

READING

Transitional Justice in South Africa

Germany is not alone in having had to navigate the transition from war to peace and from a society marred by hatred and discrimination to one striving for more democratic values. In the decades since the end of World War II, many other places—from South Africa to Northern Ireland, from Rwanda to Cambodia—have faced similar struggles. For a society that has been through a period marked by genocide or systematic violations of human rights, enormous challenges are involved in trying to achieve stability, justice, and peaceful coexistence.

The term “transitional justice” describes a set of approaches that communities can use to move toward a lasting peace. Transitional justice typically has three key elements: ensuring accountability for crimes and atrocities, establishing truth, and fostering reconciliation. What does transitional justice look like in practice? Judicial actions, like trials for war crimes and crimes against humanity, are a key part of seeking justice; so are reparations. Official apologies, government reforms, memorials, and education also have roles to play. Since the 1970s, truth commissions have become one of the most widespread components of transitional justice. Of the more than 40 such commissions dealing with violence and abuses of human rights, South Africa’s Truth and Reconciliation Commission (TRC) is perhaps the best known.

In 1994, after nearly 50 years of apartheid and hundreds of years of racial violence and oppression, South Africa made a peaceful transition to a more democratically elected government, from one based on elections in which only whites were permitted to vote. Apartheid, created by the white National Party and based on the system of segregation that arose after Europeans colonized the area, affected every aspect of life, from where people lived and the conditions of their housing, to where they went to school and the kind of education they received, to whom they could marry. Apartheid meant total separation by color. Black South Africans had the worst of housing and health care and the lowest-paid jobs. Whites enjoyed a disproportionate share of resources, including access to the best living areas, access to the best and most well-equipped schools and best-trained teachers, and access to the best-paid jobs. Apartheid was enforced with brutal violence as well as shame and humiliation. Though it was run by the government, it required the participation of the white citizens. South African Anglican Archbishop Desmond Tutu described living under apartheid this way: “Your dignity is not just

rubbed in the dust. It is trodden underfoot and spat on. Our people are being killed as if they were but flies. Is that nothing to you who pass by?"¹

As the apartheid era ended, South Africa's interim constitution suggested the creation of some sort of reconciliation process as an alternative to prosecutions or trials. A truth commission was set up in 1995 to establish a public record of the apartheid years through the voices and experiences of both victims and perpetrators. Its sessions were widely covered by the media: newspapers, radio, television, and the internet brought the TRC into people's homes and into public spaces. The TRC was not intended to be the only way to bring to light and attempt to rectify the massive human-rights violations committed under apartheid, but it was a crucial one.

The Truth and Reconciliation Commission focused on what had happened in South Africa between 1960 and 1994. This included political crimes of mass violence committed by black South Africans along with the much larger number of abuses committed by white South Africans on behalf of the state. The TRC mandate said that "to achieve unity and morally acceptable reconciliation, it is necessary that the truth about gross violations of humans rights must be: established by an official investigation unit using fair procedures; fully and unreservedly acknowledged by the perpetrators; made known to the public, together with the identity of the planners, perpetrators, and victims."²

In a trial, the focus is on the perpetrator. At the TRC hearings, the focus was on the victims and their families. As TRC Commissioner Alex Bouraine said, "To ignore what happened to thousands of people who were victims of abuse under apartheid is to deny them their basic dignity. It is to condemn them to live as nameless victims with little or no chance to begin their lives over again."³ For many victims of apartheid, testifying before the TRC was a transformative experience. Mzykisi Mdidimba, who was tortured at the age of 16, reflected on his experience with the TRC: "When I have told stories of my life before, afterward I am crying, crying, and I felt it was not finished. This time, I know that what they've done to me will be among these people and all over the country. I still have some sort of crying, but also joy inside."⁴ According to a TRC report, "By the end of the Commission's lifespan, 21,000 people had come forward, women and

¹ Archbishop Desmond Tutu, speech to the United Nations, 1985, quoted in *Facing History and Ourselves, A Guide to "Facing the Truth with Bill Moyers"* (Brookline, MA: Facing History and Ourselves, 1999), 22.

² "Explanatory Memorandum to the Parliamentary Bill," *The South African Truth and Reconciliation Commission*, accessed June 26, 2016.

³ *Facing History and Ourselves, A Guide to "Facing the Truth with Bill Moyers"* (Brookline, MA: Facing History and Ourselves, 1999), 29.

⁴ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998), 68.

men, old and young, and told the Commission about nearly 38,000 gross violations of human rights. In the process, the broad outlines of the past emerged with undeniable clarity. Ninety percent of those who came forward were black. Most of them were women. The greatest number of these approached the Commission on behalf of dead men to whom they were related."⁵

The TRC offered amnesty (an official pardon) for individuals under specific conditions. Perpetrators had to make a full confession of their crimes and had to show that their crimes had been politically, not personally, motivated. The commission received 7,112 amnesty applications. Amnesty was granted in 849 cases and refused in 5,392 cases, while other applications were withdrawn.⁶ In its use of amnesty, the TRC decided not to use trials like those at Nuremberg after World War II and suggested an alternative path that emphasized telling and hearing the truth rather than punishment or retribution.

The TRC brought the history of apartheid and the role of the government in enforcing it out into the open and made it harder to deny the truth of the past. Many South Africans agree that the work of the commission was critical and that it indeed played a vital role in a transition to democracy that all could participate in. But as writer Ariel Dorfman notes, "This creation of a shared history through the public airing of a harsh past does not, however, unavoidably lead to a true reconciliation. Other steps may be necessary to heal a divided community."⁷

The TRC was not intended to be the only tool of transitional justice: reparations and prosecutions, for example, were expected to be used much more widely than they actually were. Also, the daily humiliations and more "ordinary" violence of apartheid were not addressed by the TRC. Nor was the participation in the system by average white South Africans and the ways that they benefited simply by being white—and the ways that whites continue to benefit today, even though apartheid is over. A new generation of South Africans is actively questioning how adequately the legacies of apartheid have been dealt with, when reforms of the economy, the judiciary, and the education system remain incomplete.

While truth commissions can't reconcile societies all by themselves, they are increasingly seen as a crucial tool for transition. Despite its limitations, South Africa's TRC helped to popularize and

⁵ "Truth and Reconciliation Commission of South Africa Report, Volume 1," South African Broadcasting Corporation, accessed June 27, 2016.

⁶ "Amnesty Hearing and Decisions," The South African Truth and Reconciliation Commission, accessed June 27, 2016.

⁷ "Eighth Nelson Mandela Annual Lecture: Ariel Dorfman talks about memory, justice and reconciliation," Nelson Mandela Foundation, last modified July 31, 2010, accessed June 2, 2016.

make legitimate the use of truth commissions at the national level, and in recent years countries as diverse as Nepal and Canada have used this tool. Cities, states, towns, and even schools have also adapted elements of truth commissions in their efforts to establish a common history, rebuild trust, and secure peace.

Connection Questions

1. What are some key differences between trials and truth commissions? How might you figure out when it would be best to have a trial and when a truth commission would be best?
2. What aspects of South Africa's TRC seem to have had the greatest effect? What were some limitations of the TRC? Why might it be important to learn about even flawed examples of transition and reconciliation programs?
3. In 1935, American author W. E. B. Du Bois reflected on the purpose of history. He wrote, "Nations reel and stagger on their way; they make hideous mistakes; they commit frightful wrongs; they do great and beautiful things. And shall we not best guide humanity by telling the truth about all this, so far as the truth is ascertainable?" How does Du Bois add to your thinking about the importance of establishing the truth about the past?
4. Do you think the country or community where you live could benefit from a "truth and reconciliation" process? What histories would you want to bring to light? What individuals or groups would you want to reconcile?
5. Some schools in the United States have started implementing truth commissions and other transitional justice practices to help address conflicts and discipline issues in their communities. Have you seen elements of these practices being used in your school? If so, how? If not, how might they be applied?