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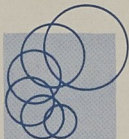
CONFERENCE

THE SOUTH AFRICAN CONFERENCE ON TRUTH & RECONCILIATION

NEWLANDS GARDEN COURT
CAPE, SOUTH AFRICA

29 - 31 JULY 1994

JOSE ZALAQUETT
Abogado



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IDASA
INSTITUTE FOR DEMOCRACY IN SOUTH AFRICA

PROGRAMME

JUSTICE IN TRANSITION

Dealing with the Past

LORD CHARLES HOTEL, SOMERSET WEST, CAPE, SOUTH AFRICA

25 - 27 FEBRUARY 1994

FRIDAY 25 FEBRUARY

13h00 – 15h00 REGISTRATION

15h00 OPENING CEREMONY

Welcome & Announcements Alex Boraine

Keynote Speakers

Aryeh Neier
Jose Zalaquett
Adam Michnik

16h30 TEA/COFFEE

17h00 Panel I – EXPERIENCES UNDER REPRESSION

Moderator Nthato Motlana

Fikile Bam
Nyameka Goniwe
Albie Sachs
Paizoah Gcina

20h00 DINNER

21h30 FILM

A World Apart

SATURDAY 26 FEBRUARY

07h30 BREAKFAST

08h30 Panel II – FACING THE PAST: ACKNOWLEDGEMENT,
TRUTH & JUSTICE

Moderator Kader Asmal

Uruguay
Argentina
Chile
El Salvador

Lawrence Weschler
Juan Mendez
Jose Zalaquett
Roberto Canas

Plenary Discussion

11h00 TEA/COFFEE

11h30 Panel III – RECONCILIATION/AMNESTY: PAST
& PRESENT EXPERIENCES

Moderator Lawrence Weschler

Latin American Tina Rosenberg
Poland Wiktor Osiatynski
Hungary Andras Sajo

Plenary Discussion

13h00 LUNCH

14h00 PLENARY DISCUSSION CONTINUED

15h30 TEA/COFFEE

16h00 Panel IV – LEGISLATING THE PAST: STATE
SECURITY FILES & DISQUALIFICATION

Moderator Van Zyl Slabbert

Germany Joachim Gauck
Bulgaria Dimitrina Petrova
Czech Republic Karel Schwarzenberg

Panel Discussion

19h00 DINNER

20h30 Panel V – PROSECUTION: WHO AND FOR WHAT?

Moderator Tim Phillips

Jose Zalaquett
Tina Rosenberg
Aryeh Neier
Juan Mendez

SUNDAY 27 FEBRUARY

07h30 BREAKFAST

08h30 AMNESTY & TRANSITION IN SOUTH AFRICA

Lourens du Plessis

09h00 Panel VI – SOUTH AFRICAN RESPONSE

Moderator Judge Richard Goldstone

**Mary Burton
Albie Sachs
André du Toit
Barney Desai
Frank Chikane**

10h00 TEA/COFFEE

10h30 SOUTH AFRICAN AGENDA (Plenary Discussion)

Moderator Alex Boraine

12h30 LUNCH

AFTERNOON DEPARTURE



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Onderwerp 159

Amptel 6799 a

Financial Mail

Jg. 132 Nr. 13 P. 50 Dat. 24 JUN 1984

PEOPLE

DULLAH OMAR

The truth, the whole truth

President Nelson Mandela's appointment of lawyer-activist Dullah Omar to one of the principal offices of State — Justice — came as a surprise to many. But it was by no means an unpleasant one — at least not to those from liberation circles.

After all, since his admission as an attorney in 1960, Omar has chalked up a notable record as a human rights lawyer on behalf of just about all anti-apartheid organisations — starting with the entire PAC executive, who went to see him just before their arrest in 1960. Also among his clients was the world's most famous political prisoner — Mandela himself.

Not surprising, then, that whereas many of Omar's political colleagues have appeared in the dock at some stage in their careers, his role tended to be outside it — for the defence. The pattern broke in 1985, when Omar, by then a member of the Cape Bar, was detained three times under emergency regulations. His bid to secure his release failed in the Supreme Court and subsequently in the disappointing Appellate Division ruling on the rights of detainees — the case of *Omar v the State President*.

It led, however, to the important dissenting judgment by Cape Judge President Gerald Friedman, which is regarded by civil rights lawyers as having kept alive the flame of justice during a dark period in SA law.

Cape Town-born Omar (60) joined the

ANC comparatively late, when, about 10 years ago, the Unity Movement (a Trotskyist group of which he had been a leading light) rejected attempts to join up with the ANC-aligned United Democratic Front (Trevor Manuel, now Trade & Industry Minister, was a key figure in the UDF's Cape region.)

Omar was in favour of fusing and now represents the most senior appointment to the Cabinet of an internal — as opposed to former exile — ANC man. It is generally assumed that his switch of allegiance was partly influenced by Mandela and others on Robben Island, where he used to call for legal consultation.

Opposed to the death penalty, the new Justice Minister aims to transform the judi-

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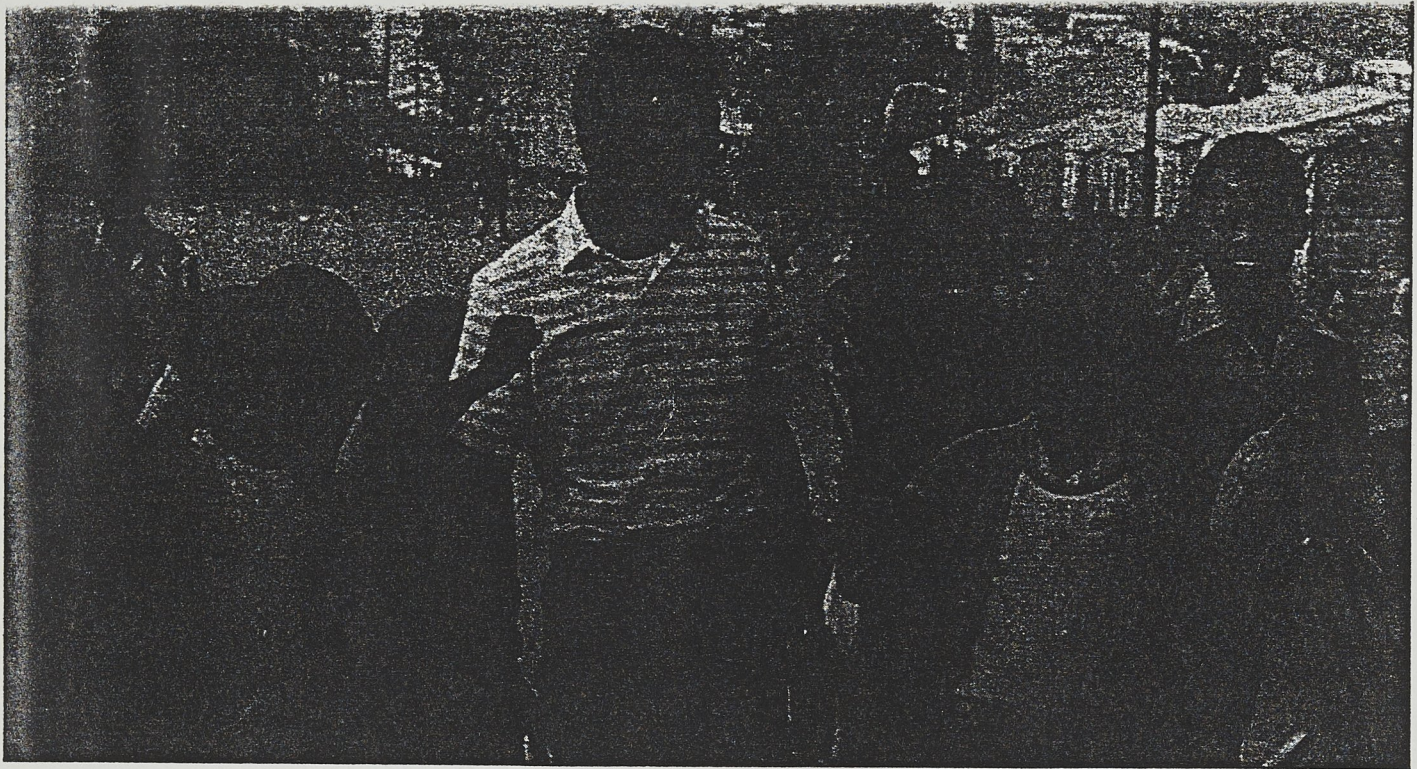
cial system by making it more widely accessible and respectable. His priority is implementation of the new constitution, which includes the essential step of setting up the Constitutional Court. Omar is a member of the nonestablishment National Association of Democratic Lawyers, which, together with the Black Lawyers' Association, opposes nominations to the Court being made solely by the official lawyer bodies — the General Council of the Bar and the Association of Law Societies (Current Affairs, June 17).

Recently, Omar has taken flak over his intention to set up a truth and reconciliation commission aimed at making a "complete break" with apartheid's past. Stricking to his guns despite strong opposition, Omar says he will press even if it

may embarrass ANC members in the Cabinet. At least the Minister's commitment to openness cannot be faulted. ■

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*Mathew Goniwe, victim of apartheid war crimes.
We need the whole truth.*

Instead of self-indemnity by the government – which the ANC has, over a year ago, clearly stated will not bind a democratic government – we need the whole truth, so that the victims of disappearances, murder, torture and dirty tricks, or their families, know what has happened.

DIFFERENT DUTY

The Truth Commission's approach is based on a different duty from the normal human rights duty of a government to refrain from committing such violations. It is the duty of a successor government to dispense justice for past crimes.

A government of national unity will be obliged, if we are to follow recent precedents, to set up such a commission if only to ensure that the Bill of Rights – which obliges our state to provide effective remedies for such rights – is to have any relevance.

The most important reason for the establishment of such a commission is to get to the truth. The experience of Chile, Argentina and El Salvador keenly reflects the cleaning power of the truth. Thousands of people who gave evidence rarely, if ever, showed a desire for vengeance. What mattered to most was that the memory of their loved ones would not be denigrated or forgotten and that such

terrible things never happen again.

Each country will deal with the past in its own way. We will not follow the pattern of vengeance shown in some European countries today where people are being persecuted for their past beliefs. But there are some common features which we can adopt.

A commission must be broadly based and made up of respected people. It must be adequately staffed and must complete its work within a year. It will look at gross violations of human rights, not only from the government side, but from all political formations.

FACT-FINDING

Interestingly enough, in Chile and El Salvador, it was found that a very small proportion of such violations were committed by the resistance. It will not be a prosecuting body but a fact-finding one. Not all commissions name names of transgressors but, where they do, the list must be handed over to prosecuting bodies.

The recent UN-organised El Salvador commission which reported in April listed over 40 individuals responsible for human rights crimes and recommended that they should be removed from their positions. It further recommended that they be

prevented from serving in a public position for ten years or in any military or security position forever.

COMMUNITY REPARATIONS

In addition, the commission recommended, as had occurred in Chile earlier, that “justice demands that the victims of human rights violations in the war be publicly recognised and be given material compensation.” In Chile, pensions, scholarships and training programmes were set up as tangible expressions of community reparations to such victims.

Such commissions also provide a greater awareness of the background to violations of human rights. But the truth must be acknowledged, proclaimed and publicly exposed. The worst transgressors must be removed and there must be an acknowledgement of the rights of the victims.

Only then can we discuss the issue of amnesty. When we do not reproach evil doers, as Alexander Solzhenitsin has warned, “we are not simply protecting their trivial old age; we are thereby ripping the foundations of justice from beneath new generations.”

We cannot afford to do so. ♦

T here is a smug, comfortable and complacent lobby in our country which believes that the negotiation process will herald not only a new constitutional order but will also ensure that our awesome apartheid legacy will be quietly forgotten and buried. This self-serving approach works on two bases.

Coping with the past

First, it says that by-gones must be by-gones and invokes the concept of reconciliation to serve its end. Secondly, it says that all parties were guilty of terrible wrongs in the struggle against apartheid – we all have much to be forgiven for – and since no-one has clean hands, there must be a new start.

Mr de Klerk's idea of a "new start" is not only to forget the past but to invent one where his party and regime now insist that there was no deliberate targeting of its opponents. If terrible acts were done, they were in pursuit of a policy of protecting the state and, therefore, an amnesty must be given to the practitioners of kidnapping, systematic torture, disappearance and ill-treatment.

Is it therefore valid for the opponents of a comfortable present to demand the dredging up of the past and the re-opening of old wounds? Coming to terms with the past is a difficult and, for some, a painful matter. We must, therefore, ask: if we are to close the book on the past, can we suppress it altogether?

THE TRUTH COMMISSION

Many countries who have moved from authoritarian or illegitimate regime to

democracy have grappled with this fundamental truth: how to settle a past account without upsetting the present transition. The Nuremberg and Tokyo trials of 1945-1946 of war criminals, an attempt to preserve the collective memory and to build up an effective deterrent, were models that rested on a particular material condition.

WAR CRIMINALS

The war criminals who were brought to trial did not lose power through political means but through a complete military defeat. The victors did not have to worry about the balance of forces where the military, economic and state power of the losers was largely left untouched.

It was for this reason that the "Nuremberg" approach has not been repeated since 1946. Instead, in recent years, a number of Truth Commissions have been established by newly-elected governments, by private initiatives from non-governmental organisations and, in the most recent example, by the United Nations in relation to El Salvador.

A recent report, prepared in the United States, has described 14 such bodies and has identified the ANC as the first non-governmental body to investigate its own actions. It was because of the need for a comprehensive opening of the books, for full disclosure and accountability, that the National Executive Committee, at its August 1993 meeting, proposed that a National Truth Commission be set up to investigate all abuses that have flowed from the policy of apartheid.

A truth commission for S A

The truth must be acknowledged, proclaimed and exposed publicly and the worst transgressors must be removed, writes Kader Asmal, ANC NEC member and Professor of Human Rights Law at the University of Western Cape.



The coming challenge: dealing with the past . . .

By ANDRÉ DU TOIT

IT IS now only a matter of months, even of weeks, and the future will be with us. After April 27 apartheid and all its injustices can at long last be put to rest — or so some would have us believe.

It remains to be seen whether we will be rid that easily of the spectres of our apartheid past. History does not know any "zero hour"; it offers no blank page on which we can start from scratch.

If we think about it, we can see why this must be so. From May 1 1994 it will be essentially the same civil servants, policeman, judges, teachers, farmers and workers who will have to keep the country going. The "new" South Africa will in large part consist of the same people who administered apartheid, who suffered under apartheid, and who struggled against apartheid.

Whatever we say, that past remains part of them. Families who lost their property in terms of Group Areas, communities broken up by forced removals, activists detained for months without trial, perhaps even tortured, all those shot and wounded by the police — they will not and cannot forget. A new constitution and a new government cannot summarily undo the abuses and injustices of the past.

Fragile phase

There are some who would rather not be reminded of this unhappy past, especially not at this stage. It is time for reconstruction and reconciliation, they insist, not for vengeance or the nurturing of grievances and past injustices.

South Africa cannot afford any "Nuremberg trials" on apartheid's "crimes against humanity", they say, especially not at this fragile transitional phase.

It is to be expected that these views will become even stronger in the coming era of reconstruction. As of now, the ANC still favours a public "Truth Commission" and insists that the killers of Goniwe and others should be found and prosecuted. But once a government of national unity has been installed, priorities will shift.

A mutual reconciliation will solve quite a few problems for the NP as well as the ANC (who also have some skeletons in the cellar). The shape of things to come may already be seen in the release of a Barend Strydom as counterfoil for the release of a Robert McBride, our race murderers in exchange for your terrorists.

Forgive and forget for the sake of national reconciliation — it will sound only too plausible. But it could amount to a fatal mistake. History is not that easily repressed or shunted aside.

Concentration camps

A people who blithely attempt to smooth over the injustices and grievances of the past will find that, unacknowledged and repressed, they will continue to fester, infecting social and political relations and haunting political life for generations to come.

One of the more remarkable phenomena of our time is the way in which the atrocities of World War II are still exercising many minds even now.

Fifty years on aged men are prosecuted for what they did in the concentration camps or under the German occupation, and the younger generation often feel even stronger than their parents.

In the former Yugoslavia, after decades of ostensibly effective nation building, it is the long repressed grievances about what Serbs, Croats and Bosnians did to each other 50 years ago which fuel the current atrocities.

The injustices of the past cannot simply be cancelled or forgotten. What is needed, is a conscious and justified settling of accounts with the past.

We need to find commonly acceptable ways and means to address past atrocities and injustices. "Nuremberg trials", that is criminal prosecutions by the "victor", are by no means the only option, especially if there is no clear-cut "victor". Indeed, justice (which can so easily become vengeance) is by no means the only or the most basic concern: publicly acknowledging the truth of what has happened may be even more important.

Instigated prosecutions

This has been one of the lessons learnt by other societies which had to deal with their own past histories of atrocities and injustices*.

In the Argentine, for example, the new civilian government of President Alfonsín revoked the amnesty which the outgoing military government had granted themselves and instigated prosecutions of some of the more notorious colonels and generals — only to find that the political risks of provoking a military coup were too great.

No doubt bearing this in mind, the new civilian government of Uruguay entered into a covert agreement with their military predecessors that there would not be any prosecutions.

However, when key formations in civil society became aware of this unspoken amnesty, popular and sustained protests succeeded in forcing a bitterly contested referendum on the issue. In both cases the result was neither justice nor truth and an erosion of the legitimacy of the new civilian governments.

More successful was the Chilean "National Commission on Truth and Reconciliation". Unlike Nuremberg, it was not primarily concerned with redressing past injustices through prosecutions; the commission's main task was to establish the truth regarding the "disappearances", torture and other atrocities consistently denied by the authorities. By creating a public forum where the victims could attain some acknowledgement of the injustice they had suffered, they were enabled to regain their dignity as citizens and as human beings.

Political culture

Moreover, by reaching some kind of agreed version about the injustices of the past, the bipartisan commission actually provided a basis for the process of national reconciliation to go forward.

At stake here is the building of a political culture in which the principle of the rule of law amounts to more than a rhetorical invocation. This is not possible if there are people who are known to be above the law, who have done terrible things with impunity. The problem with a blanket political amnesty is not just that murder remains unpunished but that this also undercuts the basis of any future legal order. Say, for example, a Barend Strydom or a Robert McBride were in future elected or appointed to public positions, then this would make a mockery of the constitutional principles enshrined in the bill of rights. When political leaders, police chiefs, judges and other public figures themselves have blood on their hands and go unpunished public discourse about justice and democracy becomes a cynical joke.

The solution certainly cannot be to declare an open season for political witch hunts. Efforts in Eastern Europe to introduce "disqualification measures" in the post-communist period have led to most unfortunate results; in Czechoslovakia, for example, the so called "lustration" of former security officials and their informants led to a new kind of McCarthyism in which, ironically, former dissidents became the prime targets. New injustices are added to the old.

Guiding principles

As far as a settlement of accounts with our apartheid past is concerned, there can be no quick fix, as little as this is the case in reconstructing education or the economy. After the election the new government will have to think carefully and move quickly to find the necessary ways and means.

One such measure is the appointment of a National Commission on Truth and Reconciliation with a clearly defined and carefully limited brief. Its guiding principle should be to acknowledge the truth about the injustices of the past, with as much justice as we can afford.

● This is a translated version of an editorial article in the latest issue of *Die Suid-Afrikaan*.

* An important workshop organised by IDASA on *Dealing with the Past — Justice in Transition*, including key participants from Latin American and Eastern European societies as well as a range of South Africans, will take place in Somerset West on February 25-27.

Desai demands the trial of apartheid offenders

From **BARNEY DESAI, Secretary for Publicity and Information, Pan Africanist Congress of Azania, Salt River:**

THE oppressed of our country have been the victims of a holocaust over these past four decades of white domination. The United Nations have characterised apartheid as a crime against humanity.

The cries of torture and abuse still ring in our ears. The fallen are deeply etched in our collective memory. The millions who were forcibly moved from their homes remain bewildered and disorientated. The abused know their abusers and they are now the accusers. They seek justice. They seek retribution for the atrocities committed against them.

If violators of our human rights are not punished we make a mockery of the rule of law and we invite a repetition of the nightmare we have endured for so long.

I am not vengeful nor do I think that those who seek reconciliation (to strengthen a fledgling democracy against reaction) do not have cogent arguments. However, I would remind them of what a German writer Jurgen Fuchs said: "I am not blood thirsty, I write poetry, but I would not be able to live with that. If we do not solve this problem in a definite way, it will haunt us as Nazism did. We did not denazify ourselves, and this weighed on us for many years."

The position we take in the PAC is fully supported by the convention on the prevention of the crime of genocide and the convention against torture and other cruel, inhuman or degrading treatment and punishment. Clearly these instruments oblige signatories to criminalise certain conduct and to prosecute those responsible.

The case of Chile is a striking example of no prosecutions being instituted against violators of human rights. The Pinochet regime, anticipating a change of government, arranged general amnesty for its own past violations.

Pinochet remains head of the army and cannot be removed as senior members of the

secret police have been promoted to senior army posts.

In 1990 the new government of President Aylwin established a National Commission for Truth and Reconciliation to investigate abuses resulting in either death or disappearance during the Pinochet era. They investigated 4 000 cases and 2 025 were classified as human rights violations committed by the security forces. In March 1991, after a report had been submitted to President Aylwin, he presented the report to the nation. No names of violators were mentioned. The president said the nation must "accept the truth" and turn the page.

Human rights activists in Chile are doubtful that telling the truth is sufficient and they charge that the army is still engaged in torture.

In our own case we would be living in a fools paradise if we believed that telling the truth will end human rights abuses by the security forces that are steeped in the most atrocious practices. Here one is not just thinking of the past, but of the very chilling present where faceless killers murder at random.

It is not for the multiparty negotiating process to absolve those culpable of crimes against our people. We are particularly aghast at the thought that Chris Hani's killers could go free. Any absolution should only be done by a democratically elected Parliamentor Constituent Assembly.

We would support the establishment of a commission to investigate human rights abuses, name the violators and put them on trial. Let justice be seen to be done.



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DEMOCRACY
in ACTION

Jg... 8 Nr... 4 P... 28 Dat... 15 JUN 1996

Catharsis or national haemorrhage?

By Charles Villa-Vicencio

THE nation must deal with the past," President Nelson Mandela said in his state of the nation address, adding that "the burden of the past lies heavily on us". The problem with this burden is that it does not easily go away. It weighs like a nightmare on the present. Try to ignore it and it is likely to return to haunt us. Face it and it has the capacity to destroy us.

One of the contributors to *Dealing with the Past*, author Tina Rosenberg, warns in connection with the need to remember that "there is a dragon living on the patio". No, it's "right inside the living-room", says fellow contributor Mary Burton of the Black Sash.

These observations provide a sense of the urgency of the issues dealt with in this crucially important book. It is one that should be inwardly digested by every single person in South Africa.

The issues facing South Africa in transition are both ethical and political. They need to be worked out in relation to each other. Chilean activist Jose Zalaquett, a lawyer who served on his country's national Commission of Truth and Reconciliation, makes this point in his contribution to *Dealing with the Past*. He stresses the importance of understanding the fears and motivations of the perpetrators of evil deeds, and warns that neither victim nor adversary can hold the power of veto in determining the rules of society.

A similar point is made by Roberto Canas, an economist who has been deeply involved in the El Salvadorian struggle. He shows the need to balance what is ethically correct with

what is politically possible: "Ethically it is imperative to punish those responsible for violence and politically it is possible and correct to work for the eradication of all instruments of terror and to create a system of guarantees to ensure that the abuses of the past will not be repeated."

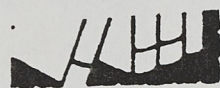
Legal academic Albie Sachs grounds the issue in the South African context: "We cannot say to the security forces: 'We are going to lock you up.' It just won't work. There will be more deaths and suffering. What we can say to them is: 'When we have the new constitution, if you side with those fighting democracy with arms and assassinations, you will forfeit any claim to amnesty.'"

Barney Desai of the PAC goes further: "We would be living in a fool's paradise if we believed that merely telling the truth would end human rights abuses," he says. "The violators must be named and put on trial."

Questions abound: who should be investigated and who brought to trial? What should the cut-off point for amnesty be? Should the names of all those found guilty of crimes be made public? Should prosecution follow disclosure? The tentacles of apartheid abuse extend widely.

Dealing with the Past makes a start at providing answers, making it abundantly clear that a truth commission should never be allowed to degenerate into a witch-hunt. Judge Richard Goldstone argues that the terms of reference of any truth commission ought to be politically negotiated. Only then can the commission address itself to its task.

Political scientist Andre du Toit argues that the core issue to be investigated should be the so-called third force. Aryeh Neier, a former executive director of Human Rights Watch in New York, concurs: The main task of the commission should be to "deal with deception and to respond with truth".



BOOKS

TREFWC

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- 3 Desai
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- 5 Sachs
- 6 Desai
- 7 Neier
- 8 Desai
- 9 Canas
- 10 Neier



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DEMOCRACY in ACTION

Jg. 8 Nr. 4 28 Dat. 15 JUL 1996

Zalaquett speaks movingly of the Chilean president's presentation of the report of the Commission of Truth and Reconciliation to the nation on television, atoning on behalf of the state for its crimes. The full report was

← 209
sent with a personal letter from the president to every affected family.

John de Gruchy, who attended the conference on which the book is based, picks up on the theology of this option in a plenary discussion: "There is an ongoing pressure that is not only moral. The moral says there must be justice; the theological concurs, but adds that justice must lead to reconciliation."

Sachs argues that "the real reparation we want ties in with the Constitution, the vote, with dignity, land, jobs and education". New York columnist Lawrence Weschler agrees. Weschler, who is also the author of *A Miracle, a Universe: Settling Accounts with Torturers*, suggests that the basis of true reconciliation is the ability to live in a normal country - "but before that point, there is a lot of remembering to do".

Nomonde Calata, widow of murdered Cradock activist Fort Calata, tells of her eight-year-old daughter wanting to know what happened to her father. "Can't you draw a picture for me? Can't you tell me?" the child asks. A priest in Uruguay tells of his experience in counselling a woman whose child had disappeared: "Father, I am ready to forgive, but I need to know whom to forgive and for what."

Badly handled, a national truth-telling exercise could lead to a national haemorrhage. But it could also be a cathartic new beginning. Nineteenth-century French historian Ernest Renan suggests that nations are built on great remembrances and great forgettings. Amnesty is not amnesia. Coupled with confession or disclosure it can be a way of remembering the need to forgive. ■

Charles Villa-Vicencio is professor of religion and society at the University of Cape Town.

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21 JUL 1994

Negotiation News

Jg..... Nr..... 7 P... 12 Dat.....

Confusion and controversy surround the questions of temporary indemnity, amnesty and a truth commission proposed as the means to deal constructively with South Africa's murky history of human rights abuses and clandestine armed struggle. Among the questions over which debate rages in the media are how to define "political offences" and how to decide who should – and who should not – receive amnesty for such offences.

Justice Minister Dullah Omar quickened the storm around the issues by stating on a recent SATV "Agenda" programme that he did not think that the planned assassination of civilians would be included under the definition of "political offence" that would find its way into amnesty legislation.

Made in relation to the case of former Conservative Party MP Clive Derby-Lewis, who was convicted of murdering ANC leader Chris Hani, the minister's remark was condemned by right-wing groups. Omar was anticipating the work of the truth commission, they said.

With many of its members in prison or on trial, the right wing has entered the debate intent on striking a bargain: peace from the right wing in exchange for the extension of the cut-off date for amnesty to include the right-wing pre-election bombing spree.

Another lobby with an agenda is the Returned Exiles Co-ordinating Committee (Recoc) which is demanding that investigation of atrocities

Light in a dark place?

The vexed question of how to deal with past abuses of human rights in South Africa is soon to be answered by legislation. Indications of its likely parameters have been provided by the Ministry of Justice.

committed in ANC camps outside South Africa form part of the task of the commission.

The government of national unity is in the process of preparing legislation that will set in motion a process for dealing with these vexed questions. In the interests of shedding light on the proposed statutory process, the statement on the matter issued by Omar on 7 June 1994 is reproduced here in full.

The fundamental issue for all South Africans is therefore to come to terms with our past on the only moral basis possible, namely, that the truth be told and that the truth be acknowledged. International human rights norms and standards and other international experiences provide us with guidance.

2. In finalising our proposals we are considering the following matters:

i) **Composition of commission**
The commission should consist of eminent, respected South Africans and must be broadly representative.

ii) **The terms of reference of the commission**
This would include investigating and establishing the truth about human rights violations, and their acknowledgement. Gross violations of human rights must be fully and officially investigated with due regard to fair procedures. The identity of the victims and what happened to them, and the identity of

1. On 27 May 1994 an indication was given to Parliament of thinking within government on the need to set up a Commission of Truth and Reconciliation to enable South Africa to come to terms with its past. I reiterate that reconciliation is not simply a question of indemnity/amnesty and letting bygones be bygones.

If the wounds of the past are to be healed, if a multiplicity of legal actions are to be avoided, if future human rights violations are to be avoided and, indeed, if we are to successfully initiate the building of a human rights culture, disclosure of the truth and its acknowledgement are essential.

We cannot forgive on behalf of victims; nor do we have the moral right to do so. It is the victims themselves who must speak. Their voices need to be heard.

TREFWOORDE

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- 2 Agenda (TV)
- 3 Kommentaar
- 4 Kuelrae
- 5 Definiesies
- 6 Politieke
- 7 Kommissie
- 8 Waarheid
- 9 Menseregte
- 10 WJ



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Datum 9, 4, 0, 7, 2, 1, 2, 0, 2

Onderwerp nr. 159

Knipsel nr. 1, 7, 6, 16, 6

Negotiation News

Jg..... Nr..... 7..... P..... 12 Dat.. 21 JUL 1994.....

the perpetrators must be made known. There must, as indicated, be both knowledge and acknowledgement. The events need to be officially recognised and publicly revealed. Truth telling responds to the demand for justice for the victims and facilitates national reconciliation.

iii) Fair procedures

The commission should perform its tasks and responsibilities on the basis of fair procedure and adherence to international law relating to human rights must be assured.

iv) Reparation/Compensation.

This is another difficult matter. However, a framework needs to be created to deal with all claims, especially those based on gross violations of human rights, with the power to bring finality to such matters, it being borne in mind that it is the democratic government that will have to bear the financial burden.

The commission is to complete its work within a prescribed period of time, for example 18 months or two years.

v) Reporting to the nation

There should be reports submitted to the president from time to time, as well as a final and complete report after which the president shall report to the nation and thereby close this chapter on South Africa's past.

3. Amnesty and indemnity

It is in the above context that legislation should make provision for amnesty and indemnity.

i) The commission may set up a specialised structure to deal with all applications and make recommendations.

ii) The cut-off date in respect of offences committed will be not later than 5 December 1993.

iii) The offences in respect of which amnesty may be applied for will be defined strictly within the

framework of the constitutional provision on national unity and reconciliation.

iv) The recommendations of the commission shall be referred to the president whose decision will be final.

v) There will be a fixed cut-off date for applications. All persons seeking amnesty and indemnity will be required to submit applications by not later than such date.

4. Participation

Participation in the process will help the nation to heal itself. Whilst the above represents the thinking within government, individuals, organisations, religious bodies and members of the public generally are invited to submit their comments and proposals to the Ministry of Justice before legislation is finalised. Such comments, suggestions and proposals will receive consideration in the finalisation of legislative proposals which will then be placed before the cabinet.

(The cut-off date for such submissions was 30 June 1994.)

5. Outstanding applications

Whilst we are in the process of preparing legislation along the lines set out above, there exists great concern about the various applications for indemnity submitted under the existing indemnity laws to the previous government. Such applicants have an expectation that their applications will be processed and finalised in terms of the existing indemnity laws.

I agree that these applications cannot await consideration until a new law is passed. Hence, consideration of all applications under the existing indemnity laws will be expedited. An advisory committee under the convenorship of Brian Curran, national director of Lawyers for Human Rights, will be set up immediately. Its task will be to scrutinise all outstanding indemnity or amnesty applications which are still pending and make appropriate recommendations to the president. Those who qualify in terms of the two indemnity laws will be released. Those who do not qualify will, together with the new applicants, be given an opportunity to apply for amnesty through the new mechanisms which are being established in terms of the Constitution.

TREFWOORDE

- 1
2
3
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10



Holiday Inn

Garden Court®

I'm so irritated this time —
the lot of Americans, everybody
seems to be clamoring for a
job in the Commission and
I'm angry that here ~~is~~ is no
Africans. Idasa has a reputation
for working with Africans — so why
does no one feel free (safe)
enough to come??

What can we do
about it? It's particularly
important the more
they appear because
anti-Ross

I think I suspect that not enough
trouble was taken to convince people.
"They" think having a few renegade
names (me, Andre, Carl etc) and
Willie Estomize (who was so bad last
night) that's enough. Unless there is
not enough acceptable + respected
Abr. names on that Commission it
will get no support from that side

We are supposed to be in a honeymoon. The last
thing you want to do when on honeymoon is
to keep saying what a good time you are
having. You just ~~just~~ ^{go ahead and} have a good time;
as the saying goes, lie back and enjoy it.
yet I feel we are ^{producing something unique in our country}
The fact is, ^{something valued by the whole world, and we should try to} that what we are experiencing ^{put a name}
is far more than a honeymoon. The courtship ^{to it}
was long and painful, and we already
have children: the Constitution, the new
Parliament, the new provincial governments
~~and irreversible processes~~ ^{the beginnings of serious} of change in the
army, police and civil service. ~~These are~~
~~tangible and permanent achievements~~
Even if the goodwill were to fade, the
Constitution would be there, this Parliament
eternally. What has happened is supposed to

be a miracle. Miracles are not my field.

I am a lawyer. I rely on tested and
verifiable evidence. ^{All human beings need faith, yet} faith reveals itself

in deeds. Yes, we ~~are~~ believed: we believed
in the essential dignity, worth and equality
of all our people. We never let go of that
belief, not in jail, not in exile, not even
those who went singing to the gallows.

We worked hard, relentlessly, over decades,
~~and~~ in every part of the country, in all
the continents of the world. That is not a
miracle, it is hard work. We used our
brains, studied the great ideas of the
world, learnt how to correct errors and
consolidate gains. That is not a miracle,

That is using your ~~kap~~. We invented a way to accommodate with others. Negotiation for us has become a way of life. Everyone must be heard. We must find a way of bringing everyone in. That is not a miracle. That is good common sense ~~and fairness~~.

So the miracle is not a miracle, but the product of principled belief, hard work, intelligence and accommodation.

The same applies to the RDP. It is a wonderful document, but its conception was not miraculous ~~it was the product of~~ belief, work, intelligence and accommodation. Similarly, the RDP will not miraculously be self-enforcing. Its success will require belief, work, intelligence

and accommodation. What the RDP
~~434992~~
gives us is a set of clear goals and a
common platform so that we ^{concentrate our resources} ~~are~~ ^{pull}
in the same direction. The nation ~~emerges~~
lives not by symbols alone, but by
shared values and shared endeavour. We
must be neither too timid to take initiative,
nor ~~too~~ arrogant to admit errors. Above
all, we must work out things together.

This is the great S.A. achievement - we
have learnt how to work out things together.
Inclusiveness can never be a purely formal
thing. It means giving a real voice to
everyone, and, specially, ensuring that
the voiceless are heard. Freedom of speech

went right - well, more or less.

1
The sign of RDP
Closing gap
Participation of all
Benefits for all.

Apartheid wasn't social engineering,
it was social demolition.

There are those who argue ~~for~~ that
coldness and lack of feeling are a
virtue in economic life. They urge
us to accept the dictatorship of the
marketplace as a stepping stone to
a prosperous society. To them a

caring society is a losing society.

Keys { They say that govt is bad, but
+ campaign like mad to get in it.

They denounce any form of public
enterprise as social engineering.

Ughd, they say, was social
engineering. It wasn't anything of the
sort - it was social demolition.

The market has a crucial role to
play in enabling us to achieve the
aims of the RDP. The problem

with the market in SA is that it
is not free.

Not only cartels,
Millions of small & medium
enterprises just can't break in.
going SE - black face head or shell -

①

Bloemfontein

Why - Acknow. Moral/polit.

What - 1994 Micro. dial.

Where - South.

②

Role of civ. society:

a). Terms, character, composition
Negot. Any group

b). Encourage - witnesses

c). Broaden process:

~~Just - Bloem~~

Victims.

Funds

Memorials

Relig, cult. orgs.

Profess.

Bloem -

~~Reparation~~

Bloemfontein,

~~What
Why
Where~~

Why - 1994. Micro. dial.

What

Where

JUSTICE IN TRANSITION IN SOUTH AFRICA

The Albion Spring
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Rondebosch
7700
Tel 021 689 8389
Fax 021 689 3261

24 May 1994

Prof Albie Sachs
Dept of Community Law
University of Western Cape
Private Bag X17
Bellville
7530
Fax 021 959 2411

Dear Albie

You will be aware of the interest and concern surrounding the important question of "dealing with the past" with specific reference to serious human rights violations by the state during the previous administration. Recently we held a conference which was attended by leading participants from Eastern Europe and Latin America as well as a number of key South Africans. The book entitled, "Dealing with the Past : Truth and Reconciliation in South Africa", based on the conference, has now been published and is available.

I am now planning a follow-up conference which will take place from 29 - 31 July 1994 inclusive at the Newlands Garden Court Hotel in Cape Town. The theme of the conference will be "Truth and Reconciliation in South Africa".

One of the panels is entitled "Memory and Acknowledgement : The Way Ahead". I would be most grateful if you would consider being moderator for that panel.

If you are able to attend, obviously all your travel and accommodation expenses for the duration of the conference will be met.

..... /2

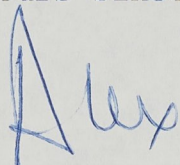
- 2 -

In order that I can plan efficiently, I would appreciate it if you would let me know as soon as possible whether or not you are able to attend the conference and participate in the panel discussion.

I look forward to hearing from you.

With good wishes

Yours sincerely

A handwritten signature in blue ink, appearing to read "A. L. Boraïne". The signature is stylized with a large initial "A" and a cursive "L".

DR A L BORAINÉ
Executive Director

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Cape Town 8000

F A C S I M I L E

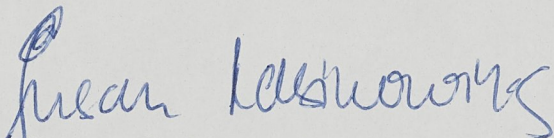
TO: IDASA S
FAX NO: 689 3261
ATTENTION: DR ALEX BORAINÉ
FROM: ALBIE SACHS
DATE: 2 JUNE 1994
RE: CONFERENCE ON TRUTH AND RECONCILIATION IN
SOUTH AFRICA

Dear Dr Boraine

Albie thanks you for your fax of 24 May and says that he will be happy to attend the conference on Truth and Reconciliation in South African to be held from 29-31 July and to participate in the panel discussion.

Please keep us informed.

Yours sincerely



Susan Rabinowitz
Assistant to Albie Sachs

JUSTICE IN TRANSITION IN SOUTH AFRICA

The Albion Spring
183 Main Road
RONDEBOSCH
7700
Tel 021 686 6150
Fax 021 685 1584

8 August 1994

Prof Albie Sachs
Dept of Community
University of Western Cape
Private Bag X17
BELLVILLE
7535

*File -
AMNESTY*

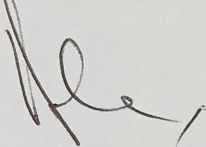
My dear Albie

I would like to place on record my sincere thanks to you for speaking at the recent conference on Truth and Reconciliation. I am all the more grateful knowing how tired you must have been after your trip overseas. By all accounts your contribution was greatly appreciated. It will be extremely interesting to watch developments in parliament over the next few months as they consider the appointment of such a commission.

We are working on the transcripts of the tapes and hope to publish the conference proceedings in the next few months.

With renewed thanks and warmest good wishes

Yours as ever



DR A L BORAINE
Executive Director

National Office

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Telex 52-2351

FAX TO ALBIE SACHS

FAX NO: _____ PAGE 1 OF 2

ATTENTION OF _____

FROM: ALEX BORAINO DATE 9.12.93

COMPANY _____

FAX NO: _____ **Post-it** Notes from 3M



9 December 1993

TO : Laurie Ackermann, Kadar Asmal, John de Gruchy, Johan Degenaar, Lourens du Plessis, Andre du Toit, Vincent Maphai, Barney Pitsoana, Albie Sachs

FROM : Alex Boraine

Attached is a list of names suggested at our recent meeting. As you will see, it is already very long but I am quite sure there are obvious names that we must consider. Please indicate as soon as possible if you have any strong objection to any name on the list and in particular if you have a strong preference for names not on the list. Once I have received these I will have to be quite ruthless and finalise a selection and clearly it won't be possible to please everyone. I think on balance, however, we have some very good people and if we can get the majority of those already listed to agree to come, it promises to be a very good start.

I must have your reply by Monday at the latest.

Warm regards

INSTITUTE FOR A DEMOCRATIC ALTERNATIVE FOR SOUTH AFRICA
 Trustees: Dr A Boraine, Prof A du Toit, Prof J Gerwel, Archbishop D Hurley, Prof J Loran, Mr S Mabasa, Ms S Mokolong, Dr N Motlana, Prof W Nkomo, Dr S Saunders, Dr F VZ Slabbert, Rev Du V Soga, Prof P Vols, Rev Canon M Xundu

"DEALING WITH THE PAST - JUSTICE IN TRANSITION"

South Africa

Alex Boraine
Van Zyl Slabbert
Kadar Asmal
Andre du Toit
John de Gruchy
Johan Degenaar
Lourens du Plessis
Laurie Ackermann
Barney Pitso
Vincent Maphahle
Nyemake Goniwe
Albie Sachs
Geoff Budlender
Johan van der Westhuizen
Zola Skweyiya
Corry Lubbe
Gerhard Erasmus
Denise Ackermann
Chief Justice Corbett
Annette Seegers
Fikile Bam
Zam Titus
Pious Langa
Dikgang Moseneke
Sheena Dunca
Mamphela Ramphele
Frank Chikane
Prof Peter du Preez
Njabula Ndebele
John Dugard
Rocky Williams
Jaci Cilliers
Brian Curren
Albertina Sisulu
Ellen Kuzwayo
Dorothy Boesak
Cecile van Riet
Prof Yvonne Mokgoro

①. 1994

~~Kind~~ What?

②. Microscope
dialogue

③. Why? deknawledg. - cits. Why?

④. Approach: Where?

Constit.

Instit. - generals

Econ.

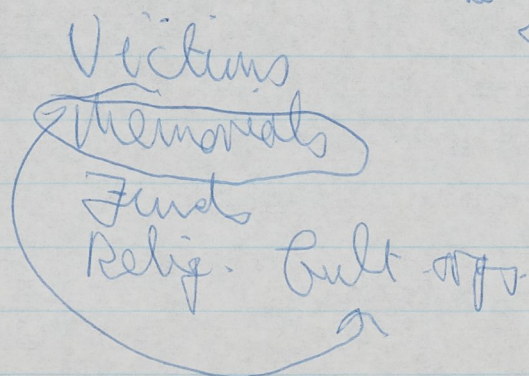
Moral

Result

a). Process - negot. Priv. socy Terms
Anti-flock Bloem. not polit. Ped.
Re-struct of pain.

b). Encouragement - witnesses -

c). Analogous: Professions - (medics)
Bar



Legal mech. of 'forgiving'

Future

Mobilisation -
to tell story
Mil. - non-mil

Professionals

Lawyers docs.

Generals -
part, power,
Transform

Victims

Universities
- week of reflection

Memorials

Funds

Relig. orgs

Objectives:
Humanise
Com. cit.
Prevent

Prone
within
a crime

What are we
doing?

Constitutional order
Instit. - even so
Moral

Not related to elections.

Information - civ. society

You cannot forgive on
behalf of another.

Com. as focus a catalyst.

Developed negot. strat-
forums.

Real dialogue

- 1) 1994 years ago -
- 2) An coarse truth
and dialogues truth
- 3) What for? Process
Com cit, end

Moral & political
- expediency

We know what the
truth is - why
discover it?

Not dare as acknowledge

Disclosure -
why.