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GLOBAL TRANSITIONAL JUSTICE:

South Africa: Balancing Truth-Seeking and Accountability

Date: 27 May, at 16.00 – 18.00 Kyiv / 9.00 – 11.00 NY/ 15.00 – 17.00 CET

Co-organizers: Human Rights Institute of the Ukrainian Bar Association (UBAHRI), International Center for Transitional Justice (ICTJ)

Format: online (ZOOM)

Languages: English/ Ukrainian, with simultaneous interpretation

Registration: at the link. For additional information about the event, please contact Daria Lupiichuk at +380 (97) 256-30-41 or gr@uba.ua.

BACKGROUND

The South African transitional justice process aimed to address the underlying issues and consequences of apartheid and violent oppression, including their antecedents and context. Following the National Peace Accord signed between the authoritarian apartheid regime and the opposition led by the African National Congress in 1991,¹ an interim Constitution was adopted in 1993² providing for, among other things, restructuring of the government, upholding of fundamental rights and free elections. In 1994, Nelson Mandela was inaugurated as the first democratically elected President of South Africa.³

The Truth and Reconciliation Commission (TRC, Commission) was established in 1995. It was tasked with establishment of the truth about the gross violations of human rights between 1960 and 1994, facilitating amnesties, establishing the whereabouts and fate of the disappeared and restoring the dignity of victims.⁴ The TRC consisted of the Human

¹ National Peace Accord. (1991). *National Peace Accord*. African Transitional Justice Hub. <https://atjhub.csvr.org.za/wp-content/uploads/2023/11/National-Peace-Accord.pdf>

² South Africa. (1993). *Interim Constitution of the Republic of South Africa, 1993*. United Nations Peacemaker. https://peacemaker.un.org/sites/default/files/document/files/2022/07/zainterimconstitution1993_2.pdf

³ Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

⁴ Centre for the Study of Violence and Reconciliation. (n.d.). *Truth commissions: South Africa*. African Transitional Justice Hub. https://atjhub.csvr.org.za/truth-commissions/?tx_post_tag=south-africa

Rights Violations Committee, the Amnesty Committee, and the Reparations and Rehabilitation Committee.⁵

The TRC was allowed to grant amnesty to perpetrators who a) came forward, confessed to the violations they committed and provided full truth about them; and b) showed that their crimes were politically, and not personally, motivated. One of the widespread misconceptions about South African TJ is the allegedly large number of amnesties the TRC granted. In fact, out of 7,112 amnesty applications, the TRC granted amnesty in 849 cases, while refusing it in 5,392 cases.⁶

The TRC's report – published in 1998⁷ – was based on the testimonies of 22,000 victims. Both the public hearings for victims and the amnesty hearings were widely broadcasted by the media.⁸ The final report of the TRC implicates both the former government and the opposition in human rights abuses.

While many positive lessons can be highlighted from the South Africa's TRC, as well as the country's transition from the authoritarian regime to democracy, there are also important critiques to be gleaned.

ACCOUNTABILITY

The TRC prepared a comprehensive account of what transpired in South Africa under apartheid and made important findings against all key organizations and role players.

Amnesty for perpetrators who come forward and confessed was one of the cornerstones of South Africa's transitional justice process. This measure itself was viewed as controversial, since in essence it offered "amnesty for truth" to perpetrators of gross violations of human rights.

The unfinished business of the TRC remains a burning issue in South Africa today. Very few perpetrators who were denied amnesty have been prosecuted. The TRC forwarded around 300 cases to prosecution authorities, however until recently virtually all the cases were blocked from proceeding. It has emerged in recent years that post-apartheid administrations have suppressed these cases.

In 2005 amendments to the National Prosecuting Authority's Prosecution Policy provided for a "back-door amnesty" that promoted impunity for perpetrators who had not applied for the TRC's amnesty. These amendments were found to be unconstitutional by the Pretoria High Court in 2008. Subsequently President Mbeki introduced a Special

⁵ Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

⁶ Rubin, M., et al. (2018). South African case [PDF]. Centre for the Study of Violence and Reconciliation. <https://www.csvr.org.za/wp-content/uploads/2016/06/South-African-Case-Maxine-Rubin-et-al.pdf>

⁷ The final volume was published in 2002.

⁸ Truth and Reconciliation Commission of South Africa. (1998). *Truth and Reconciliation Commission of South Africa report: Volume 1*. <https://atjhub.csvr.org.za/wp-content/uploads/2021/08/SA-TRC-Final-Report-Vol-1.pdf>; Rubin, M., et al. (2018). South African case [PDF]. Centre for the Study of Violence and Reconciliation. <https://www.csvr.org.za/wp-content/uploads/2016/06/South-African-Case-Maxine-Rubin-et-al.pdf>; Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

Dispensation on Political Pardons which provided a further avenue for perpetrators to escape justice. In 2010, the Constitutional Court ruled that the process was unconstitutional and held that victims had a right to be consulted before political pardons were granted.⁹

Families agitated for justice and closure and from 2015 approached the courts to force the authorities to take action. This prompted prosecutors to start issuing indictments and holding inquests into deaths of apartheid-era activists in security detention.¹⁰ However, by this time most perpetrators and witnesses had died bringing an end to many cases.¹¹ Families and civil society groups called for a commission of inquiry into the political interference in the TRC cases. When these requests were ignored, they sued the government for constitutional damages and sought an order compelling the President to establish a commission of inquiry.¹² Recently the President agreed to establish an inquiry but is still opposing the grant of constitutional damages.¹³

On a more positive note, in April 2025, the High Court ruled that prosecutors could pursue crimes against humanity, including apartheid as a crime against humanity, before domestic courts.¹⁴ This the first time that international crimes will be prosecuted in South Africa and the first time that the crime of apartheid will be prosecuted anywhere in the world.¹⁵

ROOT CAUSES

The TRC has been criticized for its narrow mandate which did not task the Commission with looking into the underlying causes of the conflict and addressing key issues such as land reform or economic redistribution. Consequently, socioeconomic legacies of colonialism and apartheid regime remain unaddressed which continues to raise tensions in contemporary South Africa. Land reform and in particular redistribution of agricultural land were slow and insufficient.¹⁶ Persistent corruption in post-apartheid SA, including in land administration and governance, further aggravates the existing inequality.¹⁷

⁹ International Center for Transitional Justice. (n.d.). *South Africa*. <https://www.ictj.org/location/sudáfrica>

¹⁰ Foundation for Human Rights (n.d.). *The Unfinished Business of the Truth and Reconciliation Commission* <https://unfinishedtrc.co.za/>

¹¹ Bakhsh, S. (2023). *South Africa's long wait for justice over apartheid crimes*. BBC News. <https://www.bbc.com/news/world-africa-64941144>

¹² Foundation for Human Rights (2025). *Survivors and families of anti-apartheid activists sue the government for constitutional damages*: <https://unfinishedtrc.co.za/press-release-survivors-and-families-of-anti-apartheid-activists-sue-the-government-for-constitutional-damages/>

¹³ Foundation for Human Rights. (2025). *Press release: Progress update—Constitutional damages & commission of inquiry case*. Unfinished TRC. <https://unfinishedtrc.co.za/press-release-progress-update-constitutional-damages-commission-of-inquiry-case/>. The accused are taking this ruling on appeal.

¹⁴ Foundation for Human Rights. (2025). *Press release: COSAS 4 trial—Court dismisses objections to crimes against humanity charges*. Unfinished TRC. <https://unfinishedtrc.co.za/press-release-cosas-4-trial-court-dismisses-objections-to-crimes-against-humanity-charges/>

¹⁵ Kisla, A. (2025). *Cosas 4: Naming the elephant in the room – the crime of apartheid*. Mail & Guardian. <https://mg.co.za/thought-leader/2025-04-16-cosas-4-naming-the-elephant-in-the-room-the-crime-of-apartheid/>

¹⁶ Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atijhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

¹⁷ Mathiba, G. (2021). *Corruption in land administration and governance: a hurdle to transitional justice in post-apartheid South Africa?* https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000300007

Despite equality of rights enshrined in SA's Constitution of 1996, most land in the country continues to be owned by the white minority. In practice, this leads to millions of people being cramped in informal settlements around SA's major cities, while white South Africans' houses are built on spacious land plots. It explains why land justice is viewed as a "door to reconciliation".¹⁸

SA's transitional justice and the TRC are also criticized for lack of institutional reform and guarantees of non-recurrence. For example, the TRC's Final Report explicitly states that the TRC made a decision to not recommend lustration.¹⁹

GENDER DIMENSION

Sexual violence, including rape, was common during apartheid and was intertwined with racial injustice. Gender-based violence of non-white South Africans went hand in hand with social, political, economic violence and marginalization. Rape and other forms of sexual violence were used deliberately, often – as a political tool to silence dissent.²⁰

In response to criticism by civil society organizations, the TRC organized special women's hearings in various cities of South Africa dedicated to gender-based violence. At the same time, the TRC's final report did not provide a definition of sexual violence and listed the relevant crimes as forms of severe ill-treatment. Recommendations of the TRC in the Final Report were gender-blind and did not propose solutions to gender-based violence.²¹

Women were also affected by insufficiently effective land redistribution. Historically, land ownership was considered to be male privilege. Current situation with land ownership is characterized by race and gender disparity. The 2019 Report of the Presidential Advisory Panel on Land Reform highlights that "women in South Africa's rural societies are responsible for the majority of the agricultural food production and household labor". Despite this, the percentage of female land owners remains disproportionate.²²

Landless South African females are often victims of exploitation and sex trafficking.²³

REPARATIONS

The TRC recommended that victims receive reparations in varying amounts, to be paid biannually over a six-year period. The TRC also recommended that the government

¹⁸ Baloyi, M. A. (2022). Land Redistribution: A Thorny Issue towards Reconciliation in a Post Apartheid South Africa: A Practical Theological Perspective. In E. Ugwuanyi (Ed.), *Transitional justice* (Chapter 5). IntechOpen. <https://www.intechopen.com/chapters/81631>

¹⁹ Truth and Reconciliation Commission of South Africa. (1998). *Truth and Reconciliation Commission of South Africa report: Volume 1*. <https://atjhub.csvr.org.za/wp-content/uploads/2021/08/SA-TRC-Final-Report-Vol-1.pdf>

²⁰ Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

²¹ Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

²² Mathiba, G. (2021). Corruption in land administration and governance: a hurdle to transitional justice in post-apartheid South Africa? https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1682-58532021000300007

²³ Baloyi, M. A. (2022). Land Redistribution: A Thorny Issue towards Reconciliation in a Post Apartheid South Africa: A Practical Theological Perspective. In E. Ugwuanyi (Ed.), *Transitional justice* (Chapter 5). IntechOpen. <https://www.intechopen.com/chapters/81631>

introduce a "wealth tax" on businesses that had profited from apartheid; however, this proposal was never implemented.²⁴ The government declined to follow these recommendations in favour of a one-off pro rata payment to those on the TRC's victims' list.²⁵

A one off payment of approximately USD 5000 was made from a special fund supported by state and donor contributions. The list of recognized victims was deemed "closed," meaning no additional individuals could be added—even if they met the eligibility criteria. The struggle to reopen this list continues to this day.²⁶

As of March 2022, the SA's reparations fund had around USD 102 182 000 available, however victims and survivors are yet to receive adequate reparations.²⁷

Symbolic reparations recommended by the TRC included exhumations, memorials, and the renaming of streets, which gained more traction than financial compensation.

CONCLUSION

While South Africa's Truth and Reconciliation Commission was groundbreaking in many respects—it was the first truth commission to operate with full public hearings and significant media attention—it ultimately fell short of delivering on several key expectations, particularly in fostering genuine reconciliation. Although the TRC created a platform for truth-telling and helped to document gross human rights violations committed during apartheid, it faced criticism for its limited mandate and structural weaknesses.

One major shortcoming was its narrow temporal scope. The TRC was confined to examining abuses committed between 1960 and 1994, thus excluding the broader historical context of colonialism that laid the groundwork for apartheid. This omission hindered a fuller understanding of the systemic roots of inequality and racial violence in South Africa and limited the scope of justice.

The TRC recommendations were for the most part ignored by the government, thereby weakening the long-term impact of its work.

Despite these limitations, the TRC did succeed in creating a collective historical record and in encouraging public dialogue about past atrocities. However, its legacy remains contested. Many victims and survivors feel that justice was not fully served—particularly in light of the limited number of prosecutions and the modest reparations delivered. The South African case underscores the importance of integrating truth-telling with meaningful follow-up actions, including criminal accountability, structural reform, and sustained support for victims.

²⁴ International Center for Transitional Justice. (n.d.). *South Africa*. <https://www.ictj.org/location/sudáfrica>

²⁵ South African Coalition for Transitional Justice. (2022). *Civil society stands in solidarity with the protesters demanding reparations for apartheid-era gross human rights violations*. <https://sactj.org.za/civil-society-stands-in-solidarity-with-the-protesters-demanding-reparations-for-apartheid-era-gross-human-rights-violations/>

²⁶ International Center for Transitional Justice. (n.d.). *South Africa*. <https://www.ictj.org/location/sudáfrica>

²⁷ Makhathini, S. (2023). *South Africa: Truth and Reconciliation Commission (1996–2002)*. Centre for the Study of Violence and Reconciliation. <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>

In sum, South Africa's TRC offers both inspiration and caution for future transitional justice efforts. While it broke new ground in terms of public participation and symbolic acknowledgment, its shortcomings highlight the need for comprehensive mandates, robust institutional support, and political will to translate truth into justice and lasting societal transformation.

Questions to be discussed:

- How can truth and accountability be effectively balanced in transitional justice processes?
- Are amnesties in exchange for truth a worthwhile compromise?
- Is it possible to pursue truth and justice without strong and independent institutions?
- How do socio-economic inequalities contribute to social divisions? Did such issues fuel regional grievances and, ultimately, collaboration in Ukraine?
- How can expectations around transitional justice be realistically managed?
- What role do storytelling, public acknowledgment, and cultural expressions of memory play in healing and reconciliation?

Agenda

Moderators:

- **Inna Liniova**, *Director of the Human Rights Institute, Ukrainian Bar Association*
- **Kateryna Busol**, *Legal Advisor, International Center for Transitional Justice*

Speakers:

- **Richard J. Goldstone**, Judge of the Constitutional Court of South Africa (1994 - 2003), Former Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda
- **Maksym Ieligulashvili**, expert, 5 a.m. Coalition
- **Yasmin Sooka**, former Executive Director of the Foundation for Human Rights in South Africa, former member of the Truth and Reconciliation Commission
- **Howard Varney**, Senior Expert, International Center for Transitional Justice