

VOLUME SIX

**Truth and
Reconciliation
Commission
of South Africa
Report**



■ CONTENTS

Foreword by Archbishop Desmond Tutu

SECTION ONE

Report of the Amnesty Committee

INTRODUCTION	1
CHAPTER 1	
The Legal Basis of the Amnesty Process	3
CHAPTER 2	
Administrative Report	17
CHAPTER 3	
<i>Modus Operandi</i> of the Committee	36
CHAPTER 4	
Legal Challenges	54
CHAPTER 5	
Some Reflections on the Amnesty Process	83

SECTION TWO

Report of the Reparation and Rehabilitation Committee

CHAPTER 1	
Introduction	92
CHAPTER 2	
The Case for Reparation and Rehabilitation: Domestic and International Law	96
CHAPTER 3	
The Argument for Reparation: Comparative and Customary Law	112
CHAPTER 4	
The Argument for Reparation: What the Witnesses Say	120
CHAPTER 5	
Reparations and the Business Sector	140
CHAPTER 6	
Reparations and Civil Society	156
CHAPTER 7	
Implications and Concluding Comments	160
CHAPTER 8	
Administrative Report	165

SECTION THREE

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

CHAPTER 1	
The Former South African Government and its Security Forces	181
CHAPTER 2	
The ANC and Allied Organisations	264
CHAPTER 3	
The Inkatha Freedom Party	338
CHAPTER 4	
The Pan Africanist Congress	375
CHAPTER 5	
Azanian People's Organisation	442
CHAPTER 6	
Right-Wing Groups	444

SECTION FOUR

Report of the Human Rights Violations Committee

CHAPTER 1	
Abductions, Disappearances and Missing Persons	512
CHAPTER 2	
Exhumations	550
CHAPTER 3	
Administrative Report	570
APPENDIX	
The 'Third Force'	579

SECTION FIVE

Findings and Recommendations

CHAPTER 1	
The Legal Framework within which the Commission made Findings in the Context of International Law	589
Appendix 1	
Applicability of the Geneva Conventions	607
Appendix 2	610
CHAPTER 2	
Holding the State Accountable	614
CHAPTER 3	
Holding the ANC Accountable	642
Appendix	
ANC Declaration to ICRC	670
CHAPTER 4	
Holding the IFP Accountable	673
Appendix 1	
Schedule of Changes and Corrections	680
Appendix 2	
Appendix Concerning IFP Findings	696
CHAPTER 5	
Holding the PAC Accountable	702
CHAPTER 6	
Holding Right-Wing Groups Accountable	720
CHAPTER 7	
Recommendations	726

SECTION SIX

Administration

Report of the Chief Executive Officer	733
Managerial Reports	744
Annual Financial Statements	756
ERRATA TO THE FINAL REPORT	784
ACRONYMS	787

The codicil to the report of the Truth and Reconciliation Commission was presented by the Commissioners to State President Thabo Mbeki on 21st March 2003.



Archbishop Desmond Tutu
Chairperson



Ms Hlengiwe Mkhize



Dr Alex Boraine
Vice-Chairperson



Mr Dumisa Ntsebeza



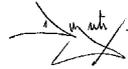
Ms Mary Burton



Dr Wendy Orr



Revd Bongani Finca



Adv Denzil Potgieter



Ms Sisi Khampepe



Dr Fazel Randera



Mr Richard Lyster



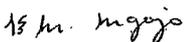
Ms Yasmin Sooka



Mr Wynand Malan



Ms Glenda Wildschut



Revd Khoza Mgogo

First published March 2003

© Truth and Reconciliation Commission and thereafter the Department of Justice. All rights reserved. These volumes may not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, without prior permission of the copyright holder.

ISBN 0702158763

Editorial and production

Management: Yasmin Sooka

Editing: Susan de Villiers

Contributions and assistance by: Jane Argall, Debbie Budlender, Mary Burton, Lavinia Crawford-Browne, Madeleine Fullard, Thulani Grenville-Grey, Richard Lyster, Carola Meyer, Hlengiwe Mkhize, Enver Moothoosamy, Gerald O'Sullivan, Piers Pigou, Denzil Potgieter, Nicky Roussouw, Ron Slye, Howard Varney, the researchers at the ICTJ and Patrick Ball of the AAAS Institute
Design: Jenny Young

The photographs that appear in these volumes were taken during the life of the Commission and represent the work of Benny Gool and others. City Press and Trace Image also supplied photographs. Cartoons by Zapiro.

Donors: Ford Foundation and Foundation for Human Rights

Printed by Formeset

Distributed for
the Truth and Reconciliation Commission by
Juta & Co Ltd, Kenwyn, Cape Town

The proceeds of the sale of this report will go
to the President's Fund

■ FOREWORD BY ARCHBISHOP DESMOND TUTU

This Report is the culmination of a remarkable effort by extraordinary people, and I want to begin by paying a warm tribute to the Commission's staff, committee members and commissioners. At this time in particular, we give thanks for those staff who, under the direction of Commissioners Hlengiwe Mkhize, Denzil Potgieter and Yasmin Sooka, have given such meticulous attention to bringing the project to finality, to the extent of providing us with summaries of the cases of some twenty thousand people declared to have suffered gross human rights violations in the period between 1960 and our first democratic election. We owe a very great debt of gratitude to Sue de Villiers who, with her editorial colleagues, working under considerable pressure, did wonders to produce this codicil on time. Thank you, thank you. It has been an incredible privilege for those of us who served the Commission to preside over the process of healing a traumatized and wounded people.

We are also deeply grateful to the thousands of South Africans who came to the Commission to tell us their stories. They have won our country the admiration of the world: wherever one goes, South Africa's peaceful transition to democracy, culminating in the Truth and Reconciliation process, is spoken of almost in reverent tones, as a phenomenon that is unique in the annals of history, one to be commended as a new way of living for humankind. Other countries have had truth commissions, and many more are following our example, but ours is regarded as the most ambitious, a kind of benchmark against which the rest are measured.

We hope that the completion of the Commission's Report brings a measure of closure to the process. I regret that at the time of writing we owe so much by way of reparations to those who have been declared victims. The healing of those who came to us does hinge on their receiving more substantial reparations and I would be very deeply distressed if our country were to let down those who had the magnanimity and generosity of spirit to reveal their pain in public. I appeal to the Government that we meet this solemn obligation and responsibility, and I should like to express appreciation that the Minister of Finance has made it clear that he still regards reparations as unfinished business.

Those who brought to birth the TRC process also ought to be commended for their wisdom, which has recently been demonstrated no more clearly than by the trial of Dr Wouter Basson. Without making any judgment on the correctness of the judge's decision, the case has shown clearly how inadequate the

criminal justice system can be in exposing the full truth of, and establishing clear accountability for what happened in our country. More seriously, we have seen how unsuccessful prosecutions lead to bitterness and frustration in the community. Amnesty applicants often confessed to more gruesome crimes than were the subject of the Basson trial, yet their assumption of responsibility, and the sense that at least people were getting some measure of truth from the process, resulted in much less anger. For the sake of our stability, it is fortunate that the kind of details exposed by the Commission did not come out in a series of criminal trials, which – because of the difficulty of proving cases beyond reasonable doubt in the absence of witnesses other than co-conspirators – most likely would have ended in acquittals.

In terms of the settlement reached between the Commission and Chief Buthelezi and the Inkatha Freedom Party, I draw your attention to appendices 1 and 2 to Section 4, Chapter 4 of this volume, being their responses to the findings made against them in the Final Report handed to President Mandela on 29 October 1996.

It is something of a pity that, by and large, the white community failed to take advantage of the Truth and Reconciliation process. They were badly let down by their leadership. Many of them carry a burden of a guilt which would have been assuaged had they actively embraced the opportunities offered by the Commission; those who do not consciously acknowledge any sense of guilt are in a sense worse off than those who do. Apart from the hurt that it causes to those who suffered, the denial by so many white South Africans even that they benefited from apartheid is a crippling, self-inflicted blow to their capacity to enjoy and appropriate the fruits of change. But mercifully there have been glorious exceptions. All of us South Africans must know that reconciliation is a long haul and depends not on a commission for its achievement but on all of us making our contribution. It is a national project after all is said and done.

We have been privileged to help to heal a wounded people, though we ourselves have been, in Henri Nouwen's profound and felicitous phrase, 'wounded healers'. When we look around us at some of the conflict areas of the world, it becomes increasingly clear that there is not much of a future for them without forgiveness, without reconciliation. God has blessed us richly so that we might be a blessing to others. Quite improbably, we as South Africans have become a beacon of hope to others locked in deadly conflict that peace, that a just resolution, is possible. If it could happen in South Africa, then it can certainly happen anywhere else. Such is the exquisite divine sense of humour.