

Reparations: an Empty Promise?

Some of the gravest challenges to the process of reconciliation and the right to equality in South Africa are the structural inequalities that have contributed to the ever widening gap between the wealthy and the poor. The continuing delays in the payment of reparations promised to victims of apartheid era gross human rights violations, as identified by the TRC, means that many victims are now living in worse conditions than they were under apartheid.

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A significant number of victims and survivors of gross human rights violations weren't included in the TRC process, and many do not appear on the official list of victims who qualified for reparations. These individuals will, therefore, be unable to access reparations, if and when these become available.

The Department of Justice and Constitutional Development has yet to make public its policy on community reparations or to adequately consult with affected communities on the development of this policy.

Pardoning the past

The controversial presidential pardons process was set up as a mechanism to pardon perpetrators of politically motivated crimes under apartheid who had not applied for amnesty under the TRC. Since its inception in 2007, this special dispensations process has taken place behind closed doors with no consultation with the victims of the crimes in question. The list of offenders recommended for pardons has included five mass murderers with no affiliation with any political party, the killer of a five-month-old baby and a man convicted of aggravated robbery, as well as perpetrators of crimes taking place long after 1994.

In 2009, a group of NGOs challenged AWB activist Ryan Albutt's application for a presidential pardon on the grounds that victims of the crimes in question had not been consulted. In February 2010, the Constitutional Court ruled that, in keeping with the spirit that underpinned the TRC amnesty process, victims are indeed entitled to an opportunity to be heard before the President makes a decision to grant a pardon under the special dispensation.

The following news articles published, between 2001 and 2010, reflect some of these unresolved issues. They are reproduced with the kind permission of all newspapers involved.

Mbeki accused of ignoring reparations

By Ido Lekota
Political Editor

PRESIDENT Thabo Mbeki was accused yesterday of continuing to ignore the issue of reparations to victims of apartheid.

Former Truth and Reconciliation Commissioner Advocate Jasmin Sooka made the accusation after the President spoke at the official opening of a non-governmental organisations (NGO) forum in Durban yesterday.

Mbeki addressed thousands of NGO delegates from all over the world in Durban to attend the World Conference Against Racism which starts on Friday.

He said it was important for the whole world to acknowledge that

slavery, colonialism and racism were unjust.

Sooka said that, by talking only about acknowledgement, Mbeki had underplayed the call for reparations for victims of slavery, racism and colonialism.

More importantly, Mbeki had missed an opportunity for the South African Government to make a commitment to deal with the plight of those who were victims of political violence in South Africa, she said.

"Imagine the joy they would feel if they heard that our Government's programme on reparations was set to address their plight. Instead the silence on the issue of reparations is deafening."

She said it had been three years since the Government received the

TRC report but nothing had happened in terms of reparations.

The Government's position favoured the rights of perpetrators of human rights abuses under apartheid while undermining the rights of victims, she said.

"The former agents of apartheid have something to return to. They have homes and some are employed. However those that they deprived of their rights have nothing."

Former Robben Island prisoner Professor Denis Brutus said Mbeki's words were contrary to the policies his Government had adopted.

He had spoken about improving the quality of people's lives while his Government had adopted a policy that "created unemployment" by selling off public utilities to corporates, he said.



The unresolved issues of the TRC revolve directly around further amnesties and, in particular, the need and opportunity to establish more truths about past abuses. Photograph: Paul Botes

The Geldenhuys "forum" remains shrouded in mystery. We do not know what weight the "forum's" recommendations will carry, and it remains to be seen if details will be made available for public debate and input. The government knows that to undertake a further amnesty process requiring disclosures, even in an in-camera process, is an expensive and resource-consuming option. A general administrative amnesty not only ties up a range of outstanding legal liabilities, it is also cost effective. This fiscal temptation, however, must be considered in the context of a range of broader obligations. If there is to be a further amnesty, it must address a panoply of needs, not just those who hope to benefit directly from it.

While amnesty in any form remains a distasteful option, for many it may be the only opportunity to secure vital information about past abuses. For human rights activists and many victims and survivors, the TRC really was only another step in the process of trying to find out the truth. Of those who engaged with it, only a handful received any sort of detailed feed-

back from the commission relating to their submissions. It is therefore important to recognise that much more can be achieved. A general amnesty by whatever name would provide no tangible benefit to victims and survivors at all.

Considerable weight was given to the notion that an agreement on amnesty was a prerequisite for a peaceful transfer of power during the negotiated settlement. Even the Constitutional Court, arguing in favour of the constitutionality of amnesty provisions, pointed out that, "but for a mechanism providing for amnesty, the 'historic bridge' itself might never have been erected".

But, there never was any detailed agreement on amnesty. This is why one of the first moves by Nelson Mandela's cabinet in 1994 was to overturn attempts by the De Klerk government in its last days to indemnify over 4 500 security officials, mainly from the police. This is why the ANC majority in Parliament was able to ensure that a transparent conditional amnesty process was placed on the statute books, even though it required participation from all sides of the conflict. The

absence of a general amnesty did not bring about the right-wing/security force backlash that had been suggested. What then would be the purpose of such a general amnesty now? Is there any suggestion that this threat remains? Would conflict in KwaZulu-Natal re-ignite without the proposed amnesty?

There are many questions that will have to be answered around these developments if the government is really committed to building a culture of accountability. Political brinkmanship on this issue requires the government to stand firm and demonstrate its commitment to basic rights and values. There is, however, a very real concern that we are witnessing the beginnings of a significant reversal in the gains that have thus far been achieved. This need not be the case, and the government now has an opportunity to demonstrate principled leadership on this issue. Anything else is a betrayal of the fundamental values underpinning our Constitution.

Piers Pigou is a senior researcher at the Centre for the Study of Violence and Reconciliation

An 'extended amnesty' would undermine the work of the TRC

Unfinished business

ANALYSIS

Piers Pigou

Almost 16 months ago the amnesty committee was wrapping up its hearings after five-and-a-half years of difficult and often painful work. In the public debate that accompanied this long-awaited moment, limited details of secret discussions between former South African Defence Force (SADF) generals and a number of different political parties appeared, and then as quickly slipped from view.

In February 1999 Thabo Mbeki told Parliament that consideration would have to be given to special amnesties in the wake of the Truth and Reconciliation Commission (TRC), and specific mention was made of the military as well as KwaZulu-Natal.

Over the past few months we have seen the issue slip in and out of public view, as a result of unsubtle attempts from a range of political parties to secure amnesties through presidential pardons. In May former SADF chief General Jannie Geldenhuys issued a statement claiming proposals for an "extended amnesty" were submitted to the government several months ago by a "forum" consisting of four retired SADF generals and an undisclosed number of "senior African National Congress leaders".

The former SADF chiefs seem intent on securing the general amnesty promised by the late Joe Modise during bilateral negotiations between the SADF and

Umkhonto weSizwe in 1993.

Despite the 7 000-plus amnesty applications received by the TRC, the vast bulk of apartheid-era perpetrators did not subject themselves to the amnesty "deal". It was no secret that some form of amnesty would be under consideration following the TRC process. What remained unclear was how this process would unfold, and what this would mean for further truth recovery and prosecution initiatives.

The unfinished business of the TRC revolves directly around the issue of further amnesties and, in particular, the need and opportunity to establish more truths about past abuses. This is certainly not the exclusive business of the "forum". Former SADF leaders' contempt for the TRC, which they accused of political bias, is on record. Their promotion of further amnesties is evidently self-serving, and attempts to portray these moves as some sort of recipe for national reconciliation are disingenuous.

In recent weeks confessions by a former Civil Cooperation Bureau agent have resulted in arrests of several former SADF members for their involvement in the assassination of ANC-aligned youth in Limpopo during the mid-1980s. Former members of the 32 Battalion

Despite its flaws, the TRC sought to, and achieved, the most transparent amnesty process ever seen

have told government officials about their involvement in the violence that severely jeopardised the negotiations during the early 1990s. It is widely believed that the military is hiding its involvement in many more incidents of abuse.

It remains to be seen what resolve the government has to push through proposals that might detract from the spirit of the existing amnesty criteria established by the truth commission. Despite its flaws, the TRC sought to, and achieved, the most transparent amnesty process ever seen internationally.

It pioneered a twin-track strategy, which, although in need of many refinements, allows for an amnesty process to accompany and receive support from the threat of prosecution. Investigations that prompted most security force amnesty applications were in many cases just beginning to unravel the web of abuses committed, and pressure could potentially have been exerted on hundreds more operatives to apply for amnesty.

To return to limited disclosures, as in the case of the early 1990s indemnities, or a general amnesty, would constitute a step in the opposite direction in terms of building accountability and legitimacy in the criminal justice system, and the broader objectives of institutional transformation. So too, would any attempts to secure amnesties through manipulations of the presidential pardons process.

Human rights organisations are likely to vigorously oppose any such moves, and will seek to establish the constitutionality of any such developments.

All victims should receive reparations, says church

Ernest Mabuza

Senior Reporter

A CHALLENGE facing the country after the end of the Truth and Reconciliation Commission period would be to ensure that all victims of human rights abuses were considered for reparations, SA Council of Churches general secretary Molefe Tsele said yesterday.

There are about 22 000 apartheid era victims of human rights abuses who are earmarked for reparations, but there are possibly thousands who did not testify during the commission's hearings and are therefore not on the list of people being considered for reparations.

Tsele said there were areas where the commission could not work properly, such as in KwaZulu-Natal.

This meant some people who suffered human rights abuses could not be put on the records and could be left out when reparations are made.

Tsele said the challenge facing South Africans was to ensure that a meaningful communal system of reparations was effected. He also said it should not only be government that should bear the burden of reparations, but also South Africans

who benefited from apartheid.

"We have always said business must come to the table and say what they are prepared to contribute," Tsele said.

Tsele was addressing a media briefing in Johannesburg as the truth body prepares to perform its last duty on Friday when it hands over to President Thabo Mbeki the final two volumes of its seven-volume report.

The handing over will be preceded by an inter-faith religious service of celebration and healing, to be held at St Alban's Anglican Cathedral in Pretoria.

Tsele said the council wanted the service to honour the memories of the victims of human rights abuses during the apartheid period. Former commission chairman Archbishop Desmond Tutu is expected back in the country tomorrow for the ceremony.

Tsele said the service would also honour the role played by Dullah Omar, who was justice minister at the time of the formation of the commission.

One of the volumes to be presented to Mbeki at the Union Buildings contains 22 000 summaries of the human rights violations suffered by those who came to the commission to tell their stories.

Reparations a priority

Mbeki urged to apologise to apartheid victims

The final TRC report was handed over to President Thabo Mbeki yesterday with strong recommendations, writes Charles Phalane

PRESIDENT Thabo Mbeki, as head of state, should "apologise to all victims on behalf of those members of the security forces of the apartheid state and armed forces of the liberation movements who committed gross violations of human rights".

This is one of the recommendations of the Truth and Reconciliation Commission contained in a supplement to the final TRC report presented to Mbeki yesterday.

In handing over the supplement, chairman Desmond Tutu urged business and government to tackle the issue of reparations speedily, as it had the potential to destabilise the country. Tutu said there was no question the apartheid system was designed to benefit whites, and urged those who benefited to assist with reparations.

"They (victims) have waited too long for their reparations. As a nation we have a legal but, more importantly, a moral obligation to honour in paying reparations," Tutu said.

He said nearly a decade after democracy, and despite the government's commendable work, people were still living in squalid shacks.

"They go to work in town, which is still largely white, in palatial homes. If they leave that to return to the squalor, I cannot explain why those people do not say, 'to hell with Tutu and the Truth Commission, the Mandelas and all of

these people, we are going on a rampage'. And my white compatriots still take that for granted," Tutu said.

He appealed to people's spirit of gentleness and compassion to adopt an

indigent family and support them with R100 or R200 a month.

"It would make a huge difference and help to narrow the gap between the rich and the poor, the haves and the have

nots, which we identify as what is most likely to subvert any efforts at reconciliation," Tutu said.

Other recommendations include a once-off wealth tax on South African

business and industry, the establishment of a reparations trust fund, and that all ministers with portfolios affecting victims should report annually on the status and circumstances of surviving victims.

The Department of Education should make special arrangements for entry into tertiary institutions for those whose education had been disrupted by the struggle, as was done for those whose studies were disrupted by World War 2.

The report also recommends the holding of a Healing the Memory conference and a conference dedicated to the fallen.

Mbeki said the Government would respond speedily to the recommendations of the TRC, including on the issue of reparations. He thanked commissioners for their work in helping the country's need for understanding and not vengeance, for reparation and not retaliation.

Justice Minister Penuell Maduna said the Government would hold a consultative conference to plan how to take the issue of reparations forward, starting with the recommendations of the TRC.

Maduna said the Government had no position on the talk of a special amnesty to tackle the human rights violations stemming from the conflict between the ANC and the IFP. He said the recommendations of the TRC would be debated in Parliament.

The Government had already distributed R50 million for urgent reparations and had set aside R300 million for final reparations. —
Political Bureau

OPINION & ANALYSIS

TRC unfair without reparations

When the Truth and Reconciliation Commission (TRC) conducted public hearings in Thohoyandou a few years ago, a woman from Tshisaulu village related a heart-rending story.

In addition to her describing in graphic detail how her husband was tortured by the then Venda security police, her story was convincing because she had an exhibit - her husband, sitting helplessly on a wheelchair.

The man became mentally and physically disabled after he was brutalised by the police. He was arrested for assisting ANC "terrorists" and severely tortured. During the torture, the man soiled his pants and the police forced him to eat his faeces, the commission heard.

The woman spoke of the agony of having to look after a man who is unable to be a man, who is a vegetable.

And what happened to the men who turned this man into an object? They have been granted amnesty and still serve in the police service led by Charles Nqakula, under President Thabo Mbeki.

Their criminal records are clear. Worse still, their victims cannot institute any legal action, civil or criminal, against them or the state, courtesy of the TRC.

So, as the TRC handed its final report to President Thabo Mbeki on Friday, I wondered whether the commission had chieved its objectives.

Did the nation get to know what happened during the dark days of state-sponsored terrorism? Even more, have we reconciled as a people? There could be at least two views on these questions, the first being that the TRC process was a farce. It produced no truth since half-truth is not the truth. It has not reconciled South Africans and therefore it was a waste of money.

There is another less radical view but perhaps more pragmatist: It that the TRC was a product of a less than perfect political compromise.

It acknowledges that we may not have obtained every bit of information relating to who did what to whom in the struggle for or against apartheid but we know much more about what happened now than before the TRC process started.

We might still be grappling to form a nation but the different races have a better understanding of one another than they did before the TRC. Perhaps more importantly, no-one can claim any longer that they do not know the extent of the brutality of the apartheid regime.

COMMENT

KHATHU MAMAILA



This was a compromise that settled for reconciliation rather than justice

Firms cautious on calls for apartheid reparations

Some feel that empowerment deals are more constructive

Nicola Jenvey, Lesley Stones, Julie Bain, Carli Lourens and Charlotte Mathews

STUNNED silence from large parts of the business sector greeted the news that the Truth and Reconciliation Commission has recommended to government that SA's businesses be made to pay reparations to victims of apartheid unless they offer to play a more substantial role in reconstructing the country.

The commission's suggestions included a wealth tax or a one off levy on corporate or private income. The commission singled out three business sectors that benefited particularly from apartheid policies: parastatals like Eskom, mining companies like Anglo American and international institutions like the Swiss banks.

A number of businesses said yesterday they would prefer not to comment on the recommendations, either because these were considered too sensitive or because executives had not yet had time to consider the matter in depth.

Anglo American executive director of corporate affairs Michael Spicer said Anglo did not consider the payment of reparations in SA was appropriate when both the business and political environments had changed significantly and transformation in the country's mining and other industries was well under way. "Since the government and other parties have indicated their desire for a formal debate on the report — and indeed we understand that the minister of justice is convening a one-day session on the subject — we have indicated we are willing to participate in a constructive spirit," said Spicer.

De Beers, whose submission to the commission was part of Anglo's in 1997, said if it were ever asked to pay reparations it would probably channel the request through the company's De Beers fund. This fund manages De Beers social and community investments.

The notion that Anglo American or any of its subsidiaries may be asked to pay reparations for any involvement in supporting apartheid would add to the concerns of international investors when it came to investing in the SA mining sector and listed companies with assets in SA, said another mining industry



Anglo American's Michael Spicer

source. An SABMiller spokesman said the group had not benefited from the policies of the previous government. Whereas the wine industry benefited from significant tax concessions, SA Breweries paid heavy excise duties.

Before 1994, the group was actively advancing black people into management and in corporate social investment spending to uplift black communities. However, SABMiller had not yet had time to look at the report's recommendations and was still evaluating it.

Technology company Dimension Data said its growth had mainly been achieved in the post-apartheid era, as the demand for information technology products and services began to rise.

"An indirect result of apartheid was the lack of competition because of the sanctions imposed by multinational companies, which prevented them from working here and competing against us," said investor relations manager Bronwen Goeller.

"But apartheid is not something from which we enjoyed any wrongful gain," she said.

Grindrod director Laurence Stuart-Hill said black economic empowerment deals were a method of "repairing the past". It was a broader policy dealing with how apartheid

policies had skewed the economic distribution among citizens.

McCarthy human resources director Roy Parkhurst said although the motor retailing group had not formulated an apartheid reparations plan, McCarthy had been concluding black economic empowerment deals for several years.

"Implicit in black economic empowerment is redressing the past policies that weakened SA and its society and were unjust to a broad scope of the population," he said.

He questioned whether calling for apartheid reparations was semantics when companies were already undertaking black economic empowerment deals.

Stuart-Hill defined reparations as dealing with specific individuals or communities, while black economic empowerment had a broader scope. He perceived problems in introducing specific reparations.

Pepkor MD Pieter Erasmus said he did not know the details of what was proposed by the commission.

Generally, though, the private sector tended to believe it deployed funds more efficiently than a government agency could and it was uncertain whether the government's plans would take over some of the initiatives and budgets now allocated by the private sector.

Victims of repression deserve reparations

By Yasmin Sooka

THE Truth and Reconciliation Commission (TRC) handed over the codicil to its final report to President Thabo Mbeki on Human Rights Day, March 21 also commemorates the events that took place in Sharpeville in 1960 – a day which remains a defining moment in South African history.

The handover of the codicil removes the last obstacle to the government dealing with the TRC's recommendations on reparations. This right to reparation is well established in both domestic and international law, with our own Constitutional Court having determined that "reparations are usually payable by states, and there is no reason to doubt that the post-script envisages our own state shouldering the national responsibility for those".

Reparations is accepted by the international community as an acknowledgment by government of the wrongdoing against the victims of gross human rights violations. Governments often respond to the call for reparations with the notion that they have development programmes which will benefit victims.

Development is meant to advance the welfare of all citizens and must be

distinguished from reparations which is meant to acknowledge the wrongdoing, but also to ensure that the pain of paying it will be a "deterrent to a state committing violations in the future".

So the aspect of 'non-repetition' is incredibly important. Reparation becomes a restorative justice option which seeks to redefine the crime, it shifts the focus to the victims. It also aims at healing and restoring the dignity of, not only, the victim, but also of the family and the entire community. Importantly, it supports a system of justice which aims at accountability.

Incredibly, of course, the new government in South Africa will be shouldering responsibility for the crimes of the former state.

Reparation is not a new facet of international law; in 1990 the UN Compensation Commission was established as a result of the Gulf War in 1990 to pay out billions of dollars in reparations to victims.

In Chile, the cost of the reparation programme was \$16 million per year, which included a monthly pension to victims, medical benefits for the victims and the families, educational benefits and tax and military exemption.

The TRC, concerned at the amnesia of business in regard to their role during the apartheid era, took a much harder line this time around.

Although it made findings in respect of the role played by business during the apartheid period, nine years into the transition, business has not only failed to acknowledge the role that they played during the apartheid era: in not only supporting the policies of the apartheid government; but also in acknowledging how they benefited from apartheid laws and profited from their collusion with the apartheid government.

If the TRC is to be criticised, it should be for not pointing this out sooner. The destabilisation of family life and social systems has left a bitter legacy in South Africa, which has not been repaired. The single sex hostels, the exploitation of the black migrant labour force, the legacy of the brutal land removals have left a dark stain on the South African economic and social life which the country continues to struggle with today.

The TRC intended that business would be involved in the wider project of reparations in respect of all those South Africans whose normal development was impaired by the system of apartheid. This has not happened.

For business, it has been "business as usual". In fact, in many ways having prospered under apartheid, many companies have shifted their assets to other parts of the world. This has constituted a flight of capital. Business have talked about their role in black empowerment and their contribution to dealing with HIV-Aids. It is interesting that even black business has demanded that government pass laws to improve the question of black empowerment, as it is quite clear that there has been little or no empowerment.

While their effort in the HIV-Aids arena is commendable, it cannot replace their responsibility for the wider aspect of reparations.

At the heart of the debate is whether business is prepared to acknowledge the fact that decades of profits were based on the systematic violations of human rights of the vast majority of South Africans. In 1895, when the migration control regulations were first drafted by the Chamber of Mines' Native Labour Department, the President of the Chamber of Mines called it "a most excellent law ... which should enable us to have complete control over the Kaffirs". In its 1944 submission to the Commission on Native Wages, the Chamber argued openly for the 'subsidiary means of subsistence' that guaranteed migration back to the homelands. This allowed for the subsidisation of labour costs and the cost of reproducing that labour. In fact, the zeal and enthusiasm for population control laws by the mining houses set the precedent for the pass laws of the apartheid government.

The collusion between the mining houses and the state security forces should not be forgotten.

(The writer is a former TRC Commissioner.)

Trust shown by victims in the TRC process must now be honoured in proper reparations

DOT CLEMINSHAW

THE recent response by the Democratic Alliance (DA) to the report and recommendations of the Truth and Reconciliation Commission (TRC) illustrates the gaps in perception that continue to plague our communities.

In an article by Dene Smuts, DA spokesperson on human rights (Cape Times, April 24), the genesis of the TRC is correctly ascribed to the negotiating parties' need to deal with the question of amnesty. But the purpose of the TRC was much wider in scope. Its task was to find out what went so horribly wrong that South Africa became anathema internationally and the liberation movement resorted to armed struggle.

It could hardly do so by omitting to examine the nature of apartheid. The DA view, however, is that the TRC "strayed off the narrow legislated path" because it was "setting up on the grand platform of apartheid as a crime against humanity".

Smuts claims that the TRC-designated victims "are not victims of apartheid at all", but victims of gross human rights violations by all sides. In the latter she is correct, but quite wrong – these individuals would not have experienced such violations in the absence of apartheid.

The DA is so anxious to protect its main constituency, the business sector, from the demands of victims for compensation that it tries to narrow the argument down to individual reparations for victims of gross human rights abuse.

To many, the outstanding aspect of the TRC has been its negotiated origin and mode of operation, agreed between once bitterly contending parties. Yet surely the most striking phenomenon was the presence of the

THE DEBATE

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victims/survivors themselves. Why did so many victims trust the TRC and refrain from pressing criminal charges or action for civil damages?

"... the human need to tell the story and to have the truth acknowledged by wider society ... the hope of finally hearing the whole truth ... A further reason lies in the nature of the new State itself ... They saw the government as able to restore the justice that had been denied." – Lapsley and Chubb, 2000.

Has this trust been vindicated? By the response of the government as conveyed by President Thabo Mbeki, the answer is both yes and no. What came as a pleasant surprise was the positive tone of the speech, consider-

ing past events: the ANC's displeasure at the failure of their 11th-hour court challenge to stop publication of the TRC's 1998 findings on the ANC, followed by then-deputy president Mbeki's criticism of the TRC, the failure by government to deal promptly with the TRC's recommendations for reparations, the long silence as to official policy on reparations, interspersed with occasional negative or ambiguous remarks both from the justice ministry and the president on reparations, and the dismissive treatment of the Khulumani organisation's efforts to discuss the issue with government.

But the government's decision to award a once-off payment of R30 000 to each of the victims has been a great disappointment. The latter have known since 1998 that the recommendation was, in addition to other forms of reparation, individual grants of R21 700 per annum, based on average household income, for six years, to about 22 000 victims.

This is minuscule in the face of the funds spent on granting amnesty and the cost of civil claims victims have forfeited in the name of reconciliation. "How tragic it would be if the 22 000 people whose stories confronted us all with the painful truth of our past were to become embittered through our collective lack of generosity," said Michael Lapsley. Indeed.

When the minister of finance presented his budget recently, he handed back a large sum to the taxpayer that could have been allocated to reparations. He used the image of a bowl of plums, the fruits of our new democracy. Did he perhaps derive this metaphor from a reading of William Plomer's poem, the tribute to Nat Nakasa and Ingrid Jonker?

"Her blood and his
Fed the slow, tormented
Tree that is destined
To bear what will be
Bough-bending plenty.
Let those who will savour
Ripeness and sweetness,
Let them taste and remember
His, her and all others'
Secreted in the juices."

● *Cleminshaw is a human rights activist.*

1 400 KZN reparations unpaid

HANNAH KEAL and SAPA

A LARGE number of the people who have not yet claimed their reparations after being declared victims of human rights violations during the apartheid era by the Truth and Reconciliation Commission (TRC) are from KwaZulu-Natal.

Of the 1 893 people who are yet to be paid out R30 000 each in compensation by government, 1 400 live in KZN.

Justice and Constitutional Development department spokesperson Kaizer Kganyago said the department only recently divided the numbers of unpaid victims remaining by province and hence could not say why most of those who have not yet claimed their money are from KwaZulu-Natal.

"We go according to the last address that the people gave us. We might find that people have moved or died and their next of kin are not there," he added.

The department has urged people who were declared victims to contact the Department. "We have been trying to reach these people for a year. We sent them letters but they came back ... We urge these people to get in touch with us so we can pay out their money as soon as possible," Kganyago said.

Since 2003, government has paid out over R419 million in reparations to 13 971 victims as declared by the TRC.

"There is no cut-off date as yet but we really want to finish up this process so we urge people who were declared victims to get in touch with us," Kganyago said.

People who were declared victims of human rights violations

before the TRC should contact Thabo Mahlakola on 012 315 1286, Mandla Mokoena on 012 315 1292 or Sidwei Sibiya on 012 315 1425.

Kganyago said these people have been specially tasked with dealing with outstanding claims so that victims can phone them directly and won't be "pushed from pillar to post".

He stressed that this is not a reopening of the process. "People should only contact us if they have a TRC reference number. Those who did not appear before the TRC should not contact us."

Meanwhile, *The Witness*' sister newspaper, *Echo*, has reported on a "TRC scam" doing the rounds at present where people claiming to be paralegals con others out of money by promising them compensation for apartheid suffering from the now dissolved TRC.

Hundreds of people living in KwaShange outside Pietermaritzburg and Wembezi in Estcourt have lost money to these supposed consultants. It was reported that in order to "register", people pay between R100 and R150 and have to give proof that their property was damaged or alternatively a death certificate of a family member, which details the circumstances of death.

They are then told that particulars on how the money is to be paid out will be announced on radio.

The TRC started its work in 1996 and was formally dissolved in March 2002 after it had completed the victims' application process.

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Dealing with unfinished business

The Nats and the ANC had far more in common than met the eye

THE last few months have seen the deaths of two of the most notorious members of the security forces of the apartheid era: Lothar Neethling, head of the forensic unit of the South African Police and an expert in poisoning; and Gideon Nieuwoudt, a security policeman renowned for the abuse of political activists and detainees. Neethling persistently lied, denying any wrongdoing, and brought down the *Vrye Weekblad* in the process; Nieuwoudt sought some sort of redemption towards the end of his life. The deaths of both men bring to mind the unfinished business that is South Africa's recent history.

The aim of the Truth and Reconciliation Commission (TRC) was to find a way to move the country forwards within a framework of restorative justice. The admirable purpose of the exchange of amnesty for full and frank admission of the truth was to create a memorial to the past that permitted closure without amnesia. Nelson Mandela called it the RDP of the soul, a fitting conclusion to a negotiated settlement.

In this regard South Africa is seen as being at the cutting edge of international best practice. Amnesties in other countries have been far too kind to the perpetrators of past abuse. In September, for example, Algeria voted overwhelmingly for immunity in exchange for guns, and exoneration of its security forces for 6 000 disappearances during a decade-long, vicious civil war. This appears to be a recipe for disaster, especially since there are possibly 1 000 insurgents still at large.

It is, however, not widely remembered that of 7 116 amnesty applications to our TRC, three-quarters were rejected. Most high-level apartheid decision makers would have nothing to do with the TRC and those who did appear before it were mainly footsoldiers. There have been only a few prosecutions and most of these cases have fallen apart as we have been reminded recently by Wouter Basson.

In contrast to the leaders of Nazi Germany, National Party bigwigs consistently distanced themselves from the sheer criminality and



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New ground

immorality that sustained their ideology. While it is probably fortunate that South Africa rejected the Nuremberg route, the ease with which politicians and seculocrats who fully subscribed to apartheid ideology have escaped judgment and justice raises justifiable fears about the standing of the rule of law. President Thabo Mbeki's pardon of 33 anti-apartheid activists convicted of violence created similar worries. The trajectory of events over the past 10 years suggests that the slate has been wiped clean in a way that was not envisaged at the dawn of South African democracy.

At the time, much was made of what was said to be a miracle: avoidance of racial conflict and a bloodbath. This opinion ignored a number of crucial features of recent South African history that now benefit from a retrospective view. First, the two main protagonists in the conflict had more in common than met the eye and the politics of the last 10 years have reinforced this point. Second, the struggle against apartheid was more broadly based than many, for a range of reasons, would like to admit. Third, the nature of South Africa's society and its economy gave even the marginalised sufficient reason to have some hope for the future. The settlement of the mid-nineties was no miracle. It was a triumph of common sense based on a modicum of faith; in other words the everyday behaviour we hope to see around us as a matter of course in a civilised society.

The defeat of apartheid and the relative success of the TRC were a victory for the ordinary people of South Africa. Yet their achievement is by no means entirely secure and it remains vulnerable to the unfinished business of the last

decade. The political flotsam and jetsam of this period poses continued threats to a fragile democracy, and it comes in an amazing range of shapes and sizes.

Bizarre though it may seem, remnants of the white right wing still bask in fantasies about uprisings and separatism. Their chances of success are nil, but they have the capacity to do local, temporary damage. Their counterparts are the Stalinists lurking in the ANC, the secret admirers of Mugabe, whose commitment to democracy and a populist message will last as long as it takes to acquire power.

Then there is the post-apartheid elite enjoying its new-found wealth and influence, but still employing the rhetoric of struggle and liberation — and indulging in the tired clichés of victimhood. And to complete the deck of cards, there are

the common-or-garden opportunists cynically exploiting political correctness in pursuit of personal agendas, trampling under foot the work of the principled, hard-working and committed of all communities.

These people constitute small minorities, but are no less dangerous for all that. The

fact that they need to be recognised as a threat is testimony to the fact that something has gone wrong with post-apartheid South Africa. The problem lies with the vacuum created by a dearth of institutional and civic morality and the political will to deal with the incompetent and corrupt.

To his eternal credit President Mbeki has shown how to reverse this trend, sacking Jacob Zuma for a lack of judgment over this very matter of probity. The day Zuma was relieved of his duties South Africa accepted the possibility of becoming a mature, modern democracy and completing the process of liberation. That is, as yet, unfinished business.

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The settlement of the mid-nineties was a triumph of common sense.