

Healing the hurt



CONFRONTING THE PAST: Justice Minister Dullah Omar

Pictures: JANET LEVY

"SCREAM as loud as you want; no one will hear you," torture victims in apartheid jails were often told by tormentors who were confident that knowledge of their crimes would never go beyond the cell walls. But the recent electoral defeat of a regime that had scant respect for human rights offers the opportunity for the establishment of a new moral order in South Africa. "Now there is a chance for the whole world to hear the victims scream," according to psychologist Marlene Bosset of the Cape Town-based Trauma Centre for Victims of Violence and Torture.

Bosset was one of the speakers at "The South African Conference on Truth and Reconciliation" held in Cape Town at the end of July under the auspices of Alex Boraine's new Justice in Transition project. Some 150 delegates attended, including survivors of abuse, politician, religious leaders, diplomats, academics, writers, judges and representatives from non-governmental organisations. Speakers included key South American commentators, among them former Chilean president Patricio Aylwin.

The establishment of a Commission on Truth and Reconciliation was a key item on the conference agenda and received the support of many speakers. At the first conference on the topic, hosted by Idasa in February, it was unclear whether there would be sufficient political will for the government to appoint such a commission. At the July conference, however, Justice Minister Dullah Omar unveiled a proposal for the structure of a Truth and Reconciliation Commission, even though detailed proposals had not yet been submitted to the cabinet.

In doing so he linked his political career to the establishment of the commission, showing a resolve that drew comparisons with Aylwin, who appointed Chile's truth commission soon after his election as president.

Omar can expect to encounter some resistance as he shepherds his bill through cabinet structures.

Hints of such opposition were already evident at the conference in the absence of certain invited guests, including representatives from the military, the Nationalist Party, the Conservative Party, the Dutch Reformed Church and the Inkatha Freedom Party.

Significantly, however, two police colonels attended. Although they opposed a truth commission on the grounds that it would be "an organised witch-hunt that would divide society", they added that if a truth commission was established, the South African Police Services would "give their full support" to its proper functioning.

growing despite resistance in some quarters and concerns about possible witch-hunts and reopening

barely healed wounds. JANET LEVY attended a recent conference that examined the issues.

without endangering the patient

A police statement to the conference accepted that those applying for amnesty should "come clean" about their crimes but added that this process of confession should not "require wide publication of their identities or of the exact details of their past conduct".

Omar's proposal makes provision for a commission with a term of office of 12 to 18 months and consisting of eight to 10 people. He emphasised that they should "represent a broad cross-section of the population" since, as constitutional lawyer Albie Sachs put it to delegates, "the commission is doomed if it consists of one national group sitting in judgement on another".

Omar envisages that commissioners will be appointed by the president on the recommendation of a joint committee of parliament.

In contrast to the structure that investigated Nazi atrocities, culminating in the Nuremberg trials, the South African truth commission will not have powers of prosecution. However, it will be able to subpoena witnesses and will have powers of search and access to documents. Omar stressed that all the commission's powers would be subject to the Bill of Rights and that the body would abide by due process, in keeping with the building of a human rights culture.

His proposal envisages that the Truth and Reconciliation Commission will consist of three specialised committees.

- The Committee on Amnesty and Indemnity will hear applications for indemnity against prosecution for political offences committed before 5 December 1993 by state security forces, liberation movements and other organisations. A precondition for indemnity will be full disclosure. As stipulated in the interim Constitution, this committee will hear applications from those not already indemnified in terms of Acts passed by the previous government.

- The Committee on Human Rights Violations, in Bosset's words, "will provide a psychologically safe space" for victims of abuse and their relatives to tell their stories. This will help to piece together a picture of the human rights violations committed inside and outside South Africa between 1 March 1960 and 5 December 1993.

- The Committee on Reparation and Rehabilitation will look at ways of acknowledging wrongs committed and make recommendations on compensation with a view to restoring the dignity of victims.

Much of the legislative framework for the

commission still needs to be worked out, including the judicial procedure required in the various committees, the relationship between the committees, and whether proceedings should be open to the public. Another unresolved question is whether perpetrators of abuses should be disqualified from holding public office.

The Commission on Truth and Reconciliation will be just one aspect of a national effort to expose and redress the injustices of the apartheid system. The Land Claims Court, whose task is addressing the legacy of forced removals, and the Reconstruction and Development Programme aimed at tackling the economic deprivation caused by apartheid are others. Civil society – represented by writers, historians, religious groups and non-governmental organisations – will play its part in documenting apartheid, tending to those maimed by the system and contributing to South Africa's moral and cultural reconstruction.

Among delegates at the conference who supported a truth commission was Sachs, a bomb-blast survivor. He said the suffering in Boer concentration camps had never been publicly acknowledged and, as a result, the bitterness of the past had been carried into apartheid policies. "Now is our chance to end the cycle of suffering and revenge," he said.

The need to re-establish citizens' faith in the South African state should



CHILEAN SPEAKERS: Former president Patricio Aylwin and Jose Zalaquett, who served on his country's truth commission.



BEREAVED: Joyce Mtimkulu, whose son Siphwe went missing in 1982.

be taken into account when planning for the commission, said Legal Resources Centre attorney Steve Kahanovitz. For years the old state had turned a deaf ear to families as they searched at police stations and hospitals for missing relatives. Now there was a chance for a new relationship between citizens and state.

"Two commissioners plus staff should come to citizens in places like KwaNdebele and Springbok – and just listen. The new state must say it is acknowledging and recording violations that citizens have been through," Kahanovitz said.

Judge Richard Goldstone said South Africa had a legal and moral obligation to investigate gross human rights abuses. The international human rights movement had fought for the eradication of apartheid and South Africa had a moral duty to repay its dues. The public also had a right to information from its civil servants, he said.

Several speakers alluded to groups who

could be expected to resist entering the dialogue about a truth commission. Philosophy professor Willie Esterhuyse from the University of Stellenbosch said opinions he had canvassed from white Afrikaners had revealed "reaction ranging from a reflective acceptance to ridicule, rejection and outright resistance".

Many Afrikaners felt the commission would jeopardise reconciliation by turning into a witch-hunt and by "opening a wound that has not been stitched long". Others felt that the abuses of the state and the liberation movements cancelled each other out.

Noting that there were a number of constituencies who were unsure about the need for and wisdom of a truth commission, Idasa executive director Wilmot James called for a "campaign of persuasion" to highlight the compelling reasons for establishing a commission and to engage South African society in a dialogue about the subject.

Referring to the potential pitfalls, University

of Cape Town deputy vice-chancellor Mamphela Ramphele warned that the past could be dealt with only imperfectly and that the process would be fraught with complexities and dangers. "The options we face as a society are not whether or not we excise the abscess; it is how we do so without endangering the life of our brand-new democracy," she said. "Too much enthusiasm may lead to serious difficulties and prolong, if not completely derail, the healing process we so desperately yearn for."

But according to Andre Odendaal, director of the Mayibuye Centre for History and Culture in South Africa, the challenge of dealing with the past must be taken up because it is "crucial to the whole process of reconstruction in South Africa".

"It is really about healing a traumatised nation and restoring to it its memory. There is a need to confront the past if we wish to build secure foundations for the future." ■

Commission 'could be political weapon'

By Shireen Badat

POLICE fear that a truth commission will be used as a political instrument by the present South African government to "punish its former adversaries", representatives of the South African Police Services (SAPS) told "The South African Conference on Truth and Reconciliation".

They voiced disapproval for the idea of a truth commission but added that if it was set up they would take part. There was a need for people applying for amnesty to "come clean", they acknowledged.

A police statement read to the conference said: "Such a commission will be nothing other than an organised witch-hunt which will anew divide a society in which many amnesties have already been granted.

"A general, all-embracing and full public inquiry into the 'truth' of past occurrences is not required [by the interim Constitution]. The interim Constitution has closed 'the book of the past' and a merciless reopening of it would be in conflict with the spirit and ambit of the Constitution ... It would be unconstitutional and would undermine the concept of a government of national unity."

Police said few perpetrators would come forward to acknowledge their part in human



DOUBTFUL: Colonel I Davidson (left) and Colonel C Sonnekus at the conference.

rights violations if they believed their deeds would not be uncovered in any other way. "This situation will lead to a piecemeal investigation by the commission and many victims and their families will be disillusioned and angered if their expectations are not met."

They added that public hearings could result in "damage caused by false allegations" and threats to the "safety and well-being of perpetrators and their families".

Police questioned the focus to date on the

stories of the victims of apartheid. "What about the victims of the limpet mines in Wimpy bars, the Heidelberg Tavern, the Church Street bomb, attacks in churches and shopping centres and many more?" they asked.

Judge Richard Goldstone and Justice Minister Dullah Omar replied to some of the points made by the police. Goldstone disputed the claim that most perpetrators would not come forward. He told of a security policeman who had given evidence under oath to the Goldstone Commission and had expected this information to be made public immediately.

"He wanted to tell his story and exculpate to an extent his own personal involvement," Goldstone said. "There are many members of the security police who stand to benefit from the truth becoming public rather than being kept secret. The longer it is kept secret, the longer the security forces become tarnished with the same brush."

Omar denied that a truth commission would be unconstitutional and said that every clause of the Bill of Rights would be respected in the course of its work. The commission would not have the power to institute judicial proceedings. If it appeared that a person could be charged, then the matter would be forwarded to the attorney-general. ■