

Promotion of National Unity and Reconciliation Act in South Africa

Abstract: The Promotion of National Unity and Reconciliation Act established the Truth and Reconciliation Commission (TRC) as a form of transitional justice, in order to promote national unity and as a way to face the past. The TRC consisted of three different committees: the Human Rights Violation Committee, Reperation and Rehabilitation Committee, and the Amnesty Committee. The TRC played an important part of South Africa's history, and uncovered the truth in order for reperations to be made.

Key words: Truth and Reconciliation Commission (TRC), Human Rights Violations, Amnesty, Reperations, African National Congress (ANC), National Party (NP), Reconciliation

In 1948, [National Party](#) (NP) commenced building the system of apartheid with a series of laws that would keep Black, Coloured, Indian, and White South Africans separated for almost 50 years. Decades of struggle against apartheid came to an end in 1994, but South Africans faced a new obstacle. How to address the legacy of human rights violations perpetrated during the apartheid era? The result of long negotiations and deliberation on this topic was the creation of the Promotion of National Unity and Reconciliation Act of 1995, initiated by the Parliament of the Republic of South Africa. This act created the [Truth and Reconciliation Commission](#) (TRC) to address the country's legacy of human rights violations.

On 2 February 1990, in South Africa, President [F.W. De Klerk](#) stood before his parliament and made an announcement that would shock the South African Nation and the world. After forty-two years of apartheid rule by the white minority, the President announced the release of [Nelson Mandela](#) from prison, and the unbanning of the [African National Congress](#) (ANC), [Pan Africanist Congress \(PAC\)](#), the [South African Communist Party](#) (SACP) and other liberation movements. This began the open negotiations between the NP and the ANC, which would mark the difficult transition to a democratic South Africa. In 1991, de Klerk announced the dismantling of apartheid, but that did not mean it would be a simple task. Blacks did not have the right to vote, which would mean the White NP government would be able to remain in control. The need for negotiations between the NP and the ANC were crucial. The NP and the ANC entered into negotiations regarding the future of the South African government at the [Convention for a Democratic South Africa](#) (CODESA). The goal of CODESA would be to establish a constitution that would guarantee a united, non-racial and non-sexist South Africa. CODESA's first meeting was held on 20 December 1991 and hosted representatives from nineteen different political parties. At the first CODESA meeting, de Klerk announced that "[w]e are convinced it is in the best interest of South Africa and all its people for us to institute expeditiously, as a first phase, a government that is broadly representative of the whole population" (Berat, 1993). This statement by de Klerk was retracted when it later came to the issue of interim government. De Klerk rejected the notion that the existing constitution would be suspended while the transition was taking place. After three weeks of negotiations, the NP and ANC reached an agreement on the election of interim government but there was no "consensus over the power of the executive until that time" (Berat, 1993). CODESA II, the second phase of the negotiations took place on 15-16 May 1992. During this meeting they also had many

disagreements on key issues. They could not agree on the issue of the percentage of votes required for decisions about regional borders, government powers, and other issues. Even though they were faced with these issues, both sides were still committed to drafting an interim constitution. At this time South Africa was filled with violence and bloodshed, increasingly in the black community. Action needed to be taken in order to transition into a peaceful democracy. On 17 June 1992, the discussions were halted and the ANC withdrew from the negotiations because of allegations of the government's involvement in the killings of forty-five ANC supporters. These killings were known as the [Boipatong Massacre](#), and were carried out by supporters of the [Inkatha Freedom Party](#) (IFP). The ANC argued that the increased violence in the black community was not just the work of black animosity, but had something to do with the 'third force'. The third force was a death squad orchestrated by the government for attacks and killing of black people. These attacks continued after the ANC had publicly denounced the armed struggle. Mandela suggested this 'third force' was separate from the NP and ANC, but was under the direction of members of the security forces, which De Klerk denied. In 1992, the negotiations resumed and resulted in the Record of Understanding. The Record of Understanding was an agreement and timeline set between both parties in order to establish a constitution-making body, interim government, dealing with political prisoners, handling violence and many other issues. The Record of Understanding would pave the way for a democratic South Africa.

Reconciliation became one of the central ideas of a new South Africa. Early in the reform process the ANC "stressed that the past could not be ignored and that accountability was a prerequisite for a human rights culture" (Boraine, 2001). The National Executive Committee (NEC) of the ANC first presented the idea based on the success of truth commissions in various countries. Chile, Argentina, and El Salvador are examples of countries who were forced to deal

with their past in a similar way. Truth commissions had been used in the past as a form of transitional justice. The idea of transitional justice has been used worldwide since the 1980s. Transitional justice is an approach to achieve justice in times of transition from government oppression. Transitional justice provides recognition of victims and promotes trust in the government.. This is important to a new democracy, and a country that is in transition from a harsh rule and the denial of human rights. Transitional justice has used many elements in the past, including a TRC and reparations to victims.

Several key players pushed for the adoption of a TRC. [Dr. Alex Boraine](#), who opposed the apartheid government and became the leader for Institute for a Democratic Alternative for South Africa (IDASA), also helped promote the idea of the TRC. He held seminars that would allow people to explore the creation of a TRC. The former president of Chile, Patricio Aylwin, who established the Chilean TRC was present at the seminars, and helped to shape the idea of a TRC in South Africa. [Dullah Omar](#), a lawyer and human rights activist who became the Minister of Justice in the new South Africa's ANC government, also believed that a truth commission was necessary to South Africans as a way to come to terms with the past and a way to heal. He saw reconciliation as a way to cope and to move forward to democracy. These proponents of a truth commission believed that everyone who committed a politically motivated crime during the apartheid era should give full disclosure of their crimes. A truth commission was needed to “investigate all abuses that have flowed from the policy of apartheid. Instead of self-indemnity, we need the whole truth” (Boraine, 2001), truth is what the nation wanted and needed in order to heal.



TRC- Archbishop Desmond Tutu and Dr. Alex Boraine, 28 , January, 2012. Photograph by Paul Weinberg. Permission: [Africa Media Online](#).

The ANC and NP faced many problems during negotiations, and felt that a TRC was necessary. The ANC wanted ‘justice’ in the form of prosecutions and reparations. The NP wanted collective amnesty, which was seen as a way for perpetrators to get away with their crimes against human rights. The TRC became a way to respond to both sides. People who did not support the TRC wanted trials similar to the Nuremberg trials, which were held in Germany after the Holocaust. They wanted perpetrators to be put on trial and prosecuted for their crimes against human rights. This approach promoted retributive justice, rather than uncovering the truth in order to reconcile with the past. The IFP expressed strong opposition against a TRC, and believed that “there had not been a sufficient debate in the country on whether the truth commission as proposed was the best vehicle for achieving national reconciliation and granting amnesty.”(Boraine). The supporters of the TRC did not want this to be similar to the Nuremberg

trials; the South African TRC's emphasis was on gathering evidence and uncovering the truth from both victims and perpetrators. They did not want to prosecute perpetrators for past crimes. A TRC was a way to find out about the truth and past, without too vigorously pursuing it in a court of law. Supporters wanted it to be a form of restorative justice, as a way to reconcile with the past in order to move forward to a brighter future. The hearing of victims' testimonies by the Human Rights Violation Committee helped to promote sharing of South Africa's past and the restoration of dignity to victims.

Amnesty was the biggest issue faced by the TRC, particularly, who could be granted it and who could not. The ANC NEC created the TRC with the idea that "[amnesty] should not be the dominant theme in dealing with the past but that we should be concerned always with the victims, with reparation, and with truth" (Boraine). The TRC would be designed to promote both amnesty and justice. Blanket amnesty would be hazardous to the victims healing process, as it would allow for no one to be accountable for the horrific things that took place during this time. Prosecuting everyone would not only be difficult, but perpetrators would not be as willing to tell the truth during the trials. The architects of the Act wanted the TRC to focus on truth telling, and promote reconciliation among all South Africans. "The Commission would not be a court of law and would not conduct trials". (Boraine) The commission agreed that perpetrators could only be eligible for amnesty if every detail of the crime would be disclosed and it could be discerned that the violation was politically motivated. The TRC called for all people to be held accountable for their crimes, including the liberation movements, like the ANC. They did not want anyone to be exempt, because there were gruesome crimes committed on both sides.

The Promotion of National Unity and Reconciliation Act was introduced to the South African Parliament on 17 May, 1995 by Dullah Omar. The Act focused on leaving behind a past

that was marked by suffering and injustice, and proceeding to a future founded on human rights. The Bill was linked to the Interim Constitution, which had been supported by all parties involved in the negotiations. This was important for getting the support needed to pass the Act. According to Boraine, “the aim of the Bill was to re-establish the rule of law and the principal of accountability: This is our one hope of turning South Africa around from the path of violence and intolerance.” (Borraine). The Act was passed on 19 July 1995, and came into effect on 15 December 1995 when commissioners were appointed.

This Act established the Truth and Reconciliation Commission and established three different branches under the TRC. The Human Rights Violations (HRV) Committee investigated human rights abuses that took place between 1960 and 1994. The Reparation and Rehabilitation (R&R) Committee was charged with restoring and rehabilitating victims, along with reparations to be given. Lastly, the Amnesty Committee (AC) which would consider who would be given amnesty under the provisions of the act. The members of the TRC were chosen in a democratic way, and would be appointed by the newly elected, President Mandela. The commissioners were selected through an open countrywide nomination process and publicly interviewed by an independent selection panel comprising representatives of all the political parties, religions, and backgrounds. The TRC reflected the rainbow nation of South Africa. It consisted of seven women, ten men; seven Africans, two ‘Coloureds’, two Indians and six Whites. These included [Archbishop Desmond Tutu](#) (Chairman), Dr. Alex Boraine (Deputy Chairman), Mary Burton, Advocate Chris de Jager, Bongani Finca, Pumla Gobodo-Madikizela, Sisi Khampepe, Richard Lyster, Wynand Malan, Reverend Khoza Mgojo, Hlengiwe Mkhize, Dumisa Ntsebeza (head of the Investigative Unit), Dr. Wendy Orr, Advocate Denzil Potgieter, Mapule Ramashala, Dr. Fazel Randera, Yasmin Sooka and Glenda Wildschut.

When the Promotion of National Unity and Reconciliation Act was first presented, it was said that the trials would be held behind closed doors so they could be properly executed. Many argued against this, and believed that openness would be important for people transitioning from the apartheid rule to a democratic one, so they could learn to trust the government and its new leaders. Several organizations advocated for public hearings, which the final TRC did incorporate. The cut-off date for amnesty was also something that would undergo change. It was originally decided that 5 December 1993 would be the cut off for amnesty, *“to encourage peaceful opposition in the lead-up to the election due in April 1994.”* (Boraine, A.,2001). But it was later brought to the TRC’s attention that the Freedom Front (FF), IFP, and PAC had not ended their conflict until 23 April 1994. [General Constand Viljoen](#), who represented the FF party argued that FF, IFP, and PAC *“conflicts of the past did not come to an end on Friday 5 December 1993, because the aspirations and demands of those parties were not met.”* (Boraine). The conflicts between the FF, IFP, PAC and the ANC had not been resolved at the time. So the cut-off date would not include all victims of crimes against human rights. This was later taken in consideration by President Mandela, and the reason for an amendment.

Reparations were the next thing the TRC had to deal with. The democratic government had to bear the financial burden for ensuring reparations would be paid to the victims. South Africa was a new democracy, and could not give every victim reparations for their suffering. They came to the conclusion that victims of gross human rights violations be seen in a wider context. They would have to use their resources wisely and efficiently in order to guarantee reparations to those who were entitled to such. In order to receive reparations you had to have made statements to the Commission, or were referred to in someone else’s statement. They were to only be given to those who were formally declared victims by the Commission. The

Committee had proposed a Reparation and Rehabilitation Policy that consisted of five parts: Interim Reparation, Individual Reparation Grants (IRG), Symbolic Reparation, Legal and Administrative measures, Community Rehabilitation Programmes, and Institutional Reform. Interim Reparation is to help victims who were in urgent need because of the gross human rights violation they suffered. Victims were to be helped to get access to the services and facilities they need. There was limited money available for this kind of assistance. The IRG was a special individual financial grant scheme. It was proposed that each victim of gross human rights violations, as decided by the Commission, would receive a financial grant which will be paid out over a period of six years. Symbolic reparation was to help communities remember the pain and the victories of the past. This would include setting aside a day for national remembrance and reconciliation as well as the building of memorials and monuments.

This Act, along with the TRC established by the law, helped South Africa to transition to a democratic government. The TRC allowed people to interact and hear the voices of those who committed human rights violations, and victims. For many people this was important, they were able to see the faces of the perpetrators and victims. This helped many people to reconcile with their past, and have some closure.

As the Commission got underway, it became clear the act would need to be amended to address several issues. The first amendments were presented in 1997 (Promotion of National Unity and Reconciliation Amendment Bill 1997 No. 37 South Africa: Parliament of the Republic of South Africa). President Mandela made the change to the cut-off date for offences which may qualify for amnesty from 5 December 1993 to 10 May 1994. When that was changed, it meant the TRC's amnesty applications would increase. As a result, the Commission asked that the number of members of the Amnesty committee apart from the Chairperson and Vice-

Chairperson, be increased to a maximum of eleven; and at least three of such other members shall be Commissioners of the TRC. It also provided that the Chairperson of the Committee may establish subcommittees which will have the same powers, functions and duties as the Committee in relation to applications for amnesty and the persons submitting such applications. By making provision for the establishment of subcommittees, it made the process of amnesty applications much easier for the Commission.

The next amendment had to do with the subcommittees, stating that they shall have the same powers, functions and duties as the Committee in relation to any application or amnesty submitted and to the person who submitted it. Another amendment in 1997 provided an end date for the commission's work, stating, 'the Commission must complete its work on 31 July 1998 and submit a report to the President within three months thereafter. Thereupon *"the activities of the Commission will be suspended until the Committee on Amnesty has completed its work, whereupon the Commission must be reconvened by the President for the purpose of completing and submitting its final report."*(Amendment Bill No. 48, 1997) The last amendment was presented in 1998, and is important to the Act because the Commission did not get through all of the amnesty applications by the stipulated time of 31 July 1998. The Commission still had thousands of applications left, and the amendment allowed the Commission to continue to work.

This Act helped to promote a unified nation that could look forward but the process did not happen without many criticisms. According to the non-profit Khuluani Support Group, many South Africans were disappointed in the TRC, and the many aspects of the bill. The Bill was never to serve retributive justice, but a restorative justice that could promote truth and healing. Many black South Africans are still angry that amnesty could be granted to the white regime that participated in the gruesome crimes of apartheid. They believe that reconciliation was not

reached because many of the perpetrators went unpunished. Only 293 amnesty applications were submitted to the TRC by former [mainly White] security agents, which left a large number of people not held accountable for their past violations of human rights (Khulumani Support Group, 2005). The TRC was supposed to make people want to confess their crimes and give them the opportunity to clear their consciences. Truth was the main idea, but unfortunately not all perpetrators felt guilty enough to confess their crimes and were let off easily. Some believe the TRC's work was inadequate because no hearings were held on land issues, on education systems, on the migrant labour system under apartheid. Reparations are also seen as a large failure of the TRC. The government has paid less than a quarter of the people who were granted reparations for their gross denial of human rights.

The Promotion of National Unity and Reconciliation Act and the TRC have been the subject of both praises and complaints. Many people felt that the TRC did not bring justice, and that amnesty was granted too easily to the perpetrators. The purpose of the Act was to promote unity and reconciliation as a 'rainbow nation', but for many, the TRC hearings opened up wounds that need much more time to heal. For the victims, the TRC allowed them to share their stories and be heard. For perpetrators, it allowed them to 'come clean' and be able to see forgiveness for the acts committed under apartheid. Forgiveness and reconciliation are two different things and both take time to achieve. Forgiveness means leaving the past behind, and letting it go. Reconciliation is about recognizing that it happened, but finding a way to move forward from it. The TRC was based on the notion of reconciliation, so that these gruesome crimes against human rights could be recognized and documented for the world to hear. Even though the TRC had many failures, it became an important part of South Africa's history. South Africans got to tell their stories, most of them would have never been heard under apartheid rule.

Reconciliation is not achieved over night, but is something South Africa has been working towards.

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TRC- Desmond Tutu and Dr. Alex Boraine, 2012. Photograph by Paul Weinberg. Permission: [African Media Online](#)

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