

How has South Africa chosen to remember the past?

Key question: Why did South Africa choose a Truth and Reconciliation Commission and how has the struggle against apartheid been remembered?

What are the various forms of justice that can be used to deal with a divided past?

Recap:

The brutal apartheid system had abused the civic and human rights of the majority of South Africans. The detentions and torture of the 1960s and 1970s had given way to the abduction, torture and murder of the 1980s.

The question facing South Africans was:

What was the best way to deal with the violent past? There were two possibilities when considering judgement in terms of the past:

1. Retributive justice

- It is the form of justice that considers punishment to be the best response to a crime.
- In post-War Germany, after the Nuremberg trials, the Nazi leaders were given the death sentence or long terms in prison.
- It is the kind of justice that happens in a court of law and if convicted, the offender is given a punishment that is thought appropriate for the crime committed.

2. Restorative justice

- This form of justice rejects the exclusive focus on punishment.
- In South Africa's case the TRC and perpetrators have to take responsibility for their actions as a way of trying to repair the harm they have done
- Instead, victims and perpetrators come together in some way to resolve collectively how to deal with the aftermath of the offence and its implications for the future.

The TRC

Reasons for and origins of the TRC:

- *The idea for the TRC first came from the ANC:* After the unbanning of the liberation organisations, the ANC faced accusations of human rights abuses in its training camps in Tanzania and other parts of southern Africa.
- It set up an internal inquiry and it was revealed that human rights violations had occurred in the ANC camps.
- The ANC's National Executive Committee (NEC) accepted the findings, but decided that these violations needed to be seen against the overall human rights violations that were perpetrated over decades in SA.

So rather than the ANC looking for general amnesty for itself, it called for an independent truth commission so that everyone could be accountable for the past.

The options facing South Africans in terms of dealing with the past were

EITHER

1. a blanket amnesty, which was not acceptable for criminal trials so would not have worked

OR

2. criminal prosecutions, which would've meant that the ANC would not have been able to rely on the apartheid security forces to ensure a peaceful election and transition to democracy. (These security services were still strong and were needed in the new state.) So it was decided to set up the Truth and Reconciliation Commission.

What was the TRC?

- It was essentially a political compromise in the interests of national reconciliation.

- It involved hearings that were held in public, which made it impossible for South Africans to deny the atrocities carried out by the state in their name.
- The public hearings also began the process of accepting accountability for the past and of a commitment to making sure that it would never happen again.
- The Promotion of National Unity and Reconciliation Act of 1995 created the TRC that had to facilitate this process. The Chairperson was Archbishop Desmond Tutu who was assisted by 17 commissioners.
- It was the world's first truth commission that had hearings of victims and perpetrators open to the public and that published its findings at the end of the process.
- Hearings (began early in 1996) and were held in community halls in cities and small towns, often in the townships where the violence had happened and where the victims and their families had lived.
- The hearings were broadcast on radio and television in all official languages.

What is the TRC Act?

This outlined the three preconditions to be met before amnesty could be granted:

- applicants had to make a full and truthful disclosure of events and actions around the act of violence for which amnesty was applied;
- the applicant had to prove he/she had a political motive;
- and the act could not be out of proportion with the political objective. In other words, amnesty would not be granted to someone who had committed murder because of a political difference of opinion.

The role of the TRC

- To compile as complete a picture as possible of gross human rights violations that had taken place on all sides between 1960 and 1993.
- To hear testimony from victims and perpetrators.
- To grant perpetrators amnesty from prosecution or civil action, where there was full disclosure and a clear political motivation.
- To suggest how victims could be compensated through reparations.

Special hearings

These were also held to discuss prisons, women, children, state security, the military and police, the different political parties, the media, the medical profession, and religious communities, among other particular cases.

The TRC had three committees

- *Committee on Human Rights Violations* to hear the public testimonies by victims of gross abuses of human rights. This was not a court of law.
- *Committee on Reparation and Rehabilitation* which investigated cases, gave support and awarded reparations to victims.
- *Committee on Amnesty*, which could grant amnesty from prosecution under certain conditions.

The hearings

- During the first six months the TRC heard evidence from the victims.
- Task of the HRV committee = investigate human rights abuses between 1960 and 1994, based on statements made by victims and their families to the TRC.
- Once victims of gross human rights violations were identified, they were referred to the Reparation and Rehabilitation Committee.
- The hearings were conducted by groups of commissioners travelling around the country to take testimony from those who had suffered human rights abuses and to gather information about the atrocities that had been committed.

The hearings of the Human Rights Violations Committee (HRVC)

- These hearings began in the East London city hall on 16 April 1996.
- They were held in community halls around SA – before each hearing, witnesses met with the staff of the commission to make a written statement.
- White South Africans, who had voted for the apartheid government, were for the first time confronted by the crimes that had been committed in its name.
- Only a proportion of the victims could in fact appear in public hearings. Their participation was to an extent, symbolic.
- The TRC acknowledged the victim's pain publicly and, for many, being able to tell their stories was the beginning of a process of healing and closure. In many cases, victims publicly forgave perpetrators.

The hearings of the Amnesty Committee

- Amnesty hearings were conducted as a legal process. The Amnesty Committees consisted of judges, advocates and attorneys.
- Unlike the HRVC hearings, witnesses, victims, survivors and applicants were entitled to legal representation.
- Also, all evidence was tested through cross-examination; and the Amnesty Committee was able to subpoena witnesses.
- The primary function of the Amnesty Committee was to ensure that applications for amnesty were done in accordance with the provisions of the TRC Act.

- Being granted amnesty for an act means that the perpetrator would not be prosecuted for that particular act.
- If someone was denied amnesty they were liable for prosecution.
- The Reparations and Rehabilitation Committee
- Tasked with recommending to the government a system of reparations for victims.
- It also provided victim support to ensure that the Truth Commission process restored the dignity of victims.
- A President's Fund, funded by Parliament and private contributions, was established to pay urgent interim reparations to victims in terms of the regulations prescribed by the President.

Outcomes of TRC

- The TRC had a limited time period of two years. The overriding objective was to encourage truth telling.
- However, in trying to compile the 'picture of the past', the TRC faced the dilemma of how to validate the 'subjective truths' of the painful experiences and memories of human rights violations of the victims, while at the same time producing a suitably 'objective' and authoritative account of the apartheid past.
- One of the most important aspects of the TRC hearings was the fact that they were held in public. Everyone daily witnessed the pain and suffering that apartheid had caused to fellow South Africans.

Major findings of the TRC

- The final report handed over to President Mandela at the end of October 1998, was contained in five volumes of findings on gross human rights violations, and found the following:
- Apartheid was judged to be a crime against humanity.
- The National Party government of PW Botha was found to have been responsible for murder, torture, arson, abduction and sabotage.
- The liberation movements were also found to have been guilty of gross human rights violations.
- The report also criticised De Klerk's government for activities of 'third force' in an attempt to disrupt the pre-1994 negotiations.
- The ANC was criticised for the civilian casualties in MK operations: the torture and executions in camps in exile and the use of violence against opponents.
- Finally the report found that South African society as a whole was damaged by apartheid and was in need of healing.

Positive aspects: The TRC as an instrument of reconciliation

- The TRC process did serve the purpose of confronting the evils of apartheid, allowing transition from apartheid to democracy to happen in a peaceful, non-violent way.
- The media played a critical role in this process.
- The public hearings that were broadcast daily on TV and radio included the testimonies of both victims and perpetrators.
- This ensured that South Africans could not deny their violent past.
- The experience of telling stories and hearing confessions was a cathartic experience that began a process of forgiveness and healing between victims and perpetrators.
- It also brought closure to families who had lost loved ones.
- For a few, there was a deep sense of guilt and soul-searching.
- But many whites accused the TRC of being a witch-hunt and of stirring up hatred, and said it would make reconciliation impossible.
- Ultimately though, the TRC placed the truth on record, which allowed the nation to move forward.

Amnesty provisions and problems with amnesty

The provision of amnesty in return for full and truthful disclosure raised both moral and legal issues:

- Amnesty for torture is prohibited by an international treaty, which South Africa signed in 1993. Many therefore questioned whether perpetrators should then have been tried in a court of law.
- Many South Africans felt that amnesty for perpetrators of gross human rights violations during the apartheid era was morally unjust, yet others accepted that this was the price South Africa needed to pay to ensure a peaceful transition to democracy.
- While there was closure for some, others were infuriated to see the guilty granted amnesty and able to walk free.
- It was problematic that many of the top apartheid leadership didn't apply for amnesty and refused to take responsibility for the apartheid abuses. Many believed that the Amnesty Committee should have used their power to subpoena to ensure that these officials were brought in front of the TRC.

It was felt that one of the major shortcomings of the TRC, was that the focus was on gross human rights of 1980s and that by doing this, it ignored the institutional violence and the whole human rights abuses of apartheid:

- The TRC's mandate was to gather information and investigate gross human rights violations during SA's apartheid past. Therefore individual cases of violence such as murder and torture were examined
- The TRC looked at apartheid through the experience of a minority of political activists and state security forces. This was an important task, but the damage that apartheid did to generations of South Africans was ignored

- The apartheid system that destroyed the lives of millions economically & psychologically was not put 'on trial' – it ignored those arrested for pass law violations, victims of forced removals; and those who went through Bantu Education.
- Apartheid conditioned South Africans into believing that they were either superior or inferior human beings. The psychological damage, particularly to those who were made to feel inferior, was enormous.

Reparations

The Reparations Committee made two suggestions:

- Urgent interim relief for victims. This has been implemented to some extent.
- By the end of the TRC's term, every victim should have been given monetary compensation by the government.

In the years since the end of the TRC process, the victims have not received this compensation. Government has admitted that this has been a failure – that there are no mechanisms in place to assist victims. This has seriously challenged the model of restorative justice.

Responses of political parties to the TRC and its final report

NP & ANC: Both were dissatisfied with the final TRC report and tried to block its publication.

Former President FW de Klerk: He brought an urgent action in the Cape High Court, asking it to forbid the findings against him from being included in the Commission's report. These were removed at the last minute.

The Inkatha Freedom Party (IFP): The TRC findings on the IFP were also rejected – Chief Mangosuthu Buthelezi rejected the findings of the report which held him responsible for acts of gross human rights abuse.

The ANC appeal: It objected to the risk that the liberation struggle would be criminalised, and lodged an appeal in the courts to stop the handing over of the report to President Mandela. However, the hand-over went ahead.

Conclusion

For all its flaws the TRC was a process vital to South Africa's peaceful transition and is highly regarded as a model around the world. Admitting the truth about past abuses helped restore dignity and identity to thousands of victims.

Dealing with the past was essential for South Africa to move forward. The TRC started the process of reconciliation.