

**The Failure of Good Intentions:
What Went Wrong with the Truth and Reconciliation Commission upon Granting Reparations?**

After the end of apartheid, the South African government found itself left to tend to not only a scarred nation, but also gaping wounds that had yet to be treated. In order to begin this lengthy healing process, the government formed the Truth and Reconciliation Commission. The task of the Truth and Reconciliation Commission, otherwise abbreviated as the TRC, was to deal with cases of “gross human rights violations” committed during apartheid by seeking out perpetrators and victims and arranging confession hearings, as well as granting amnesty to repentant perpetrators and reparations to deserving survivors. As part of the Truth and Reconciliation Commission’s mandate, the government sought to issue reparations to citizens who had suffered "gross human rights violations," but victims and analysts alike criticized the implementation of these standards. Additionally, because of the South Africa's large and diverse population, granting reparations to all victims was already an impossible endeavour from the start. No matter how many lives are eased, there will always be some remaining tension. Many Africans are still dissatisfied with what they have received from the TRC and the South African government, which begs the question of how effective the TRC’s efforts were. While some believe that the government has done its best and now any additional repair is left up to South African citizens, others believe that the TRC failed in properly granting reparations. Some believe this failure adds up to the definitions of *who* deserves reparations being too wide, and that victims were invalidated as a result. Others believe that the government was too soft in handling perpetrators and that these individuals were not properly punished. Yet another set of criticisms describes that the TRC itself was corrupt. However, findings suggest another set of criticism that underlines the fact that there was simply too little in the way of resources to grant retribution-based reparations. Because of these factors,

it is logical to conclude that the struggle to acquire adequate reparations for everyone is far from over.

The TRC's Mission

Like most projects, the Truth and Reconciliation Commission started out with good intentions. In their original proposal, the TRC stated that the meaning of these reparations was to "help victims overcome the damage that they suffered, to give them back their dignity and to make sure that these abuses do not happen again" (1995:1.2). In going over the moral basis reparations, the TRC included a bulleted list of their standards:

- *Victims of gross human rights abuses have the right to reparation and rehabilitation because of the many different types of losses they have suffered.*
- *Victims need to be compensated in some way, because the amnesty process means they lose the right to claim damages from perpetrators who are given amnesty.*
- *The present government has accepted that it must deal with the things the previous government did and that it must therefore take responsibility for reparation. (1995:1.3.1)*

In a way, the act of granting reparations served not only as an act of compensation, but as a type of protection for citizens. The TRC realized that part of their protocol, granting amnesty to wrongdoers, would sacrifice the chance for those who have been wronged to finally claim justice; however, claiming justice was not the point of their mission. At the point in time the TRC began its work, such methods of attaining retribution-based reparations were impossible. Perpetrators would be granted amnesty for their actions, making the notion of seeking vengeful justice hypocritical and problematic. If the TRC were to forgive perpetrators, then turn around and subject them to harsh punishment, this would only stir more uproar. While what went on under apartheid is worthy of being addressed, the TRC was under a tight bind; they *had* to tread lightly in order to solve remaining conflicts as peacefully and simply as possible. A key element identified in the mission statement of the TRC was *responsibility*, which further underlines the importance of these reparations. Another aspect of the TRC's aim was to take up for what the South African government failed to do in the past. It is undeniable that countless wrongs were committed under apartheid, but the old government either

ignored or sanctioned these acts. By granting reparations to victims of the old government, the TRC was finally able to publicly acknowledge the horrors their citizens underwent. In their original proposal, they went thoroughly over the process of granting reparations and all that entailed:

"Consultative workshops were held throughout the country. All the information collected by the Committee helped it to: find out the harm that was suffered; find out what the needs and expectations of victims are; work out ways to identify and help victims in immediate need; and make proposals for long term measures for reparation and rehabilitation." (1995:1.4.1)

Their ultimate goals were to keep these reparations "development-centred; simple, efficient and fair; culturally appropriate; community-based; and promoting healing and reconciliation." (1995:1.4.2) Their list of goals and standards goes on and on, and continue to sound of nothing but good intentions. So what went wrong? Firstly, we will have to examine how this process worked.

How Reparations Worked

The TRC determined who to grant reparations by holding multiple open workshops, where all citizens were allowed to attend and air their grievances. These workshops were held all throughout the country, some taking several days. Each workshop was transcribed accordingly for further evidence. Such a setup provided the TRC with the ability to hear multiple viewpoints and cases at once.

One such hearing took place in Pietersburg. While the purpose of this hearing was to air grievances it highlights several other tensions within South African society that could not be easily mended through reparations. One of the first speakers was a man by the name of Mr. Lategan, who stated:

"Chairperson, I've spent almost all my adult life trying to persuade White people that all the people living in South Africa are citizens of this country and to accept the logical consequences of such a reality. That has brought deep division in the White community especially in this Province. Politics beset every fibre of our community, in our schools, in our Churches, in our agricultural unions, in our cultural organisations, every bit of the community got politicized and polarized. Sir, I never abandoned my own people, I stayed with them helping them through the difficult times of reform firstly because it was my duty and also because I love them. I've never been a broker or an advocate for the Right Wing tendencies yet if my Black friends want to understand the past, they need to

understand what the cause of these Right Wing tendencies were.

[...] Sir we have a wonderful country and we have a beautiful Province, we have everything in our favour. We as the people of this Province must learn to work together. Let us purge our hearts of all the bitterness of differences of the past. A wound must be cleaned before it can be healed otherwise it will keep on festering. Let us cleanse our hearts and our minds and take hands and work together. It is in our hands whether we succeed or not. Let us build a common loyalty towards our country and towards our Province and may God Almighty help us all to heal the wounds of the past. In that process we must go forward on the continued road of reform for the better of all the people. Shall we all pray together Nkosi Sikelele i-Afrika. I thank you” (1997.)

While Mr. Lategan's speech was much longer than what is quoted, he ultimately came to identify that there was some existing tension coming from the White side of South Africa; that there were a lot of general misunderstandings amongst all South Africans with regards to how the old government worked; and that in order for things to truly be resolved, everyone had to learn to work together without prejudice or resentment. This shifted the discussion away from reparations and toward how the entire community could work together to improve themselves, suggesting a hidden dual purpose to these workshops. They were meant to not only identify and apologize to victims, but to try to rally communities into working together to move past apartheid both socially and with the help of government.

Underlying Problems

One of the more notable reparation cases came from the documentations of Laura Pollecut, a TRC worker who travelled to Pietermaritzburg to interview female victims of various atrocities. It is important to note her foreword at the beginning of the document, where she listed the crimes wrought against these women (some of which included “three [...] widows who had lost their homes, two young girls [...] who had lost their parents plus their homes” (1995:1) and “cases of SADF and SAP harassment and abuse” (1995:1.)) Pollecut stated explicitly:

“I am not sure whether all of [these women] can be addressed as the Commission is only really concerned with serious human rights abuses. For example, the whole area of refugees, the majority of which were women, will probably not be perceived as a serious human rights issue. Yet, if one can argue

that these women were attacked in their homes, forced to flee, losing all their possessions and their homes, they deserve compensation – reparation” (1995:1).

If this was truly the case of these women, it is questionable as to why their cases have to be argued at all. The document goes on to list *several* horrible crimes wrought against individual women, in fact. One woman listed grievances such as:

- *Her home was attacked and her son was shot. The police took the son and put him in a combi. He was hit and tortured with electric shocks and tubes. A lawyer “stopped” the torture.*
- *Her house was burnt and in 1990 windows were broken which she then replaced with the help of her brothers. (1995:3.)*

While the anonymous woman received small loans and grants to help with the damages, many other woman listed were not nearly as fortunate – if that is even the proper term. There is a clear imbalance here concerning which “gross human rights violations” are actually gross enough to warrant governmental compensation. If we compare this document to the TRC's original proposal, the TRC states:

“Reparation will be given only to those formally declared victims by the Commission. The Commission will decide if someone is a victim by looking at all the information they have on the gross human rights violation suffered by that person. It may be possible, in certain circumstances, that the relatives and dependants of victims will also qualify for reparation.” (1995:2.2)

However, if these women's eligibility is *dubious*, then who qualifies automatically for reparations? Why do some people receive compensation, but not others? Why are some events of human suffering more worthy of aid than others? What is the TRC's *criteria* for determining who is worthy of reparations? In their original document, the TRC merely stated, “Only people who made statements to the Commission; or were referred to in someone else’s statement can be considered for reparation.” (1995:2.2) There were no specific requirements, which – especially when looking through the eyes of a victim – is very troubling and lends to doubt and uncertainty for many cases. Upon further investigation, these women were not the only deserving people who may have been excluded from receiving reparations. A 2011 report by the International Center for Transitional Justice outlined the

official definition of included victims, as well as the numbers relative to the amount of total victims and which of them received any kind of reparation. The ICTJ – taking reference from the TRC – had this to say about how victims are categorized: “In offering educational and medical benefits to apartheid victims, the regulations define victims as ‘those who suffered physical, mental, or emotional injury,’ and who either testified before or registered with the TRC prior to the release of its report in 2003.” (2011) This definition is still very loose; in addition, acceptance of reparations had long since shut down, which excluded many people who were still in need of explanations, justice, or any kind of aid. The ICTJ went further into their findings, mentioning the Khulumani Support Group – a support group for apartheid victims – in the process:

“The Khulumani Support Group, a 54,000-member organization established in 1995 by survivors and their families, says their records indicate at least 65,000 victims of gross human rights violations covered by the TRC act who should be entitled to reparations. The TRC itself found about 8,000 victims who could have been registered if not for the closing of registration of the victims’ list. Thus, if eligibility for reparations is to be based on the closed list, those who received compensation earlier will receive medical and educational benefits while those who were previously omitted will again be excluded from reparations. When we look again at Pollecut’s own writings, it begs the question of whether or not these rulings were highly subjective, or if there were other factors involved that kept some victims from receiving reparations.” (2011)

In yet another workshop, we do not find citizens discussing reparations in the sense of awards, but through criticizing the TRC’s judgment. In a 1997 report titled “Survivors’ Perceptions of the TRC and suggestions for the Final Report,” the workers at The Centre for the Study of Violence and Reconciliation and The Khulumani Support Group recorded their findings upon speaking with members of the Khulumani Support Group. There they found multiple criticisms of how the TRC carried out its decision-making, such as:

** Justice equals Reconciliation: Participants in this group felt that even if perpetrators were held accountable through the amnesty process for their deeds, justice still had to be done. There were strong feelings expressed that perpetrators must be made to contribute materially and financially toward the reparation and rehabilitation of victims. Justice and punishment was still favoured as a way of dealing with the perpetrators over amnesty.*

** Reconciliation is an Individual Process: Some victims/survivors also saw reconciliation*

as a deeply personal experience and that each and every case must be dealt with individually. Perpetrators must therefore be held accountable individually and be accessible to the victims to meet them.

** Reconciliation tied-up with Reparation: A sentiment expressed by most victims/survivors was that reconciliation and reparation were integrally linked. The slogan "No Reconciliation without Reparation" was echoed in many ways throughout the workshops. (1998:2.1.1).*

The basic idea here is that the TRC did not do *enough*. Perpetrators of crimes were not made to physically repent for their wrongdoings, instead being forgiven and let off the hook. Many victims wanted the perpetrators to actually be *punished* for what they had done, so seeing them simply be let go felt extremely dissatisfying and probably denied them the catharsis they desired or needed to recover. Then, reconciliation between perpetrators and victims were not handled as individual cases, but in group meetings where issues were most likely more cluttered, time was more limited, and victims did not get much chance to have one-on-one discussion with the accused. Lastly, many survivors wanted reconciliation and reparation to be rendered mutually exclusive, rather than an either/or situation where neither option was guaranteed.

The document goes further into the complaints of survivors, creating a summarizing list of what many felt went wrong. Many survivors still felt divided despite the TRC's efforts, and that while the TRC had done well on a *national* level, they stumbled in resolving things at the *community* level. Many felt that the TRC was just crossing into new territory in dealing with community-based conflict, and that they could not call themselves done just yet. There were still noticeable gaps between communities, especially between the Coloured and White communities. Citizens noted that there was very little White attendance at workshops. One participant went so far as to comment: "White people do not want to reconcile with blacks since they do not turn up to the TRC meetings." (1998:2.1.2)

Secondly, many survivors thought the way perpetrators were handled was shoddy, because *many* were left in high-ranking positions, leaving survivors still at their mercy – and while many survivors sought out those who had wronged them, the TRC did little investigation of these offenses.

One participant commented on this issue with: “The TRC have not helped with anything here in Duduza. My son was shot. A boy of 15 years - shot with 4 bullets by a policeman. Last year when I went to the police to inquire I was told that the case ended on the 5th of February 1996. The policeman is still working here...” (1998:2.1.2) This issue was similarly touched upon in a political cartoon drawn by Zapiro.



© 2012 Zapiro (All Rights Reserved)
 Printed/Used with permission from www.zapiro.com

In the above comic strip, we see white perpetrators complaining of the psychological trauma put upon them by the acts they committed during apartheid, and thus being granted reparations along with truly innocent victims. According to the Khulumani report, many victims felt similarly, and thought that perpetrators were secretly being rewarded by the system not only through amnesty, but also through many other ways. One participant said, “Perpetrators are not seen. The government is always begging perpetrators. A lot still needs to be done on the issue of forgiveness” (1998:2.1.2), and yet another commented, “Most perpetrators do not indicate any sign of remorse and are therefore not serious about reconciliation.” (1998:2.1.2) This communicates the idea that even *reconciliation* was not fully achieved; because of perpetrators' failure to even show up to workshops, combined with the TRC's usage of amnesty, shaky deliverance of reparations, and minimal effort in arranging meetings between the victim and their offender, many victims could not see how perpetrators were actually being

punished. The Khulumani Group succinctly summarized the participants' opinions as such: “Many participants felt that the TRC has only raised the hopes and aspirations of the people but that tangible results have not emerged; meeting the perpetrator according to the participants was one way this could have occurred.” (1998:2.1.2)

Many participants also expressed dissatisfaction with the methods used to inform victims of the workshops and other meetings. The ICTJ criticized more recent methods:

“The DOJ has invited comments on the regulations before June 8, 2011; however, there has been little effort to ensure victims are made aware of the regulations or the deadline to comment. Moreover, given the length and complexity of the regulations themselves and many victims’ limited literacy or lack of access to information technology, SATJC is concerned meaningful participation will also be limited.” (2011)

Members of the Khulumani Support Group expressed similar views. Many saw the Commission's informational methods as “flawed and inadequate. For example, people indicated that the TRC had hired town councillors (or previous town councillors) to take statements. Victims felt that these individuals did not have a deep interest in the TRC process.” (1998:2.1.2)

Because of these factors, analysts such as Nahla Valji felt that the TRC’s practices were a grand failure. In her 2003 essay, *South Africa: No Justice without Reparation*, Valji referred to the TRC as a “[deflecting] responsibility from the broader structures of apartheid and those who benefited from them” (2003). This shows from another perspective how deeply the TRC failed to penetrate the existing conflicts within South Africa during the period; Valji outlines a sense of on-going conflict spawned from the aftereffects of the TRC, suggesting a viewpoint that the organization did little to improve the situation.

Conclusion

Annelies Verdoolaege and Paul Kerstens, both African researchers of Belgian descent, describe the TRC's challenges as being determined by factors beyond their control in the 2004 issue of *Africa*

Today; specifically, they theorize that the TRC's failures lend to a lack of clear definition of which victims deserved reparations and what these reparations would consist of. (Verdoolaege and Kerstens, 2004:78) Individual reparations were rare because the TRC did not have the finances to award every single victim, so they chose more symbolic methods of reparations. If this is the case, then it is no wonder that many victims still feel as invalidated. While it is true that the government could do so much in such delicate situations, they still do not lend much in the way of aid for victimized civilians.

In the transcript from the 1997 "Forum on reconstruction and economic justice," Professor Heribert Adam expresses his own views on the TRC's handlings:

"We all know that the Truth Commission was a compromise. A compromise between amnesia on the one side, forgetting, and ... back style drives revenge on the other.

I see one fundamental contradiction in how the Truth Commission operates and makes assumption at the moment. The one is, the one fundamental contradiction I see that the more the gory truth comes out the more the victims actually demands justice. And the more the atrocities are revealed the more the perpetrators and the previous system is still legitimised.

So, the truth actually then undermines reconciliation, because neither the victims are satisfied with that compromise nor are the other side who feels that they are de-legitimised." (1997)

This "de-legitimation" could logically form a dissonance between what the public expects and what the government is truly able to do. Although many problems still exist within South African society, and the government aimed to acknowledge the truth of what happened during apartheid and catalyse the healing process, there was no conceivable way that they could help every single person. The TRC realized this from the start, and this is evidenced clearly enough by the very loose criteria they set at the beginning of the project. While they knew that they only had so many resources to work with, they did not want to shut anyone out from the beginning; however, by their lack of resources they would ultimately have to shut out some people in favour of others. This lends back to the argument that the TRC's endeavour was impossible from the start. The TRC was destined for some amount of failure in terms of granting reparations, because there were just too little resources and too wide a berth

of survivors and victims who needed compensation.

Bibliography

- South African Truth and Reconciliation Commission. 1995. *A Summary of Reparation and Rehabilitation Policy, Including Proposals to Be Considered by the President*. [Online]. Available: <http://www.justice.gov.za/trc/reparations/summary.htm> [15 November 2012]
- South African Truth and Reconciliation Commission. 1995. *Policy Framework for Urgent Interim Reparation Measure*. [Online]. Available: <http://www.justice.gov.za/trc/reparations/policy.htm> [6 December 2012]
- The Centre for the Study of Violence and Reconciliation and the Khulumani Support Group. 1998. *Survivors' Perceptions of the TRC and suggestions for the Final Report*. [Online]. Available: http://truth.wvl.wits.ac.za/doc_page.php?did=1232&li=cat [17 November 2012]
- International Center for Transitional Justice. 2011. *South Africa: New Reparations Plan Embitters Many Victims*. [Online]. Available: <http://ictj.org/news/south-africa-new-reparations-plan-embitters-many-victims> [17 November 2012]
- South African Truth and Reconciliation Commission. 1993. *Interviews with Black Women in Pietermaritzburg*. [Online]. Available: <http://truth.wvl.wits.ac.za/thumbs.php?did=1238> [17 November 2012]
- South Africa Truth and Reconciliation Commission. Post Hearing Follow-Up Workshop. 1997. [Online]. Available: <http://www.justice.gov.za/trc/reparations/pietburg.htm> [17 November 2012]
- South African Truth and Reconciliation Commission. 1997. *Transcript: Forum on Reconstruction and Economic Justice*. [Online]. Available: http://truth.wvl.wits.ac.za/doc_page.php?did=1234&li=cat [17 November 2012]
- Stanley, E. 2001. Evaluating the Truth and Reconciliation Commission. *The Journal of Modern African Studies* 39(3): 525-546.

- Michael, M.T. 2003. *South Africa's Truth and Reconciliation Commission Closes Its Doors: Moment of Truth*. [Online]. Available: <http://www.worldpress.org/Africa/1077.cfm> [6 December 2012]
- Valji, N. 2003. *South Africa: No Justice Without Reparation*. [Online]. Available: http://www.opendemocracy.net/faith-apologypolitics/article_1326.jsp [6 December 2012]
- Verdoolaege, A. & Kerstens, P. 2004. The South African Truth and Reconciliation Commission and the Belgian Lumumba Commission: A Comparison. *Africa Today* 50(3): 75-91.
- Zapiro cartoon dated 24 October 1997. <http://truth.wvl.wits.ac.za/thumbs.php?did=1233> (accessed November 2, 2012).