

Time in Perspective

Introductory Viewing

- [TRC's around the world](#) (Museum of Human Rights, Santiago, Chile.)
- [Paper on TRC's and on principles underpinning them](#)
- [Archbishop Desmond Tutu on TRC's](#)
- [Death squads and political assassinations](#)
- [Letter sent from 22 former security policemen to Archbishop Tutu, applying for amnesty](#)
- [Storming of the World Trade Center](#)

How did the TRC Function

- All of this was publicly broadcast on the SABC;
- [Torture](#) – The graphic nature of testimony – **3.10**
- [Reparation Part 1](#) (Introduction)
- [Reparations Part 2](#) - Community Visit – a police captain ordered the elimination of a group of UDF members, the operation went wrong and 11 people attending a night vigil were killed – **6.38**
- [Amnesty Hearings](#) – Evidence being taken by the Human Rights Violation Committee relating to the murder of the “Cradock Four”. The relationship between “Truth” and “Amnesty” **12.21**
- [Reconciliation](#) The Church Street/Amanzimtoti/Potchefstroom Bombings - **5.48 (NB especially at around 3.00)**
- [The Trojan Horse](#) 10.59
- [Chile, Brand, and Robben Island](#)
- [APLA at the TRC](#)
- [Valentine's Day for Archbishop Tutu](#)
- [TRC Amnesty Stats](#)

- Why call these commissions “Truth and Reconciliation Commissions?”
- Why is “Truth” central?
- What is “the Truth?”
- Do “Truth” and “Reconciliation” inter-relate? How?

- Since 1973, many “truth commissions” have been established around the world, with the majority (15) created between 1974-1994.
- Some were created by international organizations like the United Nations (UN), a few by nongovernmental organizations (NGOs), and the majority by the national governments of the countries in question.
- Counting “Commissions of Inquiry” with “Truth and Reconciliation” commissions, a partial list is:
 - The UN sponsored, financed, and staffed truth commissions in El Salvador (1992-1993). Commissions sponsored by NGOs include Rwanda (1993) and Paraguay (1976).
 - In South Africa, the African National Congress (ANC) sponsored two commissions of inquiry (1992 and 1993) investigating its own conduct during the anti Apartheid struggle.
 - The better-known South African Commission of Truth and Reconciliation was established by South Africa’s post-Apartheid parliament in 1995; the Commission’s report was issued in October, 1998.
- Other governmentally sponsored commissions (several of which never published final reports) include:
 - Argentina (1983- 1984, resulting in the powerful report *Nunca Mas*, “Never Again,” translated into English and published commercially in 1986 in Britain and the U.S.);
 - Bolivia (1982-1984; disbanded without issuing a final report);
 - Uruguay (1985);
 - Zimbabwe (1985, report never publicly released);
 - Chile (1990-1991);
 - Chad (1991-1992);
 - Germany (1992-1994);
 - Guatemala (1997-1999);
 - Haiti (1995-1996);
 - Nigeria (1999);
 - Philippines (1986, report never completed);
 - Sierra Leone (called for in 1999, still underway);
 - Uganda (1974 and 1986-1995); Brazil (1986);
 - East Timor/Timor Leste (1999-2000);
 - Ethiopia (1993-2000); and
 - Honduras (1993).
- The website of the [US Institute of Peace](#) is a good albeit partial repository of information including links in some instances to the full text of commission reports.
- And Wikipedia is another good source for an initial survey.

THE TRC'S STRUCTURE/TERMS OF REFERENCE

- Established in 1996, the TRC was tasked to focus on the most **egregious human rights violations committed during the conflicts of the past and was limited to the period 1960-1994.**
- Besides the amnesties I have described, the TRC also functioned within the context of a newly agreed final constitution, an agreement dated at 1995. The 1993 interim constitution, agreed upon at [multiparty talks](#), ushered in a legal order based on the concept of [constitutional supremacy](#). From 27 April 1994, the interim constitution became the law's touchstone. And the 11-person court it established became the highest legal authority in the land in all constitutional matters.

Why a ConCourt?

- In 1994, the judiciary was overwhelmingly white (and male) and therefore limited in its legitimacy and its capacity to draw on the sense of justice of all communities and both sexes. It was agreed that a new court, more representative of South Africa's diverse population, should be established to protect the Constitution and the fundamental human rights it entrenches.
- A question that arose in the negotiating process concerned the sort of institution needed to protect a constitution and the rights enshrined in it. Should South Africa create a specialist Constitutional Court, use the existing court structure to act as the guardian, or opt for a hybrid?
- In many English-speaking countries, ordinary courts can scrutinize constitutional issues. But these courts needed to be credible and command respect. Could the highest structures of the South African judiciary - the Supreme Court and the Appellate Division - be transformed into such institutions?
- The ANC felt that this task would be too difficult and that the new Constitution needed as its protector a new court - one untainted by the past. In this sense, the decision to create a Constitutional Court was a political one. And the process of appointment to the Court - clearly laid down in the interim constitution - was the product of compromise.

- As an aside, the ConCourt was inaugurated by President Mandela on 14 February 1995. and it is fitting that, on **15 February 1995**, the 11 judges took their seats to hear the first case. [S v Makwanyane](#), raised the question of the constitutionality of the death penalty.
- Why is this fitting, why is it unsurprising?
- For three days the judges heard arguments. The facts of the case, in which Makwanyane had been sentenced to death, were not directly relevant: the core issue was what bearing the interim Constitution had on the death penalty. Did the death penalty violate sections 9, 10 and 11(2), which guaranteed every individual the right to life, the right to dignity and the right to be free from torture and cruel punishment?
- In its judgment, handed down on **6 June 1995**, the Court unanimously found that the death penalty was indeed unconstitutional.
- The ConCourt also certified the final Constitution, suggesting some amendments and finally certifying it.

THE TRC'S STRUCTURE/TERMS OF REFERENCE

- Note that there has been considerable criticism relating to the TRC's narrow terms of reference, and its subsequent failure to grapple with the structural aspects of apartheid and related victimization.
- Its specific mandate, as set out in the Act, was:
- “to provide for the investigation and the establishment of as complete a picture as possible of the nature and extent of all gross violations of human rights committed within or outside the Republic during the period 1 March 1960 to 5 December 1993, and emanating from the conflicts of the past, and of the fate or whereabouts of the victims of such violations; the granting of amnesty to certain persons in respect of acts associated with political objectives committed during the said period; the taking of measures aimed at the restoration of human and civil dignity and the rehabilitation of victims of gross violations of human rights; the reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights.”
- Despite the Commission's relatively narrow focus, this was a massive undertaking and the Commission was given an unrealistic period of 24 months in which to complete its task. No provision was made for a preparation period in which staff would be recruited, structures established and strategies developed - the clock started ticking from the moment President Mandela appointed the Commissioners.
- What are the pros and cons of shorter/longer/unlimited time-frames?

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THE TRC'S STRUCTURE/TERMS OF REFERENCE

- The Act provided for the establishment of three Committees to deal with the relevant mandated areas:
- **Human Rights Violations Committee** – two core inter-related functions:
 1. To conduct public hearings across the country where victims would be able to testify about violations they had suffered.
 2. To conduct research and investigations into relevant gross human rights violations to address individual cases and provide relevant information for the Commission's final report.
- **Amnesty Committee** – Amnesty granted on the basis of key criteria -
 1. true disclosure,
 2. the political nature of the act,
 3. the time period in which the crime was committed,
 4. and an assessment of the proportionality between the nature of the offence and its related objective.
- **Reparation and Rehabilitation Committee** – The development of comprehensive recommendations for Government on reparation policy and its implementation.

THE TRC'S STRUCTURE/TERMS OF REFERENCE

• **APPOINTING THE COMMISSIONERS**

- After TRC legislation was passed, civil society groups continued to lobby for an open, transparent nomination and selection processes.
- Although the Act allowed the President to select and appoint commissioners, Mandela responded by introducing a public participatory process, appointing a committee to oversee a public nomination, selection and interview process.
- Civil society was encouraged to make nominations, resulting in the submission of 229 names, which the Committee narrowed down.
- The Committee subsequently conducted public hearings with a short-list of 46 candidates. 25 names were then forwarded to President Mandela, who chose 17, adding some who had not been on the list. He chose to not take advantage of the option to appoint international commissioners.
- Commissioners had a range of backgrounds. This was essential to the success of the Commission. Why?
- There was representation from all racial groups, although whites were clearly over-represented with six positions. Seven women were appointed and including the Chairperson, three Christian ministers were included. None of the Commissioners were active politicians, although two were former parliamentarians. In addition, most of Commissioners had been actively engaged in some form of socio-political activism relating to the past – NGO's, legal and medical fields.
- Not surprisingly, and controversially for some, this meant that most Commissioners were drawn from within the broad parameters of the anti-apartheid movement.

ATTITUDES TOWARDS THE ESTABLISHMENT OF THE TRC AT THE TIME

- Significant numbers of South Africans were opposed to any kind of detailed introspection into the past – this was true both political elites and their constituencies.
- Primarily those who were either functionaries or beneficiaries of the apartheid system, including the security forces, fragmented rightwing political forces, as well as many of those associated with the homeland and self-governing regimes that complemented the apartheid regime articulated this position.
- Some members of *MK* had similar reservations.
- Some felt that the TRC would be used as a political weapon by a dominant ANC bent on retribution.
- While the NP begrudgingly accepted the inevitability of some sort of process, it continuously raised concerns about prejudice and “political agendas”. The ANC’s other partner in the government of the then “government of national unity”, the IFP, denounced the process from its inception, and refused to constructively engage in the debates that fed into the legislative process.
- Both the NP and IFP also criticized the appointment of many Commissioners, including the Chairperson, Archbishop Tutu, who was seen - especially by the IFP - as staunchly pro-ANC, and the vice-Chairperson, Alex Boraine, with whom the NP had a history of altercation.

ATTITUDES TOWARDS THE ESTABLISHMENT OF THE TRC AT THE TIME

- By and large these groups remained vocal in their opposition, although it could be argued that the attention given to some of them more reflected their sensationalist ability to influence the media than anything else, and as such was somewhat disproportionate in terms of the constituencies they represented.
- Nevertheless, they articulated important issues especially relating to *political neutrality*, which in turn provided important reference points around which the Commission would enduringly and repeatedly have to plot its course.
- More significant, yet less vocal, were the wider concerns of ordinary South Africans, far too many of whom had been direct survivors of apartheid repression and the related conflicts of the past.
- The bulk of these people had not been consulted during the legislative drafting process. Although most welcomed an opportunity to record and acknowledge what had taken place in the country, those who continued to seek redress through the criminal justice system vehemently opposed the inclusion of conditional amnesty provisions in the Commission's legislation.

ATTITUDES TOWARDS THE ESTABLISHMENT OF THE TRC AT THE TIME

- Conditional amnesty provisions led to a legal challenge of their constitutionality by three prominent anti-apartheid families, in what has become known as the AZAPO case.
- The families of several political activists who had died under suspicious circumstances, including Steve Biko and Griffiths Mxenge, challenged the amnesty provision of the TRC legislation in the then newly created Constitutional Court.
- In a ground-setting judgment, the then newly formed Constitutional Court upheld the constitutionality of removing the victims right to legal redress, but **emphasized the imperative of proactively securing relevant information about the violations and the provision of reparations for victims and survivors.**
- This was soon after Parliament passed the *Promotion of National Unity and Reconciliation Act (No. 34 of 1995)*. In the ruling upholding the Act, Chief Justice Ismail Mohammed cited the provisions for reparations as a satisfactory substitute for the right of individuals to seek redress in criminal and civil courts (The AZAPO Case).

ATTITUDES TOWARDS THE ESTABLISHMENT OF THE TRC AT THE TIME

- Founded by legal statute and subject to South Africa's new constitutional dispensation, the TRC was bound by a new and largely untested constitutional and legal framework that sought to provide the promotion and protection of a range of fundamental rights to all South Africans.
- Somewhat ironically, it was the alleged perpetrators of violations who sought to use these new legal and constitutional protections to constrain efforts by the Commission to fulfil its mandate.
- Consequently, considerable attention and resources were diverted by the Commission for purposes of navigating its way through this legal minefield as it responded to the legal challenges mounted against it.
- It is fair to say that the Commission was faced with an intimidating array of substantive and procedural challenges from its inception.
- Besides these legal challenges, and despite favorable comparisons with other Commission processes elsewhere in the world, it was afforded inadequate human and financial resources to comprehensively address these challenges, many of which would continue to plague it throughout its existence and beyond.

ATTITUDES TOWARDS THE ESTABLISHMENT OF THE TRC AT THE TIME

- Each of the major political parties took umbrage at some aspect of the TRC.
- Ex-State President P.W. Botha defied a subpoena and balked at cooperating with the TRC.
- The African National Congress (ANC), surprised by the attribution of responsibility for abuses to both the government and the ANC-led opposition, filed suit with the Constitutional Court in an attempt to block the release of the TRC's 'final' report, which was eventually published in October 1998.
- Buthelezi, leader of the Inkatha Freedom Party (IFP), filed suit over statements in a codicil to the final report that blamed the IFP for helping foment violence. The case held up the work of the TRC for several months before it was settled as late as in January 2003.
- Public opinion surveys at the time of inception indicated a split in whites' and blacks' attitudes towards this process. Reacting to one set of poll results, TRC Chairman Desmond Tutu asserted that whereas the majority of blacks embraced reconciliation, whites were generally far less accommodating.

- We are going to look at the TRC initially through the lens of its report; this means that we will see it in the first instance as it saw itself, largely retrospectively.
- Subsequently, we will look at other perspectives on it and its work – to maintain the spirit of critical reflection and engagement we have adopted up to now.
- [Tutu and the TRC](#)

TRC – Concepts and Principles – General Overview

- **Post-amble to the Interim Constitution (Act no 200 of 1993):**
- **The place to start is Constitution – it provides a historic bridge** between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of color, race, class, belief or sex. **The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.**
- The adoption of this Constitution lays the secure foundation for the people of South Africa 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* but not victimization.**
- **In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.**
- The cut-off date, relating to offences that could be considered by the TRC's Amnesty Committee, was initially set to be before the 6th of December 1993.
- However, following requests from various political formations, especially those organizations whose members were incarcerated for offences committed just before the 1994 elections, and because of the relentless pursuit of the objective of national reconciliation, parties agreed to an extension of the cut-off date to 10 May 1994, the day of the inauguration of the new, democratically-elected President of the Republic.

TRC – Concepts and Principles – General Overview

- How did the Commission want itself to be seen? The Commission wanted to be viewed as **part of the broader national process of ‘building a bridge’** between a deeply divided past of “untold suffering and injustice” and a future “founded on the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all.”
- The Commission was founded in the belief that, in order to build the “historic bridge” of which the interim Constitution spoke, **one must establish as “complete a picture as possible” of the injustices committed in the past.** It was felt at the time that this should be **coupled with a public, official acknowledgement of the “untold suffering”** which resulted from those injustices.
- The task assigned to the Commission proved to be **riddled with tension and challenge**, some of it of a legal nature, but so much of it moral. Ethical, philosophical, as well as emotional and practical – a hugely complex task. As the Commission notes, for many, truth and reconciliation seemed separated by a gulf rather than a bridge.
- Moreover, in the process of implementing its obligation to consider amnesty for perpetrators (as required by the interim Constitution), the concept of justice also came under constant scrutiny. **“We’ve heard the truth. There is even talk about reconciliation. But where’s the justice?”** was a common refrain.
- Before explaining how the Commission approached the overlapping and apparently contradictory goals of truth, reconciliation and justice, it highlights two more general sources of tension in its own report.

- **The public nature of the Commission:**
- **A distinctive feature of the Commission was its openness to public participation and scrutiny.** This enabled it to reach out on a daily basis to large numbers of people inside and outside South Africa. In light of this, the media was able to confront South Africans with vivid images on their television screens or on the front pages of newspapers.

What was the role and effect of the media?

- People saw, for example, a former security police officer demonstrating his torture techniques. They saw weeping men and women asking for the truth about their missing loved ones. Some of the images were disturbing, viewer discretion was often advised.
- **The media generated significant public debate on central aspects of South Africa's past; it raised the general levels of historical awareness.** The TRC felt that issues that emerged as a consequence of its functioning helped the nation to focus on values central to a healthy democracy: transparency, public debate, public participation and criticism.
- The Commission's view is that **the sword wielded by the media was double-edged.** The fact that much of the Commission's work was transmitted by the media meant that by and large, **public perceptions were formed by what people saw on television, heard on the radio or read in the newspapers.**
- Thus, while the 'sound-bites', headlines and photographs of what happened in the public domain contributed significantly to the work of the Commission, they also had the effect of making aspects of its work **more vulnerable to criticism.**

- The TRC perception included the fact that **many people found it difficult to understand** how the work of the three separately functioning subcommittees, with **apparently contradictory aims**, could contribute to the overall goals of promoting national unity and reconciliation.
- **The major source of conflict in public debate concerned the question of amnesty.** As already mentioned, the decision to grant amnesty was a feature of the negotiated political settlement, the result of compromise, and became a central responsibility of the Commission.
- Many participants, however, saw a **contradiction** between the work of the **Human Rights Violations Committee**, which **devoted its time and resources to acknowledging the painful experiences of victims of gross violations of human rights**, and the work of the **Amnesty Committee**, which **freed many of the perpetrators of these violations from prosecution (and from prison)** on the basis of full disclosure – and with relative immediacy.
- This **tension was deepened** by the fact that the **Amnesty Committee** was given **powers of implementation**, while the **Reparation and Rehabilitation Committee** could, by and large, **only make recommendations. Perpetrators** were granted **immediate freedom. Victims were required to wait** until Parliament had accepted or rejected the recommendations of the Commission.

- **PROMOTING NATIONAL UNITY AND RECONCILIATION:**

- The overarching task assigned to the Commission by Parliament was the promotion of national unity and reconciliation.

- **Debates within and outside the Commission demonstrated that the interpretation of this almost tautological, contradictory concept was highly contested.** The Commission at the time felt that whilst there was no simple definition of reconciliation, from its perspective and based on its operation, the following essential elements emerged, documented in its report:

1. **Reconciliation is both a goal and a process** - the ‘journey’ itself must be a reconciliatory one, and not just the end result. If the process is not reconciliatory, it should be abandoned.

2. **Different levels of reconciliation –**

- ***Coming to terms with painful truth:***

- Help people to reach ‘closure’, to make peace with what had happened – or to deal with alienation.
- Help perpetrators in coming to terms with guilt and shame

- ***Reconciliation between victims and perpetrators:***

- The **contribution of the Commission to reconciliation between specific victims and perpetrators** was necessarily limited - by its time frame, mandate and resources. In a limited number of cases, however, the Commission felt it assisted in laying the broader foundation for reconciliation.

- **Different levels of reconciliation (ctd)–**
- **Reconciliation at a Community level:**
- The effects of human rights violations were multiple, **inflicting lasting damage on social relations**, on everyday relationships.
- **Return** (New York Times: JOHANNESBURG, Dec. 10— "In a move that signals that the most heinous crimes of apartheid will be forgiven rather than punished, South Africa's Truth and Reconciliation Commission granted amnesty today to a white police officer who was already serving a life sentence for his role in the slaying of 11 people.")
- **Eliminate**
- At a national level, the main dimension of the conflict was between **the oppressed black population and the former state**.
- However, within and between communities, conflict played itself out in various complex, often insidious, and very detailed ways. **Internal divisions occurred across a range of social lines** - between the young and the old, men and women, neighbors, as well as between different ethnic and racial groups.
- **The Commission itself found this a definitional and pragmatic minefield**, and had to navigate its way through ongoing national and local debates about what reconciliation really meant.

Different levels of reconciliation (ctd)–

- Reflecting on its own contribution, it noted what it termed “hallmarks”:
 - **The democratic, transparent, inclusive process of the Commission** and the extensive public debates surrounding its work enabled it **to play a role in nurturing and promoting the central values of open debate and a democratic culture** – values which had not existed in the past and were struggling to gain traction in the present.
 - The Commission made significant progress in establishing **“as complete and reliable a picture as possible of past violations.”**
 - The Commission **facilitated the official, public acknowledgement of these violations.** In so doing, it sought to **restore the dignity** of those who had suffered.
 - By holding accountable not only individuals, but also the state and other institutions, and by making recommendations aimed at preventing future violations, the Commission **sought to help restore trust in these institutions.** Such trust it felt was necessary for the functioning of a healthy democratic system.

Different levels of reconciliation (ctd)–

- ***Reconciliation and redistribution:***
- The broad challenge of reconciliation between those who benefited from the past and those who continue to be disadvantaged by past discrimination was central to the vision contained in the post-amble to the interim Constitution.
- The road to reconciliation **meant both material reconstruction and the restoration of dignity**. It involved the **redress of gross inequalities** and the **nurturing of respect for common humanity**.
- It entailed sustainable growth and development of the spirit of *ubuntu*. It **implied wide-ranging structural and institutional transformation** and the **healing of broken human relationships**.
- It demanded guarantees that the past would not be repeated. It required **restitution and the restoration of our humanity** - as individuals, as communities and as a nation.
- Can this ever be achieved?

Different levels of reconciliation (ctd)–

Telling the “Full Story” and the Truth:

- Given the magnitude of this exercise, the **Commission felt its quest for truth should be viewed as a contribution to a much longer-term goal and vision.**
- Its purpose in attempting to uncover the past had **nothing to do with vengeance**; it had to do, rather, with **helping victims to become more visible and more valuable citizens** through the public recognition and official acknowledgement of their experiences.
- In addition, **by bringing the darker side of the past to the fore**, those responsible for violations of human rights could also be held accountable for their actions.
- In the process, they were given the opportunity to acknowledge their responsibility to contribute to the creation of a new South African society.

Telling the “Full Story” - the Truth (TRC Report Vol. 1, Ch5)

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- Climate setting exercise, building a foundation for the future.