

MEH 91-73-2-3

MEMORANDUM

TO: The Hon Mr Dullah OMAR, MP
Minister of Justice

FROM: The Research Institute on Christianity in South Africa
Department of Religious Studies
University of Cape Town

re: Representations on the proposed Commission on Truth and Reconciliation.

1. We wish to make it known that we support the establishment of a Commission on Truth and Reconciliation. We believe that it is a timely and essential national act to put the seal on the political transformation our country is now undergoing. We do so for the reasons set out below.

I. For Pastoral Reasons:

1) the Commission will show that this nation cares. It cares for the victims of apartheid. There are many who are still confused and whose wounds continue to fester because their loved ones continue to suffer the effects of torture or the orphans and widows or those who are still missing unaccounted for. This nation owes it to them to signal our collective shame and grief for what happened. We want it to be known that their loss was never in vain and that present developments are a testament to their martyrdom. This nation must remember such sacrifices.

2) it cares for the well-being of those who perpetrated heinous violations of human rights in the name of apartheid. They too need to have their humanity restored. There can be no healing if they carry the burdens of their conscience and guilt with them. Scarred as they have been, they are inclined to continue to perpetrate other acts of violence against innocent people especially their families and loved ones. As human beings they surely wish to be delivered from debilitating guilt.

We believe that our Interim Constitution is correct when it says that we have all suffered irreparably from the history of our country. We go further, however, and say that such suffering can be mitigated by expressions of love and concern which can flow forth from such a Commission..

II. For Moral Reasons:

The social transformation now underway would be meaningless if it was not also an expression of this nation's commitment to a moral transformation. Such moral formation is necessary if we are to give confidence in the future and to build a new South Africa on secure foundations. To fail, as a nation, to signal our total rejection of all immoral conduct

we can never build a new nation, to engender confidence and ensure hope in a bright future for all. The wrongs of the past will continue to haunt us. It is important to establish that the struggle was waged in order to establish justice for all in South Africa and to uphold the good. The Commission will hold before the people of South Africa that good will prevail for all its people whatever their colour or social circumstances.

III. For Liturgical Reasons:

A sacramental act of healing and repentance needs to be accompanied by some heartfelt act of renunciation of the past and an pledge to lead a new life. The Commission could be such a public liturgical act which could focus the purgation of feelings and to signal a pledge to make a new beginning. For this reason, it is our view that the Commission is symbolic. That does not take away from its significance but only to say that symbols signify or point towards that which they represent. Secondly, they set boundaries which a particular community finds acceptable and determines belonging and ownership. Finally symbols bestow meaning. In our instance, the Commission, should be seen as a symbol to our fledgling nation.

IV. For Political Reasons:

This nation has pledged itself to unity and being one nation. Such a vision would remain elusive unless those who stood on opposite sides of the great apartheid divide could reach out to one another. Failure to do so would simply lead to rough justice which the normal organs of the state would find difficulty getting to the bottom of without resort to oppressive measures.

2. We believe that it is correct to link Truth and Reconciliation The truth referred to is surely not some rigorous philosophical speculation but a desire to discover the facts. Such a process can surely be arrived at by the usual rules of evidence and investigation. We can say, however, that it is necessary for those who seek reconciliation to tell all that they know. Telling the truth is necessary to ensure trust and confidence. Telling the truth will enable those who have committed wrongdoing to empty their consciences. Hearing /knowing the truth will release the victims to express their emotions in an appropriate manner; to love once again. Both victim and perpetrator can be released to be human again. truth telling is an important moral virtue, the moreso in such circumstances.

Reconciliation can never be a cheap act. A reconciled, reconciling and renewed community is the goal and mission of the church. The genius of the Christian faith is that we dare to believe that this is possible. It is possible for all humanity to be reconciled with one another across barriers of history, culture, language and class. Reconciliation comes about by sharing; sharing our pains and hurts and sharing our hopes and our visions. It is in sharing that we are reconciled with one another.

3. Procedures and Terms of Reference:

1. We believe that it must be made clear that the Commission is concerned with the acts or omissions of the state as a result of which human rights of South African citizens were violated. This is necessary because the normal processes of the law were never able to apprehend those who had done wrong. The wrong they did as officers of the state was wrong done by the state to the people of South Africa. For the state today to

address those matters in a forthright manner would go a long way towards restoring confidence in the moral capacity of the state. Without such confidence it would be impossible for this nation to be ruled with consent, a very essential principle of democracy. This means that this Commission should not be concerned with acts committed by guerrillas or by ordinary citizens because those can be addressed through the normal processes of justice and by and large they have been. By the same reasoning, those who were in the ANC camps has a right to expect fair and proper treatment from the ANC. Inasmuch as the ANC was never able to prosecute itself for the actions of its officers, such activities must now also be investigated. To that extent, the ANC in its camps in exile was, mutatis mutandis, a government. It must, therefore, take the same responsibility as the government in South Africa.

2. We hold that if the Commission is to carry out its task in an effective manner, its Terms of Reference must be appropriately circumscribed. We believe that there is a sense in which programmes like the RDP and the Land Claims Court are instances of the state's commitment to putting right the wrongs of the past. That is only proper and deserves the support of all South Africans of goodwill. In addition, under a new dispensation, the ordinary judicial processes of the land can now undertake the investigation and prosecution of any outstanding cases as evidence becomes available. This Commission, however, does not and should not seek to duplicate any of those activities. It is a special commission. Its time span must be limited and we accept that the time from 21 March 1960 till 5 December 1993 is appropriate. Secondly, we hold that the Commission must concentrate on the violations of human rights of the extreme kind especially in the unresolved cases of torture, murder and disappearances.

3. We believe, however, that while the Commission itself should not be a formal tribunal, it should have sufficient powers to carry out its task like the power to subpoena witnesses and to search. At the same time it must operate under the conditions of respect for human rights and due process like the right of witnesses to silence and to have a proper representation

4. We suggest that the Commission should sit for only a limited period. In our view one year should be sufficient but certainly for not more than 18 months. Those matters which the Commission has not been able to resolve should be considered closed so that these issues should not become a festering sore.

5. We believe it to be vital that there should be as wide an acceptance of the thinking behind the Commission, that it is for the good of our national life and not merely to facilitate revenge or to promote witch hunting and that it should not promote fear but to release people from fear. Therefore while it should, at one level facilitate the processes towards amnesty and indemnity from prosecution, it must assure all South Africans about their rights. For that reason public education is vital. The task of education is so that the public should understand what the Commission seeks to achieve, the limitations to what it can achieve, to make it known and understood in order to invite the co-operation of the public. In our view public education programmes where the churches can play a significant role, should be instituted immediately in order to engage the public about the issues involved.

6. The Commission should be required to make a report to the President. The report should set out information or disclose facts about the activities of the state (again this includes the ANC where it could be considered to have carried out functions akin to those of government) and its agents and make recommendations to the President regarding Reparations/Rehabilitation of Victims, honouring of heroes and way in which it could be ensured that our nation should never again be subjected to such atrocities. The

Commission could also submit to the Attorney General, with the consent of the President, evidence which comes to its attention it believe should be further investigated with a view to prosecution.

7. It is essential that the Commissioners appointed should have a reputation of integrity and impartiality without being necessarily lawyers. They should be representative in that the whole spectrum of South African society should see itself in them especially in the matter of expertise and disciplines. It must draw from the expertise which all South Africa has to offer. Definitely, the Commission should be appointed after the widest possible consultation but not in such a manner as to politicise the appointments process.

4.. Finally, it is our view that The Commission should never attempt that which is impossible to achieve. It will never achieve the level of justice which some especially the victims crave for; it will not be able to compensate victims without the danger of encouraging dependency, entitlement and competing claims reducing the object of the whole exercise to a monetary matter. We believe, however, that to some extent it will help many in this nation feel good about being South Africans and the whole nation to exculpate itself from blame we all somehow carry as a result of apartheid.

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8 August 1994.