

## **Statement on the Report of the TRC Joint Sitting of the Houses of Parliament**

Cape Town, 25 February 1999

Madame Speaker, Chairperson of the Council of Provinces, President of the Republic, Nelson Mandela, Honorable Members of Parliament, Distinguished Visitors and Compatriots:

The defining parameter in our continuing struggle for national unity and reconciliation is the question of race.

For many years to come, we will be able to measure the distance we have travelled towards the accomplishment of these objectives by the degree to which we have succeeded to close the great racial divides which continue to separate our communities.

At Kirstenbosch Botanical Gardens, a few kilometres to our east, there are the remains of a 340-hundred years old almond and thornbush hedge.

Planted by Jan van Riebeeck, this thorn hedge was intended to ensure the safety of the newly arrived white European settlers by keeping the menacing black African hordes of pagan primitives at bay.

Black and white had to be kept apart, circumscribed by an equation which described each as the enemy of the other, each the antithesis of the other.

At first it was thought that the thorns of the almond and bush hedge would suffice as the ramparts to protect the enclave of 'European civilization' perched precariously at the Cape of Good Hope and advance the purposes of the then temporary sojourners.

Later, guns and wars of subjugation became the most reliable means in the hands of the settlers.

Later still, it became impossible to continue the civilising mission except through the enslavement of the people, their deliberate impoverishment and subjection to the pass laws, the whip, the gallows and cheap labour.

In the end, the temporary sojourners of the Cape of Good Hope transmuted themselves into permanent citizens while transforming the native masses into temporary; sojourners in the greater part of our country.

The almond hedge now surrounded the native reserves which, even we, were persuaded to describe as our homelands.

And together with the thorns of the hedge, there revere the prisons, the bannings and the banishment, the torture, the assassinations, the massacres, the weapons of mass destruction and the sustained propaganda and indoctrination.

Today the line marled out by; Jan van Riebeeck for the construction of his Great Wall of China is a railway line which separates the black from the white in this historic cities of our country.

Out of it all were born the programmed killers who have spoken and will speak to the Amnesty Committee of the Truth and Reconciliation Commission of the terrible things they did, to ensure the safety of the proverbial enclave of 'European civilization' perched precariously at the Cape of Good Hope.

Speaking of the African people he found at the Cape, in 1609 the Dutchman, Cornelis van Purmderend said: " In a word, a beast-like people." A year later, the Frenchman Pyard de Laval added: They eat...as do dogs...they live...like animals."

Not to be outdone, in 1612, the Englishman Ralph Standish said " yet is a great pity that such creatures as they be should enjoy so sweet a country."

(All quotations vice "Frontiers" by Noel Mostert, Pimlico, London, 1993. p 108.)

At the end of the first ever military conflict of 1659 between the indigenous people and the European settlers, Jan van Riebeeck told the defeated Khoi commanders who fought to recover their occupied land that the country had now been "justly won by the sword in defensive warfare, and...it is our intention to retain it." (Mostert op cit. p 134.)

What had been expropriated by the sword had to be retained by the sword.

It is this reality of a state founded on conquest, that had to be retained by the same means with which it was conquered, which led, inevitably, to the gross violations of human rights which constitute the heart of the work of the Truth and Reconciliation Commission.

An illegitimate state was imposed on the majority of the people and such legal framework as it established was a legalization, the codification, of a system of injustice which the international community justly declared a crime against humanity.

Based on the understanding that 'it was a great pity that such creatures as we are should enjoy so sweet a country', as the Englishman put it at the beginning of the 17th Century, the only imperative driving those who thought that they should enjoy so sweet a country was that they had a moral right to use any means in their fight for the defence of what they considered to be exclusively their own.

In such a situation, morality has no place. Greed and self-interest become the justification, the legitimization, of any action taken by those who see themselves as the defenders of what Jan van Riebeeck described as having been justly won by the sword.

The matters we raise are fundamental to what we will do as a country to advance towards national unity and reconciliation.

Any attempt to insulate or isolate the more narrowly defined work of the TRC from this larger setting will inevitably defeat the very purposes for which the TRC was established.

Accordingly, we put this forward as a matter that must be dealt with in the context of the national debate for which President Mandela has called, namely the elaboration of a national programme of action to end the racial fragmentation of our country which gave birth to the conflict which the TRC was mandated to investigate.

This proposition may not sit comfortably with some among us, who always feel a great sense of unease whenever we refer to the incontestable fact that, in many respects, ours remains, still, an apartheid society

Nevertheless, it can never be our approach that the best way to deal with any problem is to pretend that it does not exist.

The African National Congress called for and pioneered the establishment of the TRC, in a serious effort to ensure that the political conflicts of the past do not become a major obstacle to our common efforts to

create a non-racial and non-sexist democracy committed to creating a better life for all, within a society guided in its development by the important concepts of national unity and reconciliation.

Perhaps the predominant question we all have to answer as we conduct our discussion on the TRC and its outcome to date, is - whether, as a result of the work of the TRC, we are closer to the achievement of the goals of national unity and reconciliation!

The African National Congress would like to take this opportunity to salute the TRC for the work it has done in various areas. These include:

- the discovery and exposure of the truth with regard to many: instances of gross violations of human rights;
- the tracing of missing persons including their graves;
- the encouragement of reconciliation between perpetrators and victims of violations of human rights;
- the cultivation of a spirit of remorse among those who had done wrong; and,
- the identification of some of the people who are entitled to receive reparation.

We would also like to acknowledge the effort that went into the elaboration of proposals intended to build on the TRC process as we all continue the struggle for national unity and reconciliation.

Clearly, many of these recommendations would form part of the agenda of the follow-up National Summit on Reconciliation proposed by the TRC.

These outcomes of the TRC process to date are clearly an important contribution to the overall national task of unity and reconciliation.

However, there are other elements of the TRC Report and process about which we have to enter serious reservations, without subtracting from the positive work which the Commission has done.

In his Minority Report, Commissioner Wynand Malan makes some disturbing comments about the manner in which the Report was processed and adopted.

He says, in part, that "it became clear in plenary sessions for the adoption of the report that the discussions were based on the drafts, and the limited time for such discussion precluded any structural or philosophical change...even though Commissioners had serious reservations on some of (the drafts)...I proposed a delay in finalising the report, with some support but ultimately without success. Publication will lead to some reaction that we might have been able to avoid."

We, like others, had sought to meet the TRC to respond to its 'findings' against the ANC. As the country is aware, for reasons we still do not know to this day, the TRC decided not to meet us.

An appeal to the courts to assist in this matter resulted in unfortunate and gratuitous insults being made about freedom fighters being tomorrow's tyrants.

In finding against our application, the court itself raised the same matter that Commissioner Wynand Malan referred to with regard to "structural or philosophical change" and said:

"It is abundantly clear from the content of the representations that they were not simply an attempt to correct minor detail in the respondent's (the TRC's) contemplated findings... Anything short of full consideration by the respondent (the TRC) of the applicant's (the ANC's) representations would not have been adequate or proper...I am therefore satisfied, in the circumstances, that it would not have been reasonable to expect the respondent and its members to...(read the representations and consider

them)...properly and adequately in the time available to them between the 19th and the 29th October, 1998."

We too, as a last resort, had proposed a delay so that, in the words of the judge, full, adequate and proper consideration could be given to our representations, but this was denied.

What we had sought to discuss with the TRC pertained to such obviously important matters as the definition of the concept of gross violation of human rights in the context of a war situation and other issues relating to war and peace and the humane conduct of warfare.

One of the central matters at issue was and remains the erroneous determination of various actions of our liberation movement as gross violations of human rights, including the general implication

that any and all military activity which results in the loss of civilian lives constitutes a gross violation of human rights.

The net effect of these findings is to deligitimise or criminalise a significant part of the struggle of our people for liberation and to subtract from the commitment made in our Constitution to "honour those who suffered for justice and freedom in our land..."

Indeed, it could also be said that the erroneous logic followed by the TRY, which was contrary even to the Geneva Conventions and Protocols governing the conduct of warfare, should result in the characterization of all irregular wars of liberation as tantamount to a gross violation of human rights.

We cannot accept such a conclusion, nor will the millions of people who joined in struggle to end the system of apartheid.

National unity and reconciliation in our country cannot be based on the denunciation of important parts of our struggle, which were themselves firmly based on the Geneva Conventions and Protocols, as gross violations of human rights.

Further to this, the findings of the TRC show a serious deficiency with regard to understanding the origins and purposes of the violence which claimed so many lives in the period since 1990.

The Commission itself says that: "In particular, the Commission failed to make significant breakthroughs (sic) in relation to violence in the 1990's...Few entry points for investigation were opened up and a great deal of further investigation is required."

And yet, despite the claim that ' few entry points for investigation were opened up...', the Commission, among other things, makes the bold assertion that "the success of 'third force' attempts to generate violence was, at least in part, a consequence of extremely high levels of political intolerance? for which both the liberation movements and other structures such as the IFP are held to be morally and politically accountable."

What remains is but a short step to arriving at a conclusion about spontaneous so-called 'black-on-black' violence, which was such an important plant; in the propaganda armoury of our opponents.

This is in spite of the fact that the Commission itself produces evidence of how the apartheid security forces encouraged this 'black-on-black' violence, as in the case of Mzwandile Maqina who "colluded with members of the SADF and the SAP" while posing as a genuine member of AZAPO.

The issue of the so-called Witdoeke in the Western Cape also vividly illustrates what was done by the apartheid security forces to set the black oppressed one against the other.

Elsewhere in its Report, the TRC says, for example, that: "evidence before the Goldstone Commission revealed that Phola Park SDU member Michael Phama was a police informer and had been instrumental in planning and carrying out the attack on IFP supporters on 8 September 1991, in which eighteen IFP supporters were killed."

Beyond this, however, is the related matter that the Commission did not deal with adequately namely, the unravelling of the National Security Management System, including its structures and the personnel within its structures down to the local level.

We raised this matter with the Commission on more than one occasion, not for the sake of the compilation of an historical record but because these are precisely the structures and people that were used to foment the post- 1990 violence.

If these structures are not exposed, they remain available to those in our country who have not given up the idea of destabilising our country through violence means.

We hope that the Amnesty Committee will work to remedy; this serious defect by, putting together the information that is accumulating during its own hearings so that we can, as an important part of ensuring the stability of the new South Africa, finally wind down structures that had been established to perpetuate the apartheid system by violent means.

It is sometimes said that it is difficult to find anybody in our Country these days who supported apartheid. Those who were not activists within the broad liberation movement claim that they did what they could to oppose this system within the constraints imposed by the law.

Elements of this attitude are reported upon by the Commission which, for instance, states that "the business sector failed in the hearings, to take responsibility for its involvement in state security initiatives specifically designed to sustain apartheid rule"

The Commission also states that it "rejects the argument made particularly by judges of their impotence in the face of the exercise of legislative power by a sovereign parliament."

On the media the Commission notes that: "The mainstream newspaper reacted to legal curbs with a policy of appeasement. They did not defy the laws but, the claim, tried to exploit loopholes and find ways to beat the system."

To his everlasting credit and honour, the then Judge President of the Cape High Court, Judge Gerald Friedman, was one of the few judges to respond to the request of the Commission to make a submission.

In his presentation, he expressed his agreement with comments made by Judge Richard Goldstone in which the latter said:

"In my opinion, a judge may freely speak in court on any topic strictly relevant to the matter before him. If appropriate he is entitled to criticise the law he is required to implement if, in his opinion, it offends against morality or justice. Indeed, in some cases it may be his duty to do so."

What happened instead, say judges Goldstone and Friedman, was that: "The great majority of our judges applied such (discriminatory laws based on racial criteria) without commenting on their moral turpitude."

Judge Friedman also goes on to say that with regard to the role of the judiciary in applying security legislation, "it must be acknowledged that by and large prior to 1990, the judiciary's record was indefensible...To sum up, the courts' record as an upholder of the rights of the individual in the application of security legislation cannot, with obvious exceptions, be defended."

In the end, the point we are making is that the argument advanced by some, in self-justification, that there were laws which, because they were on the statute book, had to be obeyed, regardless of the fact that they were unjust and oppressive, has to be rejected.

Each one of us has a right and duty to rebel against tyranny. Beyond a certain point, each one of us has the moral responsibility to refuse to obey orders and injunctions that perpetuate a crime against humanity.

In 1964, an English judge and jury heard a defamation case brought against Leon Uris, the author of the book "Exodus" by a Dr Dering who had been an inmate at the Auschwitz concentration camp, where, on the instructions of the Nazi authorities, he carried out medical experiments on human beings.

Dr Dering sued for damages because he claimed that he had been defamed by being presented in the book as having carried out his operations with callousness and brutality.

The jury found in his favour and awarded him damages of "the smallest coin in the realm", half a penny, while the court awarded costs against him, which amounted to hundreds of thousands of pounds.

In his summing up, Judge Lwton said, among other things:

"The jury should try to imagine what agony of mind those young men and women must have gone through - to have a testicle removed when one was 16 or 18 or to have one's ovaries removed if one was a young girl!"

In the end, in a Solomonic judgement, the court ruled that whereas there might have been some exaggeration of the callousness of Dr Dering, the most outstanding issue in the matter was that Dr Dering had betrayed his personal responsibility to refuse to participate in medical experiments that were inherently criminal and inhumane, however gently they might have been carried out.

The fact that Dr Dering was an inmate in a concentration camp was no excuse, as it was no excuse that there was an all-powerful apartheid state.

In their book "Reconciliation Through Truth", Kader and Louise Asmal and Suresh Roberts make the point that:

"Reconciliation requires an acknowledgement of wrongs committed and a reevaluation by their perpetrators of the morality which lay behind them. Only then can reconciliation trigger real catharsis, a word which, in its original Greek meaning, contains the ideas of purification and spiritual renewal. Reconciliation, accurately conceived, must bring about a rupture with the skewed ethics (sic) of apartheid, and so upset any possibility of smooth sailing on a previously immoral course." (p 47-8).

A question critical to the success of the great struggle to achieve national unity and reconciliation that must be answered is whether those who benefited from apartheid are ready and willing to trigger such real catharsis as their honest contribution to the victory of that struggle!

The famous Russian poet, Yevgeny Yevtushenko begins one of his most famous poems against anti-Jewish pogroms with the words:

"No sculptured stone stands over Babi Yar!"

No sculptured stone stands over Crossroads or Hammarsdale nor over Sebokeng, Soweto or Athlone.

The great masses who engaged in a superhuman effort to rid themselves of tyrannical rule, their heroes and heroines who gave up everything for freedom remain unsung.

Clearly, something must be done to correct this grievous wrong!

It is for this reason that surely all of us must agree that reparation will be offered to those who fought for freedom by ensuring that monuments are built to pay tribute to these to whom we owe our liberty.

There was no grosser violation of human rights than apartheid itself. Countless communities across our country lie devastated by the consequence of centuries of racial injustice.

As reparation to these millions, we must, as a people, stand firm on our commitment to the reconstruction and development of our country, to the redistribution of its resources and opportunities, to the upliftment of those who had been defined as fit only to live beyond the almond hedge.

To discharge this urgent responsibility, we must all join our efforts and pool our resources, as is happening in the context of the challenge of job creation.

We must, together, generate the means whose use will firmly and practically convey the message that all of us, both black and white, are ready and willing to provide reparations to entire communities, by helping to pull them out of the wretched conditions which are the product of a gross and sustained violation of their rights as human beings.

As visualised in the Act and as recommended by the TRC, we must also attend to the matter of individual reparations, both in the form of cash and the provision of services. There are many people who were harmed and their dignity denied during the course of the conflict which the TRC was mandated to investigate. We must respond to their plight as a central part of our quest for national unity and reconciliation.

We must however also make the point that no genuine fighter for the liberation of our people ever engaged in struggle for personal gain. There are many who laid down their lives, many who lost their limbs, many who are today disabled and many who spent their best years in apartheid prisons.

None of these expected a reward except freedom itself.

We must not insult them and demean the heroic contribution they made to our emancipation by turning them into mercenaries whose sacrifices we can compensate with money.

Very many among these have not asked for any money, because their own sense of the dignity of the freedom fighter leads them to say that there is no cash value that should be attached to their desire to serve the people of South Africa and all humanity.

Due attention will also have to be given to the many heroes and heroines who lie in many graves both inside and outside the country.

Where the bodies will not be exhumed and reburied, we nevertheless owe it both to these who lost their lives and their relatives to ensure that the graves of the fallen combatants for freedom are properly maintained and honoured.

The Amnesty Committee has not yet concluded its work. It is therefore difficult to estimate the volume of cases that will remain unaddressed when it closes.

Nevertheless, it seems important that we should all agree that whatever happens we should never entertain the idea of a general amnesty. At the same time, serious consideration will have to be given to ensuring that we do not allow ourselves to be drawn into a situation of conflict as a result of the political crimes of the past.

Among others, we will all have to discuss such proposals as have been made on this matter with regard to KwaZulu-Natal and others put forward by the former generals of the SADF who have, themselves reconfirmed their loyalty to the country and its constitution, as well as their commitment to peace and stability in our country and region.

The quest for national unity and reconciliation is fundamental to our emergence as a nation at peace with itself.

What we have done has amazed and inspired many across the world. We owe that international community, including the countries of our region which were victim to apartheid aggression and destabilization, our own contribution to the common effort to build a better world for all.

It remains for us to build on the progress we have made, in fact to build an equitable society, to banish the antagonisms of the past, to create a new national identity in which all of us will draw pride and strength from the great variety of our colours, cultures, languages and religions, as a result of which all of us should say yesterday was a foreign country, as young Afrikaners were happy to proclaim!

As yet another stepping stone to that glorious future, surely all of us, political parties, our legislatures, the organs of state and organizations of civil society have need to commit ourselves to a common statement and programme of action to oppose all violations of human rights.

Our collective and burning desire not to repeat the past must find expression in the greatest mass movement our country has ever seen, for the removal of the almond hedges that deform the face of our country, for the defence of freedom and for the advancement of human dignity.

A beginning has been made.

Like all beginnings, ours is also a prayer to the future.

By our deeds, let us grant later generations the possibility to sing of unity and reconciliation among themselves which was, for us, our future.

Thank you