

Speech by Prof Kader Asmal, MP, Minister of Water Affairs and Forestry. PANEL ON "DEALING WITH THE PAST"; the South African Conference on Truth and Reconciliation, organized by IDASA, Vineyard Hotel, 20:30 hours, Friday 29 July 1994.

A great deal has been said, and written, about the concept of a commission on truth and reconciliation. There are at least 15 countries where inquiries of this nature have taken place in the past two decades, and each had its own individual form and ran its own course.

In South Africa we are on the brink of the debate that must inevitably precede the introduction of such a critically important mechanism in dealing with our awful and awesome past. However much has been said about the subject, the real debate is yet to take place, and the public are indebted to occasions like this in helping so powerfully to give it shape and form.

As the debate gains momentum, it is as well to warn that there is no prototype that can be automatically used in our conditions. We may be guided, to a greater or lesser extent, by experience elsewhere, notably those countries that managed to handle this highly sensitive and even dangerous process with success. But at the end of the day the important thing is the nature of our particular political settlement. The all-important thing is how best to consolidate our transition. Our democracy is still a fragile plant. We must carefully nurture it.

From my own personal experience, I can say that many people who were attached to the old order have not the remotest idea of what the past means, or of what the future really demands. There is a feeling that, somehow, large areas of delinquency are now disposed of. The new constitutional order is here, the gestures have been made, life will go on *roughly as before. The disasters* things that were done by agents of the Government in years past, so goes this thinking, have somehow been redeemed by the actions of then State President De Klerk in releasing political prisoners and allowing normal political activity.

If all of us are to hold our heads high as South Africans, we must restore the dignity of those who were systematically abused and whose human rights were not simply breached but violently negated. We must ensure that they have an early prospect of citizenship in the fullest sense of the term. It comes down to the basic question of dignity as human beings. An essential part of the process is to get to the truth of what happened in those dark days of apartheid rule.

If we are to believe in the rule of law, and have a successful system of government under law, we cannot ignore serious violations *gross, systematic, egregious violations* of human rights in our recent past. The events did not take place in a vacuum. They left aggrieved individuals, families, loved-ones. They *in fact have* torn the fabric of ^{our} society. They demeaned South Africa internationally.

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Of course, the law could simply be allowed to take its course, and be used against those who perpetrated crimes with a political object. There is no statute of limitations on crimes such as murder. Police could open dockets, seek evidence and prosecute offenders. That is the hard option, the divisive option. Agreed amnesty provisions, therefore, must go hand in hand with arrangements for grappling with our past.

The whole idea behind a truth and reconciliation commission is that there ~~will not~~ ^{cannot} be a punitive process against the perpetrators - however justifiable this course might seem, and however vociferously it might be urged in certain quarters both locally and abroad.

The idea of having a commission on truth and reconciliation is *in fact* the gentle way of dealing with the past. It is the way to do this quickly and effectively, so that we can move on to a future where there is respect for law and human dignity. To be successful, it must command as wide a consensus as possible. Its membership must be highly respected and representative of different currents of opinion.

Some voices have been raised against the idea of a commission. It is said that it is too risky to delve into the past, too divisive, and that it will amount to some form of punishment, even "revenge" that will run counter to the spirit of reconciliation.

Of course, there is danger. But there is greater danger -- ignoring our past and hoping that it will simply go away. Societies that shy away from the truth about their murky past are endangering themselves, because what should be dealt with and forgiven ^{poisons} ~~lies untended~~ in the body politic. To establish the truth of what happened is essential, and it is the most sensible option we face as we seek to move ahead towards national reconstruction, both physical and psychological. You cannot forgive people until you know what they did wrong. And, however big they are about it, perpetrators cannot forgive themselves. Healing can only take place once the facts are known. The surviving victims, the families and loved-ones ~~can be excused if~~ they ask for more than this; they will certainly not be satisfied with less. The very fact that indemnity will be given in cases of full and sincere disclosure means that there can be no witch-hunt against those who own up to what they did, or ordered. It is only those who seek to hide or distort the truth who will be at risk before such a commission.

The ANC is unique in the ranks of successful ^{lib'n movements} ~~guerilla struggles~~ in having voluntarily adopted a clear policy in these matters, which led to two commissions to investigate abuses, and a great deal has been laid bare at the instance of the ANC. If there is more to disclose, so be it. Indeed, ^{in 1993} in a sincere attempt to be even-handed, the ANC has accepted that the commission should investigate ALL cases of gross violations of human rights with

a political object that are brought to its notice, and not just those of the Government and its agents.

It is hoped that we shall move determinedly across a wide front to get this ugly chapter in South African history behind us, complete with disclosure, indemnity or amnesty - and, ultimately, that most crucial thing of all, forgiveness. The El Salvador Truth Commission put it this way in its report presented to the Secretary-General of the United Nations in March 1993:

"Truth alone, however, is not enough to attain the further goal of national reconciliation - ~~and reuniting the Salvadoran family.~~ Forgiveness also is indispensable. The abuses and the pain inflicted on tens of thousands of people in El Salvador will not and should not be forgotten. It is the Commission's hope that the sense of justice that truth gives voice to, will in time help them to forgive." *In all the work that I've done in this area I think of Mrs Goniwe all the time. All she wants to know is how her husband died From ~~beats~~*

There is a well-documented record of truth commissions, or similar bodies, dating back to 1974. Studies have identified no fewer than 15 such commissions covering Uganda 1974, Bolivia, Argentina, Uruguay, Zimbabwe, Uganda 1986, the Philippines, Chile, Chad, South Africa (two ANC inquiries), Germany, El Salvador, Rwanda and Ethiopia. Some worked better than others. In some cases, names of victims were given, in others (such as El Salvador) names of both victims and perpetrators of crimes were published. In some cases, like Chile, only disappearances

were delved into, and a personal Presidential letter was sent to every affected family. In some cases perpetrators were banned from holding office, in others they were prosecuted, in others they got off scot-free. We must do what is best for South Africa, bearing in mind the spirit of national reconciliation that has been ushered in at the very highest level.

President Mandela said on 24 May: "Following the letter and the spirit of the Constitution we will prepare the legislation which will seek to free the wrongdoers from fear of retribution and blackmail, while acknowledging the injury of those who have been harmed so that the individual wrongs, injuries, fears and hopes affecting individuals are identified and attended to."

The appointment of Mr Justice Richard Goldstone to be the war crimes prosecutor in Bosnia should be a reminder of that other way, that of prosecution along the lines of what happened to Germany and Japan in the series of Nuremberg trials after World War II. We do not want this, nor do we seek it. Nor is it appropriate, since our political revolution ended by negotiation and not outright defeat of one party.

And there is hope that even those most affected by the events, the victims, will contribute greatly to the process of cleansing and forgiveness, as was sometimes the experience elsewhere, notably Brazil and Uruguay. May our truth and reconciliation commission mark a catharsis in national life, one that reinforces

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our new democracy. We want catharsis, rather than a national haemorrhage, as Charles Villa-Vicencio so vividly puts it. We must therefore tread carefully. END