

# SA Reconciliation Barometer

Tracking socio-political trends

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THE TRC  
TEN YEARS ON



INSTITUTE FOR  
JUSTICE AND RECONCILIATION





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## editorial

### REFLECTING ON THE TRC

In April this year we commemorate the first public hearing of the Truth and Reconciliation Commission (TRC), which took place ten years ago in 1996. Brought into life by the Promotion of National Unity and Reconciliation Act that had been promulgated a year earlier, the commission's premise was that the truth about our apartheid past was a precondition for our common future as a reconciled nation.

The Commission's brief to investigate human rights violations, preside over amnesty applications and make recommendations about victim reparations brought it into conflict with all the major political protagonists at the time. In 2003, after last minute legal challenges that necessitated changes and omissions to its original text, the Commission's final report was handed over to the government.

It made four key recommendations. The first was that an accessible archive of key TRC documentation be created. Closely related to this was the second proposal – for a concerted effort to institutionalise the memorialisation of the struggle against apartheid. Thirdly, the Commission recommended that alleged gross human rights violators, who were not granted amnesty or did not apply for it, should face prosecution. And, according to the Commission's last key recommendation, the victims of such violations should receive meaningful reparations.

The recommendations on archiving and memorialisation are essential for the creation of a common understanding of our past, without which the foundation for a shared future cannot not be laid. The recommendation on prosecutions recognises the need for a benchmark against which to measure the application of human rights in a democratic South Africa. The same reasoning characterises the Commission's thinking on the awarding of reparations to victims of human rights violations, where it was recommended that reparations should compensate victims for their suffering and help restore their dignity.

How effectively have these recommendations been implemented? Some argue that a lack of political will has led to half measures. Others caution against impatience and the repolarisation of a society that is still largely divided along racial lines. From 20–21 April, the Institute for Justice and Reconciliation will be hosting a conference with the theme, *The Truth and Reconciliation Commission – Ten Years On*, which will assemble scholars and practitioners intimately involved with the TRC's recommendations, both during their drafting and since the Commission's completion in 2003. Conference participants will reflect on the progress made in implementing the recommendations as well as their impact on our society.

This edition of the *SA Reconciliation Barometer* is intended as a precursor to this conference. It contains contributions by a number of role players who have actively participated in the reconciliation debate over the past decade. These articles examine state and private responses to the TRC's final report, but also consider what it means to be a reconciled society. We hope they will stimulate this debate further, as issues pertaining to reconciliation remain as relevant today as they did ten years ago when the Commission started its work.

Jan Hofmeyr

Project coordinator: *SA Reconciliation Barometer*

The work of the South African Truth and Reconciliation Commission (TRC) provided a basis from which the country could embark on the road to national reconciliation. But are we still on track? CHARLES VILLA-VICENCIO, the Commission's former director of research and currently executive director of the Institute for Justice and Reconciliation, suggests that after ten years it is now time to take stock of the progress that has been made.

# THE UNFINISHED BUSINESS OF THE TRC

Ten years ago this month, the Truth and Reconciliation Commission held its first public hearing in the East London City Hall. It was tasked to 'promote national unity and reconciliation' and identify the 'causes, nature and extent' of gross violations of human rights committed during the apartheid era.

Since its closure, there have been ten similar commissions in other parts of the world – six of them in Africa – with five additional countries exploring such possibilities. Add to these the *gacaca* courts in Rwanda and the formal ritualistic healing initiatives in Cambodia and it becomes clear that an alternative to impunity on the one hand and extensive Nuremberg-type trials on the other is an attractive option for countries facing political reconstruction in the wake of long periods of human rights abuse and political violence.

The South African TRC, however, is often more readily lauded elsewhere in the world than at home. Its mission to 'promote national unity and reconciliation', requiring it to investigate the violations of human rights by both the apartheid government and the liberation movements, made it a contested exercise from the beginning. The TRC hearings frequently opened wounds that some felt were better forgotten. Others wanted the last piece of forensic truth to be laid bare. Some regarded the scope of the Commission's mandate as too limited, others questioned its methods, still others doubted its findings, suggesting it failed to provide a complete enough picture of the past. Just prior to the release of the Commission's report in October 1998, former President de Klerk succeeded in an application to court to have a finding against him expunged from the record. The ANC, on the other hand, failed in its court application to block the entire report from being released. The Chairperson of the Commission, Archbishop Tutu, observed, 'If politicians to the right and the left both have problems with the report, we are probably pretty close to the truth!' This aside, it is impossible today to consider realistically the South African transition apart from the TRC. It constitutes a vital turning point in contemporary South African history.

The success or otherwise of the TRC could never entirely be dependent on its own endeavours. It called on government as well as 'institutions, organisations and individuals' to place reconciliation

and national unity at the top of their respective agendas. Some thought it went too far in its recommendations. Others thought they were not extensive enough. Some recommendations have since been implemented and some rejected, while many have simply been ignored. Four of the many recommendations made by the TRC constitute a prominent part of its – and the nation's – *unfinished* business.

- ▶▶ Citing the complexity of the history of the South African struggle, the TRC called for the release of its own archive, which includes the testimony of victims of gross violations of human rights, investigations into the activities of apartheid security forces and those of the liberation movements, as well as the transcripts of the amnesty committee. The technology is in place and funding available for these to be digitised and made available to every library, school and community centre in the country. Sadly this has not happened.
- ▶▶ Prioritising the needs of victims, the Commission recommended individual and communal reparations to acknowledge victims' losses and to contribute to the restoration of their human dignity. After a five-year delay, the government made a reduced reparation payment of R30 000 to each victim named by the TRC. Community reparations have, on the other hand, scarcely been pursued. Material development is a crucial and indispensable part of community healing. But more is required. Memories of the Craddock Four, the Pebco Three, the Motherwell Bomb, Trust Feed Massacre, the KZN Midlands War, the Soweto Uprising, Boipatong, Crossroads, farm killings and deaths in exile, to name but a few, have left deep scars on the nation. Oral histories, community projects and ritual cleansings wait to be undertaken. Such initiatives would not involve huge sums of money – and government department budgets for community reparations remain underutilised. The expenditure of limited and well-focused government and private funding for community projects through schools, community organisations and faith communities could reap benefits that reach well beyond those who continue to bear the brunt of the nation's past.
- ▶▶ The Commission further proposed the promotion of remembrance and memorialisation initiatives designed to raise consciousness and 'promote public responsibility' with ... continued on page 7

# REPARATIONS TEN YEARS ON

The issue of apartheid-era reparations is far from resolved, as is demonstrated by the class action suit against a host of multinational companies, currently before an American court. FANIE DU TOIT, programme manager of the IJR's Reconciliation and Reconstruction Programme, argues that this case is not only about the question of complicity, it also highlights the need for greater clarity on the principles involved when doing business in unfree societies.

**m**ultinational corporations are indispensable partners in the South African nation-building process. However, many of these corporations were also instrumental in building the apartheid state.

Herein lies the paradox that has led to a bitter stand-off between government and those supporting litigation against the US-based multinationals that, despite sanctions, conducted business in apartheid South Africa. Recently, oral arguments began in a New York Court where apartheid-era victims are pursuing reparations said to be in the region of \$400 billion from 23 multinational companies.

The South African government is opposed to this action, arguing that it violates the country's sovereignty, jeopardises international investment and subverts what the Truth and Reconciliation Commission (TRC) sought to achieve, namely some measure of closure as a platform for getting on with the all-important task of political and economic reconstruction.

Government paid victims identified by the TRC a once-off sum of R30 000, while the TRC had recommended between R17 029 and R23 023 per annum for six years.

But victims, supported by Archbishop Tutu and several TRC Commissioners, argue that renewed legal action is directly in line with the Commission's intentions and findings. In a letter to the court, Archbishop Tutu wrote that 'the obtaining of compensation for victims of apartheid, to supplement the very modest amount per victim to be awarded as reparations under the TRC process, could promote reconciliation, by addressing the needs of those apartheid victims dissatisfied with the small monetary value of TRC reparations'. Victims argue that litigation is a matter between the companies and individual victims and is not relevant to state sovereignty. They contest that the lawsuit will lead to disinvestment.

Defendants argue that the causal relationship between apartheid crimes and their commercial activities are too tenuous to implicate them in any crime, let alone crimes against humanity or genocide. Victims reply that, far from 'merely doing business', companies were active partners in the crime of apartheid. IBM provided computers to run the hated passbook system. Daimler-Benz and Ford provided armoured vehicles to patrol the townships. When summoned by the late Minister Chris Heunis to his office 'in alphabetical order' and told that 'our petrol pumps must stay wet', oil companies eagerly complied. Barclays provided a cash lifeline to Pretoria. The list goes on.

It is of course the same Barclays that recently bought a 56% stake in Absa, promising a R33 billion inflow that could boost South Africa's gross domestic product by as much as 0.5% in the short term. The government is eager to welcome Barclays back, seeing the deal as a boost to the economy.

Exactly where does legitimate investment end and criminal complicity begin? Internationally, a body of law is slowly emerging to clarify grey areas. These efforts enjoy wide support in the light of the Iraqi war's multi-billion dollar spin-offs, which resulted in unprecedented levels of corporate involvement in military matters. In this regard, a long-standing piece of US legislation, the Alien Torts Claims Act (ACTA), is playing a central role by enabling plaintiffs, such as apartheid victims, to bring a broad range of international human rights cases to US courts.

In another ACTA case currently running in the US, the Canadian oil giant, Talisman, is being sued for genocide in Sudan. Central to this case, as in the apartheid case, is establishing the true extent of Talisman's complicity in human rights violations. The Sudanese army sought to increase oil security through an unapologetic and brutal ethnic-cleansing campaign against communities perceived to be sympathetic to government adversaries. They did this through



indiscriminate high-altitude bombing and other measures that systematically destroyed villages, schools and hospitals in the vicinity of the oil rigs. There are allegations that, during this illegal war, the Sudanese army operated from Talisman airstrips, used Talisman vehicles and even strategised with Talisman security experts about which villages to target next. To rub salt in the wounds, Talisman made over \$1.5 billion profit during their four years in Sudan at a time when thousands died as a result of their operations and millions more were displaced. At the same time, oil taxes enabled Khartoum to increase military capacity dramatically. As one report states: Dollar for dollar, oil paid for the war in Sudan.

Together with the apartheid case, the outcome of the Talisman case, driven by the Presbyterian Church of Sudan on behalf of the victims, will have a decisive impact on international efforts to curtail corporate impunity in war situations across the globe.


The tenth anniversary of the TRC is highlighting the fact that we are not finished with the past. Victims say key questions about accountability and impunity remain insufficiently answered. Who is to take responsibility for their suffering? Who, consequently, is to be forgiven?

Reluctant as it is to chase away potential investors, the government

cannot afford to cultivate the perception that it is indifferent to the plight of apartheid-era victims. The fact that Minister Mabandla, when approached in the run-up to the court hearing, allegedly refused to meet victim groups is not helpful in this regard.

Victim groups face an even bigger challenge: how best to rebuild shattered lives and move on. Financial redress may go some way towards this goal, but it is at best only a small part of the solution. The bigger challenge remains ensuring the victims' full participation in society as empowered and responsible citizens. In this quest, business remains an indispensable partner.

Possible payment of reparations by companies – no less than the one-off payment to the victims identified by the TRC – is important. A modest payment can go a long way to relieve the plight of poor families. It is, however, not a long-term solution. At worst, it is a band-aid on a gaping wound. There is a need for an integrated approach to relief which effectively ensures that economic growth reaches the poor through consultation, job creation and skills training. Above all, it requires more effective international regulations to better govern corporate involvement in conflict areas. ■



Multinational corporations are indispensable partners in the South African nation-building process, but many were also instrumental in building the apartheid state.



# APARTHEID-ERA PERPETRATORS SHOULD BE HEARD

CHARLES VILLA-VICENCIO recognises many of the Truth and Reconciliation Commission's guiding principles in the National Prosecuting Authority's recently released guidelines for the prosecution of apartheid perpetrators. The application of these principles, however, needs to be adapted if their objectives are to be realised in the present socio-political context, he argues.

**a**mnesty – which has become an established instrument in politically negotiated settlements around the world – is not only motivated by compassion, forgiveness or magnanimity on the part of the new elite. Amnesty also has to do with political benefit and the implied contribution it can make towards social stability, nation building and reconciliation.

Although the above understanding of amnesty is essentially correct, it is precisely this understanding that makes amnesty such a contested reality. The guidelines drawn up by the National Prosecuting Authority (NPA) for the prosecution of apartheid-era perpetrators who either failed to apply for amnesty or were denied amnesty by the Truth and Reconciliation Commission (TRC), have once again raised a series of moral, legal and political concerns.

It will be ten years in April since the TRC held its first public hearing in East London. Some argue that it is time to close the books and move on. Others, not least a number of victims, insist that the failure to prosecute perpetrators simply generates further animosity – especially when certain perpetrators live with impunity in material prosperity, while many who suffered at their hands languish in poverty and are excluded from the society they helped construct.



The prosecution of apartheid-era perpetrators will strengthen the rule of the law.



Most South Africans concede that amnesty was necessary for a peaceful transition from the old to the new at the time of political change. There was a need to ensure the support of the security forces in safeguarding the elections and the emerging democracy against those intent on destroying it. On the other hand, it was feared that blanket amnesty would negate the principles of institutional and personal accountability. The TRC amnesty process resolved this problem by requiring perpetrators to publicly acknowledge past atrocities in return for amnesty. It sought to encourage members of the apartheid regime and perpetrators from all political groupings to join the democratic process while simultaneously seeking to restore confidence in the rule of law and accountability, which are so vital for an emerging democracy.


But what now? Do the NPA's prosecution guidelines adequately address the present situation? They continue to reflect the ethos embedded in the TRC process which emphasises the need for consultation with victims as well as the co-operation of perpetrators in the recovery of the truth about apartheid crimes. While the guidelines recognise that democratic stability is no longer threatened by former security force members, apartheid-era politicians and their associates, it is here that they become vulnerable. NPA head, Vusi Pikoli, has indicated that there are plans in place to prosecute people involved in five cases denied amnesty by the TRC amnesty committee, that a further fifteen cases are under investigation, and that 'nobody is immune [from prosecution]'. At the same time, he acknowledges that age and health need to be taken into consideration when deciding whom to prosecute. Other criteria include: 'public interest', 'the interests of the victim and the broader community', and 'the circumstances of the offender'. The latter includes the willingness, or otherwise, of the offenders to co-operate in the disclosure of truth about their and their co-conspirators' involvement in a crime in exchange for indemnity from prosecution. It also requires the prosecutor to take into account whether 'the accused has admitted guilt, shown repentance, made restitution or expressed a willingness to co-operate with the authorities'.

Some have a principled objection to the guidelines, insisting that perpetrators have had their chance to come clean and that it is time to act against them. From another perspective, it could be argued that the guidelines reflect the generosity and reconciling spirit of the South African transition. But when do they end – both the transition period and the generosity towards recalcitrant perpetrators? More positively, the guidelines speak of the need for an acknowledgement of guilt, repentance, and a willingness by the offender to make restitution. This can be seen as an improvement on the TRC amnesty conditions, although, cynically, few seeking amnesty are likely to do anything other than 'repent' and only promise restitution of some kind.

The main problem is that the new amnesty process will be behind closed doors. In contrast, the full and *public* disclosure of the crime in return for amnesty was at the heart of the TRC process. It was supposed to be a generous, one-off opportunity for perpetrators to put their past behind them and to join the new society. In the words of the Interim Constitution, it was an extraordinary initiative designed to:

*...transcend the divisions and strife of the past which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts, and the legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for ubuntu and not victimisation.*


The guidelines suggest a second attempt at reconciliation – but a less powerful one. Transparency, the need for justice (however compromised) to have a public face and the demand for the disclosure of truth remain priorities for bringing a measure of closure to the past. At the very least, these priorities are prerequisites for reparations. They constitute the bedrock of victims' demands, and, for many, are far more important than the reparation itself.

Prosecution is not primarily about revenge, although the demand for some measure of payback is a natural, perhaps healthy, response from those who have been abused and belittled. For social stability to prevail, however, it is essential to ensure that the demand for prosecution does not degenerate into a witch-hunt. It must be even-handedly carried out, targeting those primarily responsible for the atrocities rather than the foot soldiers who pulled the trigger. Prosecution is primarily about the rule of law, a clear signal that those who violate the rights of others will be brought to book. This is a minimum requirement for the building of a minimally decent society. 

... continued from page 3

regards to the nation's past. The Peace Park in Pretoria and similar initiatives are important steps forward, although community involvement in these initiatives remains limited.

► The prosecution debate continues to be a complex one. The systematic prosecution of all those guilty of past violence who either failed to apply for amnesty or were refused amnesty by the Commission is simply not possible. To suggest on the other hand that perpetrators should not in some way be held accountable for their abuse of others makes a mockery of the TRC amnesty process. The investigation and, where necessary, the prosecution of those who break the law – despite rank or political standing – is a minimum ingredient for the rule of law and an essential requirement for the protection of human rights. The TRC made its position clear in this regard. The National Prosecuting Authority owes it to the nation to show the same level of candour and transparency in the implementation of the recently adopted guidelines for prosecution.

The successes and failures of the TRC will long be debated. This said, despite its limitations, no one can ever again deny the reality of the nation's past atrocities. This acknowledgement emanating from the work of the TRC, provides a basis for moving forward that many who faced the Holocaust and genocides in Africa and elsewhere are denied. Now, after ten years, it is time to look again at the specific outcomes of the TRC. There is unfinished business that still needs to be addressed. 





# MEMORY TO SHAPE THE FUTURE

The brutality of our past has divided us, but as ZUBEIDA JAFFER argues, remembering it should unite us.

At the inception of the Truth and Reconciliation Commission (TRC), South Africa took the first step in symbolically committing itself to the shaping of a national narrative. The TRC process, findings and recommendations in themselves represent a body of work that is a memorial to the apartheid experiences of thousands of citizens.

While recommending that substantial work be done to keep memory alive, the TRC did not prescribe how this should be accomplished – the government, non-governmental organisations and individual citizens were left free to shape the process. The tenth anniversary of the TRC provides an opportunity to reflect on these efforts at memorialisation and to raise some questions that will stimulate further debate.

Nostalgia is by no means the only reason for keeping memory alive. Importantly, remembering can also lead to a greater understanding of the past. Acknowledgement of who one is, and of the proud and not-so-proud histories of our communities, could help in shaping the positive national identity which is so desperately needed by our youth and for the creation of a vibrant future.

Memorialising an experience involves making choices: whose stories and what parts of those stories should be told? Do these stories reach out across the old apartheid divide, or do they entrench it further? It seems that even in our memories we are a divided country. Only a handful of white citizens attended the unveiling of two major memorials in Cape Town last year. Nowadays, our enemy is no longer conveniently



Are monuments the best tools for remembering?

external; it has instead been internalised in ways determined by where we found ourselves during the years of friction. This fact represents a very particular challenge to local authorities, who want to bridge the gap between different communities while recognising at the same time that the experience of apartheid was brutally divisive.

So how do we create memorials that don't perpetuate our existing divisions? Once an historic narrative has been selected, should we emphasise the violence of the encounter or should the memorial symbolise our commitment to a different path? Perhaps the artist should be briefed to explain the experience as well as introduce an uplifting softness? Could three birds flying away from this earth have symbolised the three lives lost when policemen shot into a crowd that was stoning government vehicles on Thornton Road, Athlone? As it stands, the memorial in question depicts the moment they emerged from the truck with guns blazing.

Perhaps the pain is too fresh for gentler interpretations. And besides, memorialisation is about education as much as interpretation. Memorials must provide explanations in case we get the story wrong; and they must remind us if we have forgotten. Having said that, surely memorials should also strive to be transcendent and help us get beyond the chaos of day-to-day events so that we can experience what is timeless in human existence?

One thing is certain, however: stylistically, our new memorials must make a clean break from the past. Some have argued that present

initiatives follow the trend set by Afrikaner nationalism. According to academic Sabine Marschall, the 'struggle for liberation' myth upon which the new South Africa is being constructed is parallel to the Afrikaner foundation myth. While she concedes that the two have developed in marked contrast, she points out that there are certain similarities to be concerned about. The old Afrikaner monuments also represent the idea of a constant struggle – resistance, deprivation, suffering, the quest for freedom and the enemy's maltreatment of the leadership. 'This is exactly the range of topics and values that recur in the new South African foundation myth – through elaborate monuments, solid memorials and bronze statues on pedestals imitating colonial and apartheid era commemorative practices – that the new South African state chooses to visualise, nurture, and disseminate its newly constructed identity,' she observes.

In the rush to construct this identity, there is the belief that erecting pieces of art is indicative of new local authorities' commitment to the remembrance of the sacrifices made by their communities. The process of consultation is often limited to a series of meetings with prominent leaders and organisations in a particular area. Very seldom have entire communities been involved in shaping the process. Those who gathered at the launch of the Trojan Horse Memorial in Cape Town, for example, had either been intimately involved in the resistance movement or in the organisation of the event itself. Would the community have a greater sense of ownership if the erection of the memorial had been the result of a longer process?

In any case, memorialisation should go beyond the mere creation of tangible artifacts and also draw on the collective consciousness of who we are and where we come from. Earlier societies were shaped and held together by strong mythologies. According to historian Susan Armstrong, although myths are today often considered falsehoods, they nevertheless continue to give individuals and communities a sense of perspective, reminding us of our potential. We often choose to memorialise that which has deeply touched us and either changed our lives or lifted us momentarily beyond ourselves. Memorials are at their most powerful, Armstrong notes, when they 'show us how to look into our hearts and see the world from a perspective that goes beyond our self-interest'.

But are monuments the best tools for meaningful remembering anyway? At a town meeting to discuss Cape Town's Memory Project, Judge Albie Sachs noted that while he was not against physical monuments, he felt they were the least significant forms of memorial cities needed. 'The liveliest, the most important memorial is not out there; it is in our heads, conveyed through words and images, songs and gestures. The oral tradition is the richest, most powerful recorder of the past.' Sachs concluded that although there are various ways to pay tribute and discover the past, it remains crucial that we deal with it 'in a way that gives us energy and vitality to carry on...' ●







# AFTER TRUTH — THE CHALLENGE OF RECONCILIATION IN SOUTH AFRICA TODAY

Reconciliation initiatives in formerly divided societies mostly focus on the healing of relations between individuals. ALEX BORAINÉ, former deputy chairperson of the South African Truth and Reconciliation Commission (TRC) and currently board chairperson of the International Centre for Transitional Justice, contends that stronger emphasis should be placed on seeking redress from the institutions responsible for injustice.

In the wake of conflict, violence, and human rights abuse, one would expect those committed to peace to automatically embrace the idea of reconciliation. However, the notion of reconciliation has become controversial in some quarters because it has been exploited by those with cynical agendas and shady pasts in ways that obscure its true meaning.

Enforced national amnesia, which often masquerades as reconciliation, should be rejected by everyone seeking to protect human rights and build sustainable peace. Rather than silencing and marginalising victims, reconciliation demands that victims' voices be heard and their suffering acknowledged.

Truth commissions have gained great prominence over the past decade and a half as mechanisms which facilitate healing in formerly divided societies. By definition, truth commissions are concerned first and foremost with the recovery of truth. Through truth-telling, such commissions have attempted to document and analyse the structures and methods used in illegal repression, taking into account the political, economic and social contexts in which these violations occurred. The focus on victims rather than on the perpetrators of human rights abuses has been one of the hallmarks of most truth commissions. Significantly, they have not replaced courts or prosecutions, but have rather complemented the retributive aspect of justice, with an albeit greater emphasis on justice's restorative nature.

As has been true in the South African case, a number of commissions have talked not only about truth, but also about reconciliation. At its most comprehensive, reconciliation has involved commitment and sacrifice; at its most superficial, however, it has proved to be an excuse for passivity and for siding with the powerful against the weak and dispossessed. The religious connotations of reconciliation, in many instances, have given it a bad name because religious bodies have often joined with those who exploited and impoverished entire populations rather than support the oppressed. In Argentina, for example, the concept of reconciliation is regarded with deep scepticism. In that country, the Roman Catholic Church, who in large measure had supported the military junta and the perpetrators of human rights violations, were the first to call for reconciliation. Also in Rwanda – where religious groups, priests and nuns participated in the massacre of the Tutsis – talk about reconciliation is highly suspect and, in some quarters, is viewed as a call for amnesia. These two cases seem to suggest that unless the call for reconciliation is accompanied by acknowledgement of the past and the acceptance of responsibility, it will be dismissed as cheap rhetoric. Reconciliation that calls for mere forgetting or for concealing is entirely spurious.

During a country's transition from a totalitarian state to a democracy, the process of reconciliation can begin at different points, depending on the nature of the transition. For some, it begins at the negotiation table; for others, when perpetrators are indicted and prosecuted. The release of political prisoners or the acceptance of a new constitution that guarantees fundamental freedoms may facilitate the beginning of reconciliation. For others, it is when free and open elections are held in which all citizens can participate. While there are many starting points, it is never a one-step process. The process should be ongoing especially in countries such as ours, where oppression was deep and lasting. And if the process is to succeed, it must have an impact on the life opportunities of ordinary people. Consequently, we need to ask ourselves whether the South African TRC has indeed succeeded in providing the moral and material impetus for

an improvement in the prospects of those that suffered under apartheid.

In my view, reconciliation would stand a better chance and would be better understood if victims were able to believe that their cry was being heard, that the silence was being broken. When perpetrators are held to account, where truth is sought openly and fearlessly, and the need for reparation is acknowledged and acted upon, then reconciliation can begin. This, however, requires acceptance of political accountability for deeds of injustice. Only when leaders are prepared to speak honestly and generously about their own involvement or, at least, the involvement of their government or the previous government, will the door be open for the possibility of some reconciliation among citizens.

But reconciliation will remain incomplete if truth commissions only focus on the individual realm. Most forms of state injustice around the world have been committed within the context of state institutions, and with the public or tacit approval of their supporters in institutions outside the state. Institutional reform, therefore, needs to be at the very heart of social transformation. Unfortunately, most truth commissions have chosen to focus almost entirely on individual hearings. In the South African commission, an opportunity was created for spokespersons from the military, the police, the security forces, politicians, faith communities, legal representatives, the media and labour to give an account of their role in the past and, most importantly, how they saw their role in the future. In other words, it is simply not enough to focus exclusively on the past.

On a visit to Serbia, it became quite apparent to me that one of the major problems preventing that country from moving out of its very dark past was the unchanged nature of its institutions, both in terms of their composition, but also in terms of their institutional culture. As I moved from one group of leaders to another, it was clear that unless the institutions were radically restructured, there would be little opportunity for growth, development and durable peace. This is not only true of Serbia, but for all states in the process of transition.

While the South African state has undergone a remarkable transition in terms of demographic representation since 1994, it is debatable whether all the institutions of state have undergone the necessary internal transformations that would clearly distinguish their structures, conventions and values from those of the previous regime. A case in point is the controversy around current proposals aimed at the transformation of the South African judiciary. While the content and implications of the reforms might be highly contestable, it would be folly to lose sight of the underlying rationale for such a reform process: the creation of a judiciary that is accessible and legitimate in the eyes of all South Africans. We need to ask ourselves whether we have succeeded in going beyond merely changing the face of our institutions towards developing a new public ethic that puts people at its centre. ●



## **BUILDING NATIONS**

### TRANSITIONAL JUSTICE IN THE AFRICAN GREAT LAKES REGION

By Charles Villa-Vicencio, Paul Nantulya and Tyrone Savage

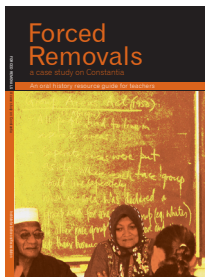


*Building Nations* provides an uncomplicated road-map of the prevailing political situation in the Great Lakes region and functions as an indispensable guide to the politics of transition in Burundi, the Democratic Republic of the Congo, Rwanda and Uganda. Africa has its ample share of failed states and corrupt leaders, but there are also signs of positive transition in several countries on the continent, where we see movement from autocratic, violent rule to the beginnings of democracy. The insights offered in this collection support the effort to recognise genuine advances, and to engage in constructive, informative and critical debate.

## **FORCED REMOVALS:**

### A CASE STUDY ON CONSTANTIA

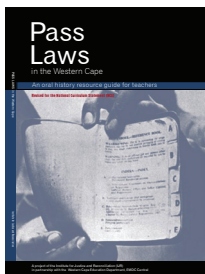
AN ORAL HISTORY RESOURCE GUIDE FOR TEACHERS



History should be a process of enquiry and debate based on evidence from the past, both written and oral. Learners must be given opportunities for 'doing history' as historians do it: constructing historical knowledge from evidence derived from historical sources. This publication, the result of one such process of 'doing history', tells the story of forced removals from Constantia. In addition, it illustrates how an interactive oral history project can be conducted within the parameters of the National Curriculum Statement. It is aimed at Grade 11 History teachers, but the activities can be adapted for any high-school grade.

## **PASS LAWS IN THE WESTERN CAPE**

AN ORAL HISTORY RESOURCE GUIDE FOR TEACHERS



The Education Management Development Centre Central of the WC Education Department, in partnership with the IJR, embarked on an oral history project involving 50 Grade 11 learners from five high schools. The learners spent a day with people who were affected by the pass laws, including residents of Langa township and members of the Black Sash. This publication

gives an account of the process, and examines what the pass laws were, their history, how they were applied and the impact they had on people's lives. The book then discusses the relevance of oral history to the History syllabus for Grade 11 and presents some ideas for classroom activities, which can be adapted for any high-school grade.

The Institute for Justice and Reconciliation  
cordially invites you to a public event with the theme:

## **THE TRC: TEN YEARS ON**

The programme includes:

Archbishop Desmond Tutu, Alex Boraine and Yasmin Sooka  
in conversation with Tim Modise.

and

Reflections by the TRC's first witnesses,  
Nomonde Calata and Nohle Mohapi.

**VENUE: South African Museum**

**DATE: 20 April 2006 at 18h00**

**RSVP BEFORE 13 APRIL 2006**

**FAX: 021 659 7138 or TEL: 021 659 7121**

This event forms part of a two-day conference from  
20–21 April 2006 with the same theme. For further information,  
please contact the numbers above.

## **THE SA RECONCILIATION BAROMETER** TRACKING SOCIO-POLITICAL TRENDS

The *SA Reconciliation Barometer* project of the Institute for Justice and Reconciliation is a longitudinal study that monitors the national reconciliation process. Through regular audits of actual social, political and economic transformation; annual national surveys and ongoing anecdotal analysis of socio-political trends, the *Barometer* seeks to find some answers to the question of how the country's reconciliation process is going.

**For further information contact the Institute:**

Tel: +27 21 659 7128 or E-mail: [info@ijr.org.za](mailto:info@ijr.org.za)

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## **THE INSTITUTE FOR JUSTICE AND RECONCILIATION**

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