

The Nelson Mandela Foundation welcomes indications that the South African state intends to reconsider the recommendations of the Truth and Reconciliation Commission (TRC). As 2018 came to an end, Minister of Justice and Correctional Services Michael Masutha confirmed that his department was initiating such a process.

In the 1990s South Africa embraced reconciliation as a means of hammering out a practical way forward, accommodating harsh realities and negotiating ways of learning simply to get on together. Through the TRC a very specific economy of exchange was put in place as what could be called a ‘bare minimum springboard’ for continuing reconciliation endeavour: amnesty for the perpetrators of gross human rights violations who provided full disclosure of their actions, reparations for victims of gross human rights violations, and the prosecution of perpetrators failing to secure amnesty. As we approach the 25<sup>th</sup> anniversary of the country’s first democratic election, it is clear that the exchange has not been honoured. Very little ‘full disclosure’ has taken place.<sup>i</sup> Reparations have been inadequate and poorly implemented.<sup>ii</sup> And prosecutions have not been forthcoming.<sup>iii</sup>

No wonder the reconciliation project conceived in the 1990s is in serious trouble. No wonder the weight of South Africa’s oppressive pasts feels heavier than ever and that many South Africans carry a sense of betrayal in relation to the compromises which made a transition to democracy possible. As with the question of land, it is time to honour the undertakings made during the transition.<sup>iv</sup>

This will not be easy. It will demand collaboration across sectors. It will require that the full medley of TRC recommendations (not just those relating to reparation, prosecution and disclosure) be considered in contexts which have changed markedly over a quarter of a century. And it will rely on commitment and courage from all South Africans.

We have taken note of the recent letter to President Ramaphosa from former TRC commissioners and regard it as an important contribution to public debate. In our view, however, it is critical that we reach beyond reliance on commissions of enquiry and the tropes of international transitional justice discourse. It is self-evident that the undertakings of the 1990s have not been honoured. The imperative is to identify implementable strategies for picking up the ball which was dropped and to foreground the needs and the voices of those most disadvantaged by our oppressive pasts.

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<sup>i</sup> The TRC received about 7 000 applications for amnesty in relation to gross human rights violations. Amnesty was conditional on a full disclosure of acts of violation, demonstration of a political motive for the acts, and passing of the test of proportionality. Amnesty was granted in just over 1 000 cases. However, most applicants came to hearings with their lawyers in a sorry tale of obstruction and obfuscation.

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<sup>ii</sup> Over 22 000 victims of gross human rights violations were identified by the TRC. The Commission recommended a medley of reparations for victims, from the financial to the symbolic, from the community to the rehabilitative. It was able to secure urgent interim financial grants for some of the victims during the process, but the state opted for a modest one-off grant of R30 000 for each victim at the conclusion of the process. Minister Masutha has indicated that about 4 000 of these grants have still not been paid.

<sup>iii</sup> The TRC recommended a robust and systematic programme of prosecutions against perpetrators who either failed to get amnesty or chose not to apply for it. A handful of prosecutions were completed during the TRC's lifespan. But since completion of the TRC's work, to our knowledge, only four prosecutions have been initiated. This means that until now the state has, effectively, embraced a blanket amnesty for apartheid-era perpetrators.

<sup>iv</sup> For a 2011 in-depth analysis by the NMF of South Africa's TRC in relation to the country's full range of strategies for transformation and special instruments for restitution, see the attached paper.