

SOUTH AFRICA: CONFRONTING THE COUNTRY'S APARTHEID PAST



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A wall at the Apartheid Museum in Johannesburg displays the names and dates of the many laws created to implement and enforce South Africa's brand of racial segregation.

Following the first free and fair elections in South Africa in 1994, the country's new government created a national Truth and Reconciliation Commission (TRC). The TRC was tasked with investigating gross human rights violations committed from 1960 to 1994 (or most of the apartheid era). The commission's assignment was daunting and controversial from the outset. More than 20 years later, the commission's significance for South Africa, and for other countries trying to address past violence and oppression, remains the subject of debate.

Origins of Apartheid

After a colonial period marked by often violent competition between descendants of Dutch settlers (known as Afrikaners) and settlers of British descent, the two groups formed a unified country in 1910. This white minority in power then sought to separate and control the land's native African peoples and the other people of color they had brought to South Africa to serve their economic interests.

The early government-designated most urban areas as "whites-only," but cities depended on the labor of people of color. So the government moved "non-white" people to nearby crowded settlements known as "townships," which had little or no infrastructure or services. The largest and most well-known is Soweto (short for South Western Township), outside of Johannesburg. Today, it is home to almost 1.3 million people.

At every step, black people and other people of color resisted. In 1923, the African National Congress (ANC) formed out of an earlier organization to protect the rights of black people.

The Afrikaner-dominated National Party (NP) came to power in 1948 and instituted a platform of racial segregation called *apartheid*. The word *apartheid* means "separateness" or "apartness" in Afrikaans, the language of the Afrikaners.

The Apartheid Era

The NP had campaigned on the promise to implement apartheid, and it kept that promise (or tried to) until 1994. Building on discriminatory laws from the earlier colonial periods, the NP erected a legal framework of segregation that dictated every conceivable facet of life. It was dizzying in its breadth and detail.

One of the seminal laws of the apartheid state was the Population Registration Act. Passed in 1950, this law defined the racial categories that informed subsequent segregation laws. It designated people as either "White," "Black" (also referred to as "African," "Native," or "Bantu"), or "Coloured." This last category included several subcategories that accounted for other "non-white" people in South Africa.

People were classified based on a myriad of pseudo-scientific or just arbitrary methods, such as physical appearance. According to a 1956 newspaper article quoted at the Apartheid Museum in Johannesburg, a person's athletic skill or preference could tip the scale one way or the other: "a soccer player is a Native, a rugby player is a Coloured."

A person's race classification determined everything from where they could live, where or whether they could own land, and where they could work. It also determined what kind of job they could have, where they could go to school, and whether or when or for how long they could travel from one place to another.

Perhaps not surprisingly, repeated rounds of rebellion and repression characterized the apartheid era in South Africa. One of the most notorious incidents was the 1960 massacre in the township of Sharpeville, where police killed 69 and wounded 180 people who had gathered to protest "pass laws" that severely restricted black people's freedom of movement.



A Truth and Reconciliation Commission press conference in Cape Town. Pictured second from left is Archbishop Desmond Tutu.

In 1963, ANC leaders including Nelson Mandela and Walter Sisulu were charged with a range of crimes related to trying to overthrow the government. In this infamous trial, known as the Rivonia Trial, the men were sentenced to life in prison. Later, in 1976, police killed anywhere from 176 to as many as 700 people and wounded about 4,000, many of them children, during student-led demonstrations in Soweto.

International condemnation followed these events. The British Commonwealth expelled South Africa in 1961, and the United Nations Security Council (UNSC) condemned the Rivonia Trial. The UN also labeled apartheid a “crime against humanity” in 1973, over objections from South Africa, the United States, the United Kingdom, and Portugal. The UN General Assembly suspended South Africa the following year, and the UNSC imposed a mandatory arms embargo on South Africa in 1977.

The End of Apartheid

In early 1990, then-President F.W. de Klerk announced the legalization of previously banned political organizations, including the ANC, and granted the release of political prisoners. Nelson Mandela was released from prison on February 11, 1990, after almost 28 years.

Mandela, de Klerk, and other leaders worked to negotiate a transition to a multi-racial, democratic government in South Africa. But growing political and ethnic conflict was ravaging the country. State security forces, right-wing Afrikaner paramilitary groups, and supporters of different factions of black liberation movements clashed all across the country.

Between 1990 and 1994, 14,000 people (almost all of whom were black) were killed. A panel at the Apartheid Museum points out that this was “several times more than had died in the previous four decades.” This period of political violence threatened to derail the first elections of the “new South Africa” scheduled for April 27, 1994.

Nonetheless, those elections did take place. Nelson Mandela became the first president of South Africa to be chosen by a majority of its citizens. South African

writer Sisonke Msimang is blunt in her assessment of what they achieved, especially for white South Africans: “By using negotiations rather than armed insurrection, Mandela and his comrades averted civil war and sheltered whites from mass violence.”

Seeking Truth and Reconciliation

A month after the first elections, the new government announced that it would establish a Truth and Reconciliation Commission (TRC), the structure and function of which would be laid out in legislation.

The TRC’s members were nominated, vetted, and selected through a public process that included televised interviews. The 17 commissioners ultimately appointed were a racially, ethnically, and politically diverse group. Anglican Archbishop Desmond Tutu, a Nobel Peace Prize winner and longtime anti-apartheid activist, was named Chairman of the TRC. The commission met for the first time in December 1995.

Its legal mandate included several specific tasks. Through investigations and public hearings, it was to find out as much as possible about the truth of what happened in cases of gross human rights violations from March 1, 1960, to May 10, 1994. It would grant amnesty to perpetrators of these violations when certain conditions were met. And it would make recommendations to the government about reparations to and rehabilitation for victims of the violations. To accomplish these, the TRC was given powers of subpoena (order someone to appear), search, and seizure.

The law that governed the TRC’s work defined gross violations of human rights as “killing, abduction, torture or severe ill-treatment” and the “attempt, conspiracy, incitement, instigation, command or procurement to commit” such acts. As the commission would later note, this meant that its focus was actually quite limited and would “by no means” provide a complete picture of apartheid’s crimes and abuses.

The Work of the TRC

With several offices across the country and different departments tasked with various aspects of the commission’s mandate, one of the many practical issues the TRC had to deal with was hiring “statement takers.” These crucial staff would fan out nationwide to receive testimony. To do so, the staff had to include speakers of all 11 of South Africa’s official languages.

As people gave testimony and/or applied for amnesty, their statements and allegations had to be corroborated. Archbishop Tutu stressed that all of this work had to be done quickly so that the TRC’s public hearings, which would be televised, could begin as soon as possible. He also constantly reminded the commissioners that those public hearings must include the voices of “the little people,” not just those from high-profile cases.

The first public hearings were held in East London from April 15-18, 1996, and included 33 testimonies.

Many more hearings soon followed. South Africans bore witness to their country's violent past in towns and townships big and small and in gatherings that ranged from a few grieving people to the largest of 3,500. Testimonies were heard in the weekly TV broadcasts that aired from April 1996 to March 1998. When this phase of the TRC's work was over, it had taken testimony from about 21,000 people.

The Question of Amnesty

The issue of *amnesty* (protection from civil or criminal prosecution) was the most controversial aspect of the TRC's mandate and work. The commission was given the power to grant amnesty to perpetrators of the gross human rights violations it was documenting.

Some victims' families felt that amnesty amounted to impunity and took the issue to the country's Constitutional Court. They argued that the amnesty denied them their constitutional right to seek justice through the courts and to bring civil actions against perpetrators for compensation. When the court handed down its ruling affirming that the amnesty process was indeed constitutional, it stressed that this was not a blanket amnesty where anyone associated with the previous regime was protected. Amnesty would only apply in certain circumstances.

To receive amnesty, a perpetrator had to apply for it, and the commission had to be satisfied that two important conditions had been met. First, the act had to have been "associated with a political objective committed in the course of the conflicts of the past." Second, the applicant had to "make a full disclosure of all relevant facts." It was not a requirement that the applicant apologize or show any remorse. The requirement that a person apply for the amnesty meant that anyone who didn't do so took the chance of being prosecuted.

Many critics have pointed out that there were too many opportunities for perpetrators — especially those who had been part of the apartheid state apparatus — to avoid either criminal or civil accountability. Two indemnity laws passed in 1990 and 1992 by the outgoing white-minority government had already allowed thousands of people to avoid prosecution.

Critics have also noted that many perpetrators didn't apply for amnesty because they thought their secrets, and their crimes, were safe. Beginning with the decline of the apartheid regime, thousands of documents and evidence



UN Photo/Jean-Marc Ferre

Archbishop Desmond Tutu was awarded the Nobel Peace Prize in 1984 and was elected Archbishop of Cape Town in 1986, becoming the first black person to head the Anglican Church in South Africa.

In an anecdote from her days as a commissioner with the TRC, Mary Burton recalls a moment from the second day of the first TRC hearings in East London. Ernest Malgas was a long-time anti-apartheid activist who had been arrested and detained repeatedly, and who was imprisoned for 15 years. He appeared before the commission frail, elderly, and wheelchair-bound.

Burton wrote: "As he described how he had been interrogated, and tortured by a method known as the 'helicopter,' he broke down . . . This was too much for Archbishop Tutu, who laid his head down on his arms on the table in front of him and wept too. The image went instantly around the world. Later reflecting on this experience, the Archbishop vowed he would never let himself be thus overcome again: nothing should be allowed to take attention away from the victim and the story."

of abuses were destroyed. The National Intelligence Agency did this as late as 1996 in direct defiance of two "cease and desist" orders from the Mandela government.

The TRC received 7,112 applications for amnesty. By the time it concluded its work in 2000, it had granted 849 of them and denied 5,392. (Some applications were withdrawn).

Reparations

Reparations were an extremely complex issue. The TRC ultimately recommended that one part of reparations take the form of an individual reparation grant (IRG) to be made to all victims in six annual payments of about \$4,750 – \$6,300 (in today's dollars), depending on family size and other factors. In its final report, the TRC added that "reparation is essential to counterbalance amnesty." Since amnesty protected perpetrators from civil liability, the state accepted that responsibility.

Though it eventually did take on that responsibility, the government's action on these recommendations — five years after they were made — fell short. Victims received only a one-time IRG payment of about \$8,300 (in today's dollars).

In addition to the IRG, the commission recommended that reparations should include community rehabilitation programs, institutional reforms, and "symbolic reparations," such as establishing monuments and memorials and renaming roads and public spaces.

The TRC's Unfinished Business

The TRC had a specific task to accomplish with limited resources. In its final report, the commission acknowledged that "it is not possible for one commission, with a limited life-span and resources, on its own to achieve reconciliation against the background of decades of oppression, conflict and deep divisions."

One area of unfinished business is the question of perpetrators of gross human rights violations who were denied amnesty. In 1998, the TRC handed over a list of more than 300 names to the National Prosecuting Authority, asking it to investigate them to pursue prosecutions.

Between 2001 and 2016, only five cases, involving 11 perpetrators, were prosecuted. Evidence emerged that during that time, these investigations were stopped by high-level political decisions. As recently as February 2019, Archbishop Tutu and nine of the former truth commissioners called on current president Cyril Ramaphosa to investigate why these prosecutions were suppressed.



The 6th hole of Papwa Sewgolum Golf Course in Durban, South Africa, just a few meters from an informal settlement where residents are crowded into shacks, with unpaved roads and few services. The golf course is named for a renowned golfer of Indian descent whose career was ruined by the apartheid government.

South Africa Today

One of the most enduring criticisms of the TRC is that it didn't confront the structural effects of apartheid. The TRC's final report stresses that millions of South Africans were subjected to daily violations that were "systemic, all-pervading and evil" but that were beyond the legal scope of the commission's work.

What does the long-term impact of apartheid look like? According to a 2018 report by the World Bank, South Africa is the most unequal country in the world. The richest 10 percent of the population — which is overwhelmingly white — controls 70 percent of the nation's wealth. The bottom 60 percent of the population — which is mostly black but also includes other people of color — controls just 7 percent. The unemployment rate for black South Africans in 2018 was over 30 percent; for white South Africans, it was about 7 percent. Against this backdrop, the majority of South Africans experience soaring violent crime rates, daily rolling blackouts, and stagnant economic growth.

Yet against this backdrop of extreme inequality that bears marks of apartheid, former president F.W. de Klerk insisted in a TV interview in 2020 that apartheid

could not be considered a crime against humanity, despite UN resolutions and a 2002 statement by the International Criminal Court to the contrary. His comments sparked fresh outrage nationwide.

The work of the TRC was clearly but one step in South Africans' reckoning with apartheid. As Archbishop Tutu affirmed in the last TRC report in 2003, the work of real reconciliation is a job for the "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."

WRITING & DISCUSSION

1. Summarize the origins and history of apartheid.
2. Why was F.W. de Klerk's statement in 2020 that apartheid was not a crime against humanity controversial? Use at least three examples from the article in your answer.
3. Taking into account the history of and current conditions in South Africa, do you think widespread inequality puts all citizens of a country at risk? Support your response with examples from the article as well as other cases you may know.

ACTIVITY: Examining the TRC's Amnesty Process

Using the main article, work individually, with a partner, or in a group of 4-5 students to critically examine the TRC's amnesty process. As a starting point, answer the questions below. Then add an additional question of your own to pose to another student or student group. Make sure to use evidence from the text and be prepared to report your findings back to the whole class.

- Do you think the Constitutional Court made the right decision in allowing the TRC's amnesty process to go forward? Why or why not?
- Do you think the amnesty process and the criteria that the TRC established were fair? Why or why not?
- Do you think the TRC's amnesty process could lead to reconciliation in South Africa? Why or why not?



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Standards Addressed

South Africa: Confronting the Country's Apartheid Past

National World History Standard 44: Understands the search for community, stability, and peace in an interdependent world. **Middle School (3):** Understands efforts to improve political and social conditions around the world (e.g., . . . how the apartheid system was dismantled in South Africa and the black majority won voting rights . . .). **High School (5):** Understands the role of political ideology, religion, and ethnicity in shaping modern governments (e.g., . . . how successful democratic reform movements have been in challenging authoritarian governments in Africa, Asia, and Latin America; the implications of ethnic, religious, and border conflicts on state-building in the newly independent republics of Africa . . .).

California State HSS Standard 12.9: Students analyze the origins, characteristics, and development of different political systems across time, with emphasis on the quest for political democracy, its advances, and its obstacles. (8) Identify the successes of relatively new democracies in Africa, Asia, and Latin America and the ideas, leaders, and general societal conditions that have launched and sustained, or failed to sustain, them.

California HSS Framework (2016), Chapter 15: "Several stable republics exist, however, including Botswana, Ghana, Morocco, and South Africa, where apartheid gave way to multiparty democracy in the 1990s, though these countries continue to be challenged by an unequal distribution of wealth, corruption, and one-party rule" (p. 361).

California HSS Framework (2016), Chapter 17: "Attention also should be given to historical and contemporary movements that overthrew tyrannical governments and/or movements toward democratic government in countries such as . . . South Africa . . ." (p.453). Common Core State Standards: SL 6-8/9-10/11-12.1, SL 6-8/9-10/11-12.2, SL 6-8/9-10/11-12.3, RH 6-8/9-10/11-12.1, RH 6-8/9-10/11-12.2, RH 6-8/9-10/11-12.3, RH 6-8/9-10/11-12.10, WHST 6-8/9-10/11-12.1, WHST 6-8/9-10/11-12.2, WHST 6-8/9-10/11-12.9, WHST 6-8/9-10/11-12

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About Constitutional Rights Foundation

Constitutional Rights Foundation is a non-profit, non-partisan educational organization committed to helping our nation's young people to become active citizens and to understand the rule of law, the legal process, and their constitutional heritage. Established in 1962, CRF is guided by a dedicated board of directors drawn from the worlds of law, business, government, education, and the media. CRF's program areas include the California State Mock Trial, Expanding Horizons Internships, Civic Action Project, Cops & Kids, teacher professional development, and publications and curriculum materials. Learn more at www.crf-usa.org.

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