this study seeks to contribute to the existing scholarship by examining some of the key innovations in the South African model, whose architects benefited from lessons learned in other countries with similar mechanisms. It also considers a variety of ways in

which the South African political backdrop informed the TRC process, and vice versa. The commission was established as an independent body that would operate free from external political interference—whether from the government, political parties, or other influential actors. But it was born of political compromise and, by the very nature of its mandate, it remained to the end, like any truth commission worth its salt, an inherently political body. The high-stakes politics of the handover of the TRC's Final Report clearly illustrate this reality.

On the assumption that truth commissions will outlast the fad stage, this book draws lessons from the South African experiment with truth telling and accountability. It is worth conceding up front, however, that the TRC's ultimate success or failure will depend greatly on two key factors beyond its control. The first concerns the extent to which the TRC's recommendations are acted upon by the government and by the institutions that fostered a climate conducive to the systematic and gross abuse of human rights under apartheid. The outcome will largely be a function of the political will of the government, which will play both implementing and enforcing roles vis-à-vis the TRC's recommendations. These roles will entail a difficult resource-allocation balancing act between urgent claims for basic quality-of-life improvements for South Africa's previously disadvantaged majority (for instance, water, low-cost housing, job creation) and many of the longer-term objectives embodied in the report's recommendations (for example, human rights training). How individual reparations for victims of gross human rights violations will fit into this equation remains to be seen.

A second factor is more nebulous but no less important. It concerns the fact that the long-term prospects of success ultimately will rely on individual South Africans—because it is on the individual level that reconciliation takes place and the seeds for societal transformation are planted. As the Final Report states, "Only if the emerging truth unleashes a social dynamic that includes redressing the suffering of victims will [the TRC] meet the ideal of restorative justice."¹² Here, political leadership, as Mandela has so aptly demonstrated, can play an immensely powerful role.

