

“BETWEEN NUREMBERG AND AMNESIA: THE TRUTH AND RECONCILIATION COMMISSION (TRC) OF SOUTH AFRICA – CONTRIBUTIONS TO HUMAN RIGHTS”

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This presentation will examine the contributions of the Truth and Reconciliation Commission (TRC) of South Africa to the development of human rights.

Since Nuremberg, and the founding of the U.N., international conventions, treaties and resolutions have codified unequivocal universal rights, duties and obligations in the areas of human rights and fundamental freedoms. In the same period, different international and national mechanisms have been created to hold perpetrators who violate these rights accountable and responsible, and to provide compensation and reparations to the victims who have suffered these violations. Most recently, on April 11, 2002, the International Criminal Court, with jurisdiction over war crimes, genocide, crimes against humanity, and aggression, came into existence, with the depositing of instruments of ratification by sixty-six countries.

Dealing with the crime of apartheid, the TRC was a constitutionally-based body (1996-1998) which was mandated “to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by...” (1) establishing as complete a picture as possible of gross human rights violations perpetrated between 1960-1994 by conducting investigations and hearings; (2) facilitating the granting of amnesty in exchange for full disclosure of truth for acts with a political objective; (3) making known the fate of victims and restoring their human and civil dignity and allowing them to give accounts of what happened, and by recommending reparations; and (4) making a report of findings and recommendations to prevent future human rights violations.

The first lesson of the TRC is that each country must determine, based on its specific conditions, how to deal with human rights violations. There is no uniform “blueprint” for holding perpetrators - whether governments, military and security/police forces, corporations, heads of state, other institutions or individuals - accountable. However, it is clear that a country must elicit the truth about these violations as part of the process of moving forward into a future in which human rights are respected.

The second lesson is that the legitimacy of the truth-seeking mechanism must be measured by the victims who have suffered and whose rights have been violated. This means that the truth about human rights violations must be told from the perspectives and in the voices of the heroines and heroes, who have paid a supreme price, in their struggles to exercise their

human rights and fundamental freedoms under oppressive regimes.

The TRC also illustrates that (1) human rights violations are individual and systemic, the result of acts of commission and omission and perpetrated by individuals and institutions who must both be held accountable and responsible for these violations; and (2) there is an alternative to total impunity for human rights violations (blanket or general amnesties) through an individualized amnesty process with criteria. Although the TRC did not directly focus on foreign complicity in apartheid, the role of international perpetrators in “domestic” violations of human rights is significant in many countries.

As Archbishop Desmond Tutu, Chairperson of the TRC wrote in a letter to *The Sunday Times* (of South Africa), December 4, 1996, “the Commission remains a risky and delicate business, but it remains the only alternative to Nuremberg on the one hand and amnesia on the other.”