

# **THE CONCEPT OF FORGIVENESS: A CHALLENGE TO A JUST SOCIETY\***

By Tecola W. Hagos

**“Out of the crooked timber of humanity, no straight thing was ever made.”**

Immanuel Kant, [Trans. Isaiah Berlin] <sup>1</sup>

**“What is important in life? To crush your enemies, see them driven before you, and to hear the lamentations of their women.”** Conan the Barbarian<sup>2</sup>

## **PART ONE: FORGIVENESS AS A UNIVERSAL PRINCIPLE?**

### **I. Introduction**

In a political rear-view mirror, things that appear to be near, profound, and honorable may be in reality remote, ordinary, and even corrupt. When speaking or writing about social justice or injustice and the development of civil society, one must restrain oneself from going blindly overboard, in praising or condemning any one individual or any one particular event, especially when one is being carried on the crest of populist political waves. This is easier said than done, for I too in the past have written essays overlooking some of the virtues of some leaders I severely criticized. Our time in history is a period of great disappointment, and as a result a time of self-examination and of genuine reevaluation of all events that we have held sacrosanct for some time now. The quotation above seems to indicate that Immanuel Kant, in all probability the greatest philosopher of moral certitude, was having second thought about our human moral condition. Thus, it is only commonsensical for me to revisit one of our current controversies—the concept of forgiveness.

I am starting this essay with the assertion that weak and/or despotic societies “forgive,” but powerful/democratic communities dispense justice. This assertion may be as provocative as it is simple, indeed. It is also my observation that people who are too eager to forgive their abusers, tend to abuse others in their turn. It is a fact that those who are publicly perceived to be the paragon of virtue are wanting in their private lives where virtue truly matters. In a world where people have difficulties going over a much lower threshold of “fairness,” it is appropriate to set “justice” as a social goal rather than pursue acts of “forgiveness” as a solution in social conflicts or crimes.

Foremost, in the discourse underway at political forums, universities, civic organizations et cetera on the issue of national “reconciliation,” there may be serious confusion or misunderstanding of conceptual terms such as “forgiveness,” “amnesty,” “mercy,” “immunity,” and “clemency” in association with truth and/or reconciliation commissions. There have been several truth or reconciliation commissions (tribunals or committees) in the last thirty years in many parts of the world in almost all of the Continents.<sup>3</sup> However, I do not believe the human condition has improved at all due to such effort—thus, this essay.

Very many well intentioned individuals inadvertently have polarized the issue of justice with their advocacy of forgiveness and reconciliation. There is a degree of confusion in the approach of placing the idea of forgiveness as part of the process of political and legal solutions to the injustices suffered by many in South Africa or elsewhere in the World. It amazes me to realize that in almost all instances of the infliction of tremendous suffering on Africans and their descendants in the rest of the World, it is the Africans and their descendants who are expected to forgive their abusers and exploiters who are mainly White men and women. A clear example of such distorted morality can be observed in the case of South Africa where we find African religious and political figures speaking out promoting the idea forgiveness and reconciliation, which effort ends up exclusively benefiting the former Apartheid government officials, the industrialists, wealthy farmers, mine owners et cetera criminals by any measurement..

One other serious problem for any government that is implementing the principles of “forgiveness” or granting “amnesty” to individuals who have committed “genocide” or “crime against humanity” would be the possibility of the government’s violation of the Rome Statue<sup>4</sup> that came into force as of 2002. The Rome Statue created the International Criminal Court, and the Court is in session at this moment. Signatory states have the obligation to cooperate with the International Criminal Court in the prosecution of individuals who have committed such crimes such as genocide or crime against humanity.

As the old saying goes, “charity” must start at home. The fact that Mandela could find it in his heart to forgive people who tortured and imprisoned him for over twenty years, makes it even more so difficult to understand why he would not forgive his own wife (Winni Mandela) of over twenty years who suffered as much persecution under the Apartheid system. Even if we accept the fact that Winni Mandela was unfaithful and that she had encouraged her followers to commit murder, it still is not sufficient for Mandela to treat her much less than his torturers and abusers. This glaring fact of unforgiving of his wife, leaves me to wonder how authentic is the public persona of Mandela. The same kind of lack of authenticity and hypocrisy is manifest in several advocates of forgiveness and reconciliation when we look into their private lives, for these same individuals will not even practice the much lower standard of fairness and tolerance of fellow human beings. It is truly very difficult to be a virtuous person.

## **II. The Issue of Forgiveness as a Political Solution**

I must be out of my mind to start an essay on the subject of responsible social behavior for individuals to emulate by quoting a line from the movie *Conan the Barbarian*: “What is important in life? To crush your enemies, see them driven before you, and to hear the lamentations of their women.”<sup>5</sup> I am simply getting your attention about an alternative behavior to the act of forgiveness not at all alien to mankind, but even more enduring than the act of forgiveness. I suppose Nietzsche would appreciate my quotation from *Conan the Barbarian*, for what is being referred to by *Conan* is unadulterated row power.

In the introduction section of my essay, I stated, “I am starting this essay with the assertion that weak and/or despotic societies ‘forgive,’ but powerful/democratic communities dispense justice. This assertion may be as provocative as it is simple, indeed.” Several of my readers would have asked me to explain what I meant by such statement because my statement seems to have layers of meaning. Very briefly, what I meant in the quoted statement is that in a strong democratic society, crimes are well defined in statutes and case laws in advance. The legislative body in such a community is distinct from both the judiciary and the executive organs of the government; it is a body elected on a universal suffragette basis. The judicial system is well developed, transparent, and independent of the executive, and the prosecutors and investigators are well trained professionals with great moral integrity and abide by rules of procedures of the judicial system et cetera. What is paramount in such communities is the individual’s personhood with human and political rights and social integration.

By contrast, in a society or community where the government structure is weak, such society or community tends to be despotic where the executive body has as its primary function to stay in power through illegal and undemocratic means. Such political condition tends to subordinate the judiciary to the executive, and decisions made in courts or elsewhere are arbitrary due to the interference and control of the judicial process by the executive. The judiciary becomes very much dependant on the whims and caprices of the leader. And such a leader is usually a dictator whose power lies in the military that is not answerable to the people. A state of that form of political power structure could either be characterized as a fascist or totalitarian state. The individual citizen is subordinated to the interest of the state as a whole as represented by the leader (dictator) and the in-group. There is no consistent application of the law if there is any law at all. Citizens are insecure, apprehensive of government representatives, and very fearful of their leaders. There are hundreds of examples of such violent and brutal governments around the world in the last fifty years.

“Forgiveness” as an official act of a government would represent a compromise of a negative type, in almost all instances. It is a fact that such act of forgiveness betrays the fact that such a government is weak to enforce its own laws throughout a nation, and has to make arrangement with a rebellious group to forgo normal legal procedure in order to bring to closure conflicts that had resulted in the death of several people (at times in millions) and the destruction of their property. In limited instances the rebellious group might have the upper hand and maybe able to take power through negotiation on condition that most of the crimes and atrocities committed by the government are “forgiven” and the officials are not prosecuted for their crimes.

The best argument usually offered in support of “forgiveness” has to do with the possibility of settling irresolvable political conflicts through compromise and giving the parties to such conflicts new beginnings to live together in peace. The subjects of forgiveness are individuals or groups. Often, such criminal offenders are government officials or members of opposition political organizations. Usually the situation leading to such compromise is the possibility of resolving a political stalemate between such contending groups. It is essentially a pragmatic solution of compromise and has no true

moral base, unless one considers bringing in a new beginning as a moral act. Political conflicts between contending groups may take years to resolve and result in the death and destruction of millions of people, usually innocent citizens caught in the crossfire.

The obvious question is why the government in power does not use its state power to impose law and order on a belligerent group or part of a population. Usually such problems arise due to the way state power is acquired by leaders. If political power is acquired or transferred through democratic means through elections, for example, there is very little chance that people would form rebellious groups to subvert such legally and democratically constituted governments. However, putting in mind what happened to the Allende democratically elected Government of Chile in 1973, it is not always true that election would lead to democracy. At times, it is difficult to prove whether election gives birth to democracy or democracy gives birth to free election. If we are not careful, we may find ourselves caught in a loop by asking such question.

Human beings do not live in order to satisfy some political structure or ideology or even religion. It is the other way around that political structures and ideologies are there in order to serve the needs of human beings. This is an obvious truism that does not require some fancy proof. I have quoted in the Endnote a long list of commissions or committees established to investigate individual and/or collective crimes and atrocities committed by governments and political organizations in order to bring about some reconciliation to resolve such conflicts once and for all. Most have not succeeded, except a few that merely whisked the issues under the carpet of delusion and brought about unacceptable degrees of compromise that violated the legitimate rights of millions of victims.

Let us take as our first consideration about reconciliation the case of Ethiopia after the downfall of the Military Regime in 1991. The 1991 Conference for Peace and Democracy called and organized by the EPRDF had elements of reconciliation, but was highly selective in the choices of partners and the individuals the EPRDF invited to the conference. The agenda for the Conference was already set by the EPRDF; however, some input must have been forthcoming from the OLF. Nevertheless, the whole exercise was simply some kind of a “fig-leaf” to shield the dictatorial characteristics of the new people in power. More specifically, it helped Meles Zenawi and close associates to mask their ant-Ethiopian program and allowed them enough time to structure the secession of Eritrea. One may argue that it was necessary to exclude from the Conference of 1991 highly contentious groups, such as the EPRP, or those organizations and individuals who were intimately identified with Mengistu and his government at some point in the past and also those organizations and leaders who were involved in the Red Terror, such as Meison.

The situation in Uganda may provide us with the best illustration why any effort of reconciliation with a rebellious group, with amnesty to the leaders of such group, would violate both international law and domestic legal process. After years of atrocities, where hundreds of thousands of Ugandans were killed, the country is no where close to resolving its internal conflicts. Despite the fact that President Yoweri Museveni is far more accommodating and willing to negotiate with the Lord’s Army, there seems to be

no end to the conflict despite the many agreements of reconciliation and amnesty offered to the leaders of the Lord's Army leadership at a time when the ICC had already issued arrest warrants to some of the leaders. In Uganda the form of internal division that is coming into prominent fault line may lead someday to a breakup, with old Buganda kingdom under reconstruction at this time. The case of East Timor, which did conduct an investigation of past misdeeds by sympathizers with the occupation Government of Indonesia, may have shown limited success. East Timor had tried to foster national reconciliation, but failed at the end. A 2005 UN report concluded that the systems of reconciliation and adjudication had failed, and the Indonesian special court had folded as a result of such failed system.

### **III. The Issue of Forgiveness as an Ethical Question**

The provocative article "On the Pleasure of Hating" by the Nineteenth Century celebrated curmudgeon William Hazlitt<sup>6</sup> is a proper essay to bring to your attention in order to remind you that there is more to seeking justice than mere philosophy and legalism—the psychological components are as important. In this regard, the ancient Greeks have a most expressive term *Κάθαρσις* "catharsis" that describes the psychological state of mind an individual undergoing such "catharsis." The term can be roughly translated to mean "purification of" or "purging of" oneself from the pollution of the feeling of being a victim. In other words, it is not only "forgiveness" that allows the human inner self to clean itself of polluting feelings to move away from the confinement and negativity of victimhood, but properly conducted retaliation or "catharsis" would do as well. Both forgiveness and catharsis deal with the psychology of the individual and do not truly address the philosophical basis for such relief from victim-hood.

It seems in the Hebrew Torah, for example, man is perceived as a being limited in power; especially in reference to man's capacity to act independently of God in exacting "retributive" justice on enemies. Such power is almost totally non-extant. It seems acts of vengeance are the sole authority and power of God. "Vengeance is mine; I will repay, sayith the Lord." (Dt. 32:35) The major problem in discussion of living religions around the world is the fact that the many different doctrines in the main scriptures (Mahabharata, Ramayana, Torah, New Testament, Qu'ran, et cetera) of such religions may not correspond with actual practices. Thus, people discussing the same issue and particular activity in the same religion may honestly disagree. God or Gods and Goddesses are central almost in all aspects of human interactions. It is imperative for me to discuss to some extent the role God or Gods and Goddesses play in the everyday-life of human beings when discussing the issues about justice and forgiveness. At the center of almost all religions, we find God or Gods and Goddesses.

It is often argued by moral philosophers that the source of ethics is religion and "God" or "Gods and Goddesses" are at the center of all religions. And thus the implication being that without religion the world will be in some kind of barbarism, violence, and atrocities. The assumption being that without the ordering of "God" or "Gods and Goddesses," mankind will lead a life no better than that of wild animals. However, that assumption of the significant role being played by "God" or "Gods and Goddesses" seems to have

eroded or challenged considerably due to recent advancements in the sciences and social philosophy. The work on animal instinct and behavior has been tedious and gradual beginning with the pioneering works of Nobel Laureates Konrad Lorenz and Nikolaas Tinbergen, the two great ethologists. Environmental ethicists such as Peter Singer and James Lovelock have written several articles and books with new and refreshing perspective of ethics and morality involving animals and the whole eco-system. Currently, of the many scholars that have immensely advanced our understanding of the human condition in terms of our moral behavior, I particularly refer to Francis de Waal at Emory, and Marc Hauser at Harvard who have widened the door of knowledge that moral behavior might have genetic potency inherited from a more primitive ancestors. The implication is quite staggering.

I suspect in the ancient world the concept of forgiveness might have been submerged within a system of vengeful activities, and less practiced or talked about. The earliest recorded law that of Hammurabi (1810 BCE – 1750 BCE) incorporated what must have been for sometime the dominant practice and moral sentiment of the period: “an-eye-for-an-eye” approach. Much later, the Law of Moses<sup>7</sup> carried similar vengeful concept. In the Old Testament there are several references to vengeful retaliatory sanctions: 1) Exodus 21: 23-25 “shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe,” 2) Leviticus 24: 17-20: “He who kills a man shall be put to death. When a man causes a disfigurement in his neighbor, as he has done, so shall it be done to him: fracture for fracture, eye for eye, tooth for tooth,” and 3) Deuteronomy 19: 15-21 false evidence given by a witness during a trial against another person shall suffer the punishment that would have been given to the accused: “life for life, eye for eye, tooth for tooth, hand for hand.” One will not find such concept of vengeful and retaliatory mandate in the New Testament! It is one of the reasons I believe that the New Testament has to be critically considered rather than be taken simply as an extension of the Torah or the Old Testament. The fact of the Jewish identity of the many individuals mentioned by name or otherwise in those Scriptures should not override the fact that the two religions are fundamentally very different.

In their mythology, we find the Greeks as contentious and vengeful as their counterparts in Mesopotamia or Palestine. Forgiveness seems to be a rare concept in the ancient world to such an extent that in the 4th Century BC Plato representing the more enlightened view on civil life wondered, in the voice of one of the characters (Socrates, Plato’s teacher) in his dialogue, *Crito*, how rare “forgiveness” is as a moral act. In *Crito*, Socrates articulated the concept of “not to retaliate or render evil for evil to any one, whatever evil we may have suffered from him” in his rhetorical statement asserting that form of action as exceptionally difficult moral act to carry out by human beings. One may argue that the view expressed by Socrates is simply the first step in the process of forgiveness and does lack the element of reconciliation. Whereas, we find in Homer’s *Odysseus* the idea of “forgiveness” fully developed with a slight difference from its modern sense. Forgiveness in the Homeric sense seems to be accepted after some form of vengeance had taken place.

“Then [Athena] said to [Zeus], ‘Father, son of [Cronos], king of kings, answer me this question- What do you propose to do? Will you set them fighting still further,

or will you make peace between them?’ And [Zeus] answered, ‘My child, why should you ask me? Was it not by your own arrangement that Ulysses came home and took his revenge upon the suitors? Do whatever you like, but I will tell you what I think will be most reasonable arrangement. **Now that Ulysses is revenged, let them swear to a solemn covenant, in virtue of which he shall continue to rule, while we cause the others to forgive and forget the massacre of their sons and brothers. Let them then all become friends as heretofore, and let peace and plenty reign.**’<sup>8</sup>

Of course, the characters in the quotation who are entertaining the concept of “forgiveness” are Greek Gods and Goddesses, not mortals, which fact seems to suggest that forgiveness is beyond the capacity of mortal human beings in Greek society of the period. The practice in sub-Saharan African tradition, i.e., the act of “forgiveness,” has more of cultural imprint than being a religious process. African traditional practice is rich with examples of acts of forgiveness. Professor Oguejiofor succinctly articulated the concept of forgiveness in several African cultures as follows:

The quest for peace makes reconciliation and forgiveness necessary. There is a realization that if peace is to reign, human beings must engage one another in mutual attempt to make peace a reality. Forgiveness and reconciliation is viewed not only as beneficial to one party in a dispute, but to all concerned, and in fact to the whole community. The Yoruba say that *if we do not forget yesterday's quarrels, we will not have somebody to play with tomorrow* (Ti a ka ba gbage oro). It means that forbearance is an element in the effort towards peace. One may not insist on all his points if he is to gain peaceful relationship with his neighbours. The Oromo of Ethiopia concur to this idea: *by saying “let it be” people remain together in peace*. The Igbo of Nigeria say that *malu ghalu bu uto* (knowing and forbearing is the meaning of friendship). One who wants peace must sometimes ignore the foibles of the other people in order to go forward. A Yoruba proverb says *ki a ri aye he Osan mu kalu*, which is translated by another proverb in Igbo which says *kalu mpoto kpuchie*.<sup>9</sup>

Most world religions and traditional practices include teachings on forgiveness, which provide some guidance for the practice of forgiveness. Almost all major living religions, except Hinduism, have the concept of “forgiveness” articulated in their scriptures in varying degrees. The reason I excepted Hinduism from my generalized statement is due to the idea of “reincarnation” in Hinduism, which does not leave much room for a process of forgiveness since the evil doer is reincarnated in a lower form as a matter of the Cosmic process in that religious scripture.

Here below I am discussing some examples of forgiveness as expressed in different living traditions and religions. In Buddhism the idea and act of forgiveness is an essential process of healing, which is a psychological remedy mainly against the harm to oneself of harboring anger. The Buddha said, “Holding on to anger is like grasping a hot coal with the intent of throwing it at someone else but you are the one who gets burned.” Sikhism has similar approach too, but it is outward directed in requiring not only

forgiveness but also compassion to the offending party and not limited to just healing or protecting oneself. “Where there is forgiveness, there God resides.”<sup>10</sup>

If we consider the Torah, [The Books of Moses] the Old Testament [for Christians], we see that there is almost total absence of forgiveness. The very human cosmos in the Torah is based on punishment and condemnation and serving great hardship starting from being ejected out of Paradise due to an original sin of disobedience by Adam and Eve [the supposed “parents” of all human beings] to the total destruction of man and his civilization except a handful of survivors spared by God in the story of Noah, such Judaic scripture is not helpful to us as a guide for forgiveness. The Torah is not the only sources of Judaic religion and practice. The Books of the Prophets and historical personalities as well as Talmudic knowledge are also such sources.

Here is a religion where man and God are constantly negotiating and modifying agreements, and expanding or limiting parameters. Moreover, we are confronted with an extremely violent and unforgiving God with unreasonable demands on human beings, and who repeatedly destroyed human beings on whimsical reasons. It is also a highly discriminatory religion solely aimed to benefit a discrete group of people. You do not find Judaic evangelists in history. However, Talmudic writings seem to temper such unforgiving violence of a God, with pious advice to circumspect God’s volatile temperament.

“Who takes vengeance or bears a grudge acts like one who, having cut one hand while handling a knife, avenges himself by stabbing the other hand.” — Jerusalem Talmud, Nedarim 9.4. There are a couple of verses dealing with “forgiveness” that are on point in the whole of the Torah. “It is forbidden to be obdurate and not allow yourself to be appeased. On the contrary, one should be easily pacified and find it difficult to become angry. When asked by an offender for forgiveness, one should forgive with a sincere mind and a willing spirit.” Mishneh Torah, *Teshuvah* 2:10

In great contradistinction to Judaism, Christianity is based wholly on concepts of forgiveness and nonviolence. It stands alone in the religions of the world for its cardinal precepts of compassion for the poor and the disfranchised. It announces hope, salvation, and forgiveness for all, which sets Christianity completely apart from all religions except perhaps Buddhism. The bunching of the teachings of the Christ with Judaism is a fallacious connection simply based on the biological identity of the Christ rather than his ideology. As far as I can read from the Scriptures, it seems to me that Judaism and Christianity, in terms of ethics or ideology, have very little in common. They are truly very different religions from each other. It seems to me Islam and Judaism are much closer to each other than they are to Christianity.

In Christian teachings, forgiveness of others plays an important role in the spiritual life of a Christian. For example, *The Lord’s Prayer* is the most conclusive guideline that laid out the true essence of the teachings of Jesus Christ. “And forgive us our trespasses, as we forgive those who trespass against us” ( Matthew 6:9-13). Even at the moment of his



painful death, the Christ's last words from the cross were of forgiveness. "Father, forgive them, for they know not what they do." (Luke 23:34). The teachings of the Christ are not simply reactive to wrongs done to us. He instructed his followers to love their enemies and turn the other cheek when accosted by enemies. (Matthew 5:9 & Luke 6:27-31).

Here, a note of caution must be taken on how both Judaism and Christianity dealt with us, Africans, "Negroes." Even though several of the leaders of the early Church were Africans including several Popes [Victor (AD 183-203), Gelasius (AD 492-496), and Mechiades or Miltiades (AD 311-314)], there was an attempt, in the early life of Christianity in the third and fourth Century, to exclude "Negroes" Africans from the descendants of Adam and Eve. To a great extent the Genesis story of Noah is responsible for that form of insidious discrimination that has persisted to this day. The Noah story has a counter part in an earlier story from the Mesopotamia region much older than the Judaic story of Noah. Similar problem of identity and of "humanness" arose also after the discovery of the New World (America) whether the native people, "Indians," that the Europeans encountered in the Americas were descended from Adam and Eve. Pope Paul III issued a 1537 papal bull "Sublimus Deus" declaring that the "Indians" were "fully human and also descendants of Adam and Eve." [Based on this thesis Friar Bernardino de Minaya, a brother of the same order, convinced Pope Paul III to issue the 1537 bull Sublimis Deus affirming that "Indians are humans capable of receiving Christian faith; they should not be deprived of liberty and possessions; they should be converted only by example and preaching."]

The word "Islam" is allegedly derived from the Semitic word "slm" meaning "peace," but such semantic construction is after the fact by later generations not contemporaneous with the recitation of the Qur'an by the Prophet Mohamed. Thus, any attempt to derive the concept of forgiveness from the word "Islam" is farfetched. However, the descriptive adjectives for Allah as "Ar-Rahim" (The Merciful) and also "Al-Ghafoor" (The Forgiving) may provide a meaningful source for the concept of forgiveness. As far as I can tell, those who are Moslems have no unique disposition compared to others for either peace or forgiveness. I do not find Jews uniquely aggressive either. The "subtext" of mankind is far more complex and subtle than I am capable of handling in terms of either/or. I suspect that if one does clinical studies on the percentage distribution of violent behavior among the diverse communities around the world, there may be similarities rather than differences.

In fact, the history of the rapid expansion of Islam through out the Middle East, North Africa, and finally Spain was carried out with great violence of expansion from the very beginning of that religion. It is an undeniable historical fact that the "Sword" firmly established Islam in world history. The barbaric practice using the "Sword" as an instrument of violence of governments under despotic Islamic leaders usually against unarmed people is still in practice in Saudi Arabia where they beheaded an Ethiopian woman recently for an alleged crime against an abusive man who had raped her multiple times.

It is alleged by many Qur'anic scholars that the Qur'an makes some allowances for violence, but only to defend the religion and the property and the lives of the faithful. It is gross reductionism to think of the many wars waged by Moslem leaders, against Christians, Jews, Zoroastrians, Hindus and animists, as defensive wars. Islam is an extremely militant religion far ahead of Christian evangelism in its zeal. Nevertheless, there are limited numbers of references in the Qur'an on forgiveness. "They avoid gross sins and vice, and when angered they forgive." (Qur'an 42:37). In another verse dealing with mercy or clemency, the Qur'an provides: "Although the just penalty for an injustice is an equivalent retribution, those who pardon and maintain righteousness are rewarded by God. He does not love the unjust" (Qur'an 42:40).

Even though there is very little in the Qur'an itself that can be cited as examples of the concept of forgiveness, there are several statements by pious Moslem teachers and commentators dealing with the concept of forgiveness. A case in point is one of the statements by the great Moslem mystic Sa'di. "A falsehood resulting in conciliation is better than a truth producing trouble."<sup>11</sup> Islam has more in common with Judaism than with Christianity. Both Judaism and Islam are violent religions. You do not have to take my words for it; just take a fresh look at the Books of Moses, the Qur'an, and the four Christian Gospels for comparison.

It is obvious that in society many individuals have been faced with wrenching ethical dilemmas in their lives, but few were uniquely tested as Simon Wiesenthal was tested as portrayed in his book *The Sunflower*<sup>12</sup> wherein at a time he was a concentration camp prisoner, he was called upon by a wounded Nazi soldier to forgive him (the wounded soldier). The wounded soldier was a member of the very political power structure that had murdered millions of Jews. Simon Wiesenthal refused to participate and walked away leaving the Nazi soldier to die with his guilt. Wiesenthal was a young Jew from Ukraine who was first imprisoned in 1941 by the Nazis. Eighty nine members of his extended family including that of his wife, parents and grand parents, were murdered by the Nazis. If I were Wiesenthal, I would not know what to do confronted with such profound ethical issue.

#### **IV. The Issue of Forgiveness as a Legal Regime**

Delaminating ethics from law was considered by many jurists (Austin, Hart et cetera) as a step forward in legal development. Is it possible to make similar claim by disassociating ethics from politics? May be the question is not a fair one, since politics is more of a process than a series of rules and limits as is the case with law, and thus far more difficult to distinguish questions of ethics from questions of politics. This disassociative outlook may be due to the empiricist and materialist view of ethics to be based or a result of emotion and not of reason wherein "Law" is perceived to be purely a process or result of reason. For example, Aristotle in his *Politics* stated that "the law is reason unaffected by desire." [Aristotle, *Politics*, Book III, chapter 16, Benjamin Jowett translation]

It is impractical if not outright impossible to structure a legal regime around the concept of "forgiveness." If a legal system uses "forgiveness" as one of its tools, it will be

undermining far more important legal concepts such as equal treatment, fair and just resolution of controversy, consistency and certainty et cetera all very fundamental concepts in any legal system. In Ethiopia's legal tradition, before the modernization of the legal system was initiated by Emperor Haile Selassie in the 1930s, the Sovereign was the ultimate judge of capital crimes and serious crimes; however, in the punishment phase of the process, family members of the victim were allowed a say in what type of punishment to impose on the criminal. Both oral tradition and the *Fetha Negest* are great sources of cases where the justice of past Ethiopian kings and Emperors could be studied and admired.

There are many troubling questions in connection with the concept of forgiveness especially if the implementation of which ends up freeing individuals or groups who have committed serious crimes of murder, torture, and imprisonment in the name of national security or political change. Obviously, what is needed in such situations is justice in accordance with the criminal law of the state of jurisdiction and/or the use of international legal concepts that are peremptory norms of customary international law and practices whether derived from treaties or judgments of international courts, tribunals, or arbitration forums.

If we assume, for argument sake, that to forgive a criminal or an organization (community) that had committed some harm to an individual, a family, or a community is an ethical act and may even be considered as a courageous religious/spiritual behavior, there are certain conclusions that flow logically from such assumptions that we may not endorse. The obvious question that comes to mind is why the victims and their families should bear the burden of a difficult moral judgment to benefit the rest of society, especially when such society had failed to protect them from atrocities to begin with. If we consider ancient civilizations as different from our more relaxed and enlightened civilization, there is no point referring to events or ideas from such time. For example, why should Wiesenthal ease the last moment of life of a Nazi soldier who had committed unspeakable crimes against innocent people?

Where the atrocity or criminal act is a result of civil disobedience, it may be far more difficult to withhold special considerations such as forgiveness or mercy. However, even under such circumstances of civil disobedience, philosophers, such as Rawls, suggest that those who participate in activities of civil disobedience must not commit any violence or expect immunity from prosecution for their activities. But that approach does not address non-violent actions harmful to the security of a state. For the assumption in such form of dissent is that no one can be forced to live under laws that contravene fundamental human rights of individuals.

There are precedent setting international conventions such as the Genocide Convention and others through the United Nations system that are relevant to the resolutions of conflicts. For example, international customary law principles such as the Nuremberg Principles, the Japanese war crimes Commission, the Rwanda Commission, the decisions of the International Court of Justice et cetera that maybe used as the basis for setting

standards to effect justice in the world before implementing a system of forgiveness and reconciliation.

As indicated in my introduction, the granting of “amnesty” or forgiving the criminal acts of an individual or that of a group that violated international standards under the Genocide Convention or any other bilateral or multilateral treaties may itself be considered a violation that may be a subject of sanctions imposed by the international community. The Rome Statue has created the International Criminal Court, and the Court is already fully functional. Thus, signatory states to the Rome Statue have the obligation to cooperate with the International Criminal Court in the prosecution of individuals who have committed such crimes such as genocide or crime against humanity. If individual states negotiate with criminals and grant “amnesty” or “forgive” such crimes, such states would undermine the role of the International Criminal Court. The question is whether we are putting the cart before the horse with such ideas of forgiving criminals? It is impractical and counterproductive to use the concept of “forgiveness” as public policy.

## **PART TWO: “FORGIVENESS” AND THE CASE OF SOUTH AFRICA**

### **V. Questions to Consider**

The much heralded and applauded “Truth and Reconciliation Commission (TRC)”<sup>13</sup> of South Africa is different in some of its aspects than previous such commissions from elsewhere in the world, especially in its two step goals of searching for the truth of the fate and whereabouts of several thousand South Africans (secretly murdered and buried) in exchange for reconciliation by way of “amnesty” to the perpetrators if they tell the truth about their activities of such violence (including murder and torture) for political objectives. However, the TRC too suffered from distortion of its mandate by its most influential Commissioner, Bishop Desmond Tutu. Commissioner Bishop Tutu by continuously making statements about “forgiveness” in books, articles, and interviews has blurred the distinction between his own belief system and the mandate of the TRC.

The confusion is further deepened by the fact that Nelson Mandela’s life is perceived as symbolic representation of “forgiveness” and by extension such great ethical attribution is also identified with the work of the TRC that Mandela’s administration is identified with. Any form of criticism of the Christ-like figure of Mandela is going to be met with stiff resistance and attack. It is a tragedy that human beings in their pursuit of the divine will in no small measure stomp on the rights and humanity of those underfoot. At Any rate, both Nelson Mandela and Desmond Tutu, in spite of my sharp criticism of their role in South Africa’s political and social life, are great men with tremendous contribution to all of mankind.

In my view, the argument since the 1990s to interject “forgiveness” in the workings of “reconciliation” or “truth” commissions in all kinds of conflicts as a method of closure has seriously undermined the administration of justice in very many communities around the world. Bishop Tutu often referred to the change that took place in 1993 and after as the South African miracle. The truth of the matter is that there was no miracle, for the

change that took place was the work of very shrewd and practical men of power and wealth. Furthermore, I am asserting that what is tragic is the fact that it is the disempowered victims of atrocities who are doing the forgiving of their tormentors and oppressors with delayed or none existing recompense—no “restorative” justice here. Thus, for example, in the case of South Africa, the abuser and exploiter relieved of guilt, continues his or her abuse and exploitation dressed in new iron-clad uniforms of the 1996 Constitution of South Africa individual “freedoms” maintaining the old order of power and wealth intact. In general, from our past experiences, it seems that reconciliation agreements elsewhere in the world did not succeed in bringing about the desired goals of participants in such programs.

It is not clear from the record of the last thirty five years of conflict around the world whether “forgiveness” and “reconciliation” had healed any community or individual victims. I cannot help but wonder that should it matter that there may not be any affirmative evidence to that end, as long as the concept of “forgiveness and reconciliation” is a moral act in itself? This is a fundamental question in ethics whether ethical behavior or moral judgment is consequence oriented or deontological or Platonic. The debate is not resolved as yet, and is an ongoing process. This essay is neither an attempt to resolve such “big-picture” controversy nor a defense for any particular frame of reference, but is oriented to finding what degree of success is achieved by civic and government leaders who pegged their future political and economic life on the concept of forgiveness and reconciliation. You may consider my approach close to the metaethicists.

There is serious flaw in the concept of forgiveness or reconciliation itself when it comes to communities’ claim of such collective actions or behaviors. Several well known human rights scholars and activists, such as Michael Ignatieff, Priscilla B. Hayner et cetera, have written several scholarly essays illuminative of the concept of forgiveness and reconciliation. The problem they saw was that forgiveness and reconciliation are acts of individuals and not of a collective. The starting reference for such scholars that led them to such conclusions seems to be based on the concept of self-consciousness, for the collective is a disembodied entity and more of a construction in the minds of individuals. This, of course, negates the Jungian idea of “collective unconsciousness” that identifies a collective substratum universal in its reach.

I was taught in schools that justice and fairness were the two most important building principles for any civilized society. Furthermore, I was informed that “forgiveness” was a private religious or spiritual act and has very little to do with public acts of governments and officials. There seems to be some confusion between “forgiveness,” and amnesty, and also with clemency, or mercy—the last item “mercy” is totally absent from the current monoculture of “forgiveness.” While amnesty acts as a bar against prosecution for any number of reasons, the element of forgiveness is not a necessary element for such amnesty. Clemency or mercy that occurs on occasions of great celebrations has nothing to do with forgiveness but rather the sovereign’s power in full display.

Although I am willing to give the benefit of the doubt to people who promote “forgiveness” as a legitimate tool to solve chronic problems of conflicts, I am becoming

increasingly skeptical of their wisdom, motives, and/or authenticity as I studied the problem closely. In fact, when I researched the private lives of some of the key individuals in South Africa who advocate for “forgiveness,” I found out some disturbing information about corruption and selfishness. There are several reasons for my criticism of pursuing forgiveness before thoroughly seeking justice in conflicts. Especially in fractured societies in very many African nations, including South Africa, where millions are crying out for justice, the call for reconciliation/forgiveness in any form is inappropriate and polarizing.

There is also this artificial hair-splitting of the principle of justice into what are popularly identified as “retributive” justice and “restorative” justice. The attempted distinction is simple semantics, for the principle of justice includes both “retributive” and “restorative” principles. The more interesting and legitimate question ought to be whether we should include in the debate on the subject of forgiveness the case of amnesty to millions of people who have broken the laws of particular nations. For example, should illegal aliens in the United States or other countries around the world be granted amnesty? If any one deserves our compassion, no one deserves it more than such “illegal aliens” who are overwhelmingly peaceful, hard working, and productive in any society they happen to be. Certainly, if one could argue forgiveness to brutal and violent men and women who have committed crimes against humanity, it should not be that difficult to forgive illegal aliens who have done much to improve our lives.

The rhetorical argument aside in the paragraph above, I am very doubtful about the necessity of interjecting forgiveness in economic, political, and social conflicts at a time when the world is so much in need of the administration of justice and of law and order. Forgiveness is not a political solution. It brings society to a political loop in a never ending half-measures and unnecessary compromises. When political rhetoric of development and equality fails to convince adversaries and the public, politicians seem to promote the idea of “forgiveness” in order to overcome their defective political agenda. However, what is of much interest to me is how business men used such concept to preserve their wealth from alienation and destruction by manipulating willing or gullible politicians fronting for their interest.

Is there some mid-way between vengeance on one end and forgiveness on the other end that may be a key to solving such political conflicts? If we start, for example, by considering the extreme concept of punishment of the ancient scriptural law of “an eye for an eye,” we can easily surmise how quickly such form of system of punishment could end up with the blindness of all, to paraphrase Gandhi whose observation is the bedrock of all “nonviolent” movements. If punishment is not tempered with consideration of possible rehabilitation and the moral improvement of the offender, I believe it would seem to be some form of barbaric vengeance.

In an effort to understand the concept of forgiveness and its alleged therapeutic effect in moving individuals and communities beyond the limitation endemic in hate and vengeance, I am discussing four important issues: 1) the issue of forgiveness as a political solution; 2) the issue of forgiveness as an ethical question; 3) the issue of forgiveness as a

legal regime; and 4) the issue of forgiveness as an economic factor. I have used the case of South Africa as a special case reference and guide throughout this essay.

## **VI. The Truth and Reconciliation Commission (TRC)**

The TRC was established by parliamentary legislation titled as the “Promotion of National Unity and Reconciliation Act, 34 of 1995,” in December of 1995. The Act derived its authority from the epilogue of the Interim Constitution of 1993, which provided among other things that the “pursuit of national unity and peace required reconciliation between the people of South Africa and the reconstruction of society” and to that end, “amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.” What is most significant in the Act was the granting of amnesty in exchange for the full disclosure by any person involved in the commitment of any violent act or offence in association with a political objective committed from 1 March 1960 to 11 May 1994. This is also the fault line that led to misinterpretation or misuse by Bishop Tutu and followers whereby they seem to hold that the “amnesty” provided for in the Act involved an act of “forgiveness,” which is not the case.

A brief background discussion of South Africa and its previous Apartheid government will help us understand to a reasonable degree of knowledge about the creation and complex development of the new South Africa. The Government of South Africa [totally European Whites] was declared by the United Nations in 1961 by Resolution 1598 (XV) as not representative of the people of South Africa the overwhelming majority of whom were black Africans.<sup>14</sup> Even though the expulsion of South Africa from the United Nations was sought by the General Assembly in a recommendation to the Security Council in 1974, the Security Council’s draft resolution to expel South Africa from the United Nations failed due to the veto of the resolution by England, France, and the United States. Nevertheless, the government of South Africa was effectively ostracized from the United Nations and drastically limited in its activities.

Furthermore, the sanction that was imposed on South Africa by international organizations<sup>15</sup> and also by very many individual countries [September 25, 1985, Thatcher, Britain; September 10, 1985, Reagan, USA] over time started to affect the economy of the country. Harry Oppenheimer, who was at one point reported to own more than fifty percent of the value of the capitalization of corporations listed on the Johannesburg Stock Exchange, was directly affected due to the severe decline of the value of his holdings due to sanctions and the fall of the Rand. South Africa was heading into civil war.

In the 1980s, with Julian O. Thompson (De Beers), Gavin Relly (Anglo-American) and others as his confidants, Oppenheimer launched his sophisticated strategy to control the process of change in South Africa from becoming revolutionary and (in his eyes) a destructive force by preemptively dismantling the Apartheid system and bringing in old ANC leaders from long imprisonment and exile, who were already advanced in age and their spirit broken (from long brutal confinement of twenty or more years) and only a

shell of their vigorous youth of years ago. The negotiation was carried out starting in 1985 between the ANC leadership lead by ANC Chairman Oliver Tambo (residing in Sweden at the time) and the Oppenheimer group.<sup>16</sup> Later in 1989, the negotiation for the new South Africa was conducted by Thabo Mbeki representing the sick ANC Chairman Oliver Tambo with the representatives of South Africa's De Klerk Government. Mandela, who was detained in maximum security prison, did not participate directly or indirectly in that negotiation that finally created the new South Africa.

The ANC in its 1950 political agenda, as reflected in its adoption of the new *Freedom Charter*, acknowledged that non-blacks (Whites) are also South Africans. The *Freedom Charter*, adopted at the Congress of the People, Kliptown, on 26 June 1955 was seriously challenged by the Africanist group, who rightly pointed out that the Assembly was made up of political organizations whose membership barely adds up to a couple of thousand non-African members on equal footing and were inappropriately allocated equal votes that watered down the ANC with over a hundred thousand members. The Pan African Congress (PAC) was formed as a challenge of the leadership of ANC that included Mandela, Tambo, and Sisulu.

The *Freedom Charter* clearly anticipates a program of drastic redistribution of land<sup>17</sup> and the wealth of the nation. It was based on the principles of “restorative justice” and self-determination. “The People Shall Share in the Country's Wealth! The national wealth of our country, the heritage of South Africans, shall be restored to the people; The mineral wealth beneath the soil, the Banks and monopoly industry shall be transferred to the ownership of the people as a whole; All other industry and trade shall be controlled to assist the wellbeing of the people; All people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions. The land shall be shared among those who work it! Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger; The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers; Freedom of movement shall be guaranteed to all who work on the land; All shall have the right to occupy land wherever they choose; People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished.” Such a provision in a charter is alarming to those who greatly benefited in the Apartheid system of government.

Business men routinely outsmart politicians all over the world. The best example of political savvy in our time is the way Harry Oppenheimer of De Beers and Anglo America saved his family's misbegotten great wealth from nationalization or looting by “kaffirs,” and in the process affected or accelerated the downfall of the Apartheid system that was brutally enforced since 1948 after the National Party dominated by Afrikaaners won over the then in power United Party dominated by English speaking Whites. And thus I contend, contrary to the shallow and popular history of the process of change that took place in the 1990s in South Africa that has been credited to the African National Congress (ANC) and its leaders, it is Harry Oppenheimer who gave birth to the new South Africa. The real story is as shocking and as it is outstanding, for the father of the “new” South Africa is Harry Oppenheimer and not Nelson Mandela or anybody else.



The history of Apartheid overlaps the history of the effort of the United Nations to eradicate all forms of discrimination based on race, gender, religion, and social status. The challenge to South Africa's racial policies was first brought before the General Assembly of the United Nations in 1946 by the Government of India protesting that the South African Government had enacted legislation discriminating against South Africans of Indian origin. The wider question of racial conflict arising from South Africa's apartheid policies was placed on the Assembly's agenda in 1952. From 1962 to 1992, the Assembly considered both questions under the agenda item entitled "During the 1950s, the Assembly made repeated appeals to South Africa to abandon its apartheid policies in light of the principles of both the UN Charter and the 1948 Universal Declaration of Human Rights. South Africa, however, viewing the Assembly's decisions as illegal and unacceptable and in violation of the principle of non-interference in its internal affairs, consistently rejected the Assembly appeals and resolutions."<sup>18</sup>

Prior to 1994 for a period of twenty years, South Africa could not even be seated at its alcove in the General Assembly of the United Nations because the credentials of the representatives of the Government of South Africa were not recognized as legitimate by the Credential Committee of the United Nations General Assembly. From 1965 through 1973, the credentials of the South African delegation were given specific consideration by the Assembly. In 1974, the General Assembly by Resolution 3206 (XXIX), while approving the report of its Credentials Committee and accepting the credentials of representatives of Member States rejected the credentials of the representatives of South Africa.

What Oppenheimer succeeded in doing was to suppress the nationalization or redistribution program by the ANC of land and mines and industries as expressed in the *Freedom Charter*, in exchange for the transfer of governmental power controlled by business men and fronted by ANC leaders. The leaders of Labor Unions, such as Cyril Ramaphosa played crucial roles in such corrupting transformation of all radical elements into middle-class and onto super-rich elite class. Radical elements, such as Winni Mandela were neutralized and finally divorced from the ANC, and in case of Winni Mandela from her husband Mandela too. Thabo Mbeki represented the leadership of ANC that fully cooperated with the watered down change as planned by Oppenheimer abandoning Black Nationalist short term goals in favor of building little by little the black middle class in a long haul until black South Africans can both numerically and economically control South Africa. I must say, such approach does have both great intellectual and ethical seduction (I may have failed to understand fully), if it succeeds the corrupting influence of great wealth. However, such scheme will not have any lasting effect because of the injustice of the concentration of blood stained wealth in the hands of the few extraordinarily wealthy White South Africans.

Putting Mandela as the face of the change taking place in South Africa according to Oppenheimer's initiative, effectively silenced most opposition groups and garnered support around the world for the change taking place in South Africa. Harvard at the time was in euphoria, in anticipation of the establishment of a New South Africa under the

“leadership” of Mandela. There were representatives from ANC, Inkatha Freedom Party, Labor, the Government of South Africa, and even a number of representatives from humanitarian associations visiting at Harvard and holding discussions on the future of South Africa. I remember one incident that happened when I was a Fellow at Harvard Human Rights Program in 1993-95 academic periods. Members of a certain political group from South Africa, who were fully aware of the Oppenheimer’s scheme, came to Harvard to present their case opposing the alliance of convenience between ANC and the South African Government. They were unable to get full reception from any one Student association or group except a chance to present their case to a very tiny group of scholars and fellows at the Human Rights Program.

When Mandela and De Klerk walked out on the World-stage to greet the public after receiving the Nobel for Peace in 1993, I was thinking that something was terribly wrong with that scene other than the obscenity of having the victim and victimizer on the same platform—no different than a rapist and his victim hand in hand on a stage. The one person who brought about the downfall of official Apartheid and created the “new” South Africa was not even mentioned. It is Harry Oppenheimer who should have been standing out there with the Nobel Prize and not the pawns Oppenheimer moved around on his economic chessboard in order to safeguard his wealth and control the direction of change taking place in South Africa. [This is one more reason not to give that much credence to the Nobel Committee that decides who get the Nobel awards.] Of course, the above statement is a parody, and there can be no justifiable reward for De Beers or Oppenheimer. The crumbs the Oppenheimer family threw around through their “humanitarian foundation” is nothing compared to the billions of dollars (of millions of caret diamonds and tons of gold) they looted and the degradation they inflicted on tens of thousands of black miners.<sup>19</sup> And such wealth every penny of it has to be coughed up back to the people of South Africa if one seeks true reconciliation and lasting peace in South Africa.

Jeffrey Herbst wrote evaluating the change that took place since the time of the TRC hearings and the activities of the government of the new South Africa with a degree of disappointment. “In many respects, the country has indeed made enormous progress since its last white president, F. W. de Klerk, left power in 1994. In its 11 years in office, the ANC government has refrained from pursuing retribution, and the country is now enjoying an economic upswing, thanks to conventional economic policies that feature strong curbs on government spending and the liberalization of trade and capital flows. At the same time, the government's attempts to narrow South Africa's severe wealth inequalities have largely failed, serving mainly to enrich a small black elite. President Mbeki frequently resorts to the language of class and racial struggle to lash out at his critics.”<sup>20</sup> Despite such reception from a neocon, I believe President Mbeki is so far the last honest (and the least clever) South African leader from the old ANC who has maintained his integrity in the face of great temptation.

The Act that created the TRC no where mentions “forgiveness,” however, it does discuss the granting of “amnesty” from prosecution to individuals that satisfy certain minimum requirements laid out in the Act. Bantu concept of “ubuntu” with its Zulu maxim *umuntu*

*[ngumuntu ngabantu]* ("a person is a person through other persons") is incorporated in the preamble of the Act that created the TRC. "ubuntu" is the term that is used in the epilog to the Interim Constitution of 1993. Positive concepts are juxtaposed with their negative counterparts such that "a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for "ubuntu" but not for victimization" whereas "ubuntu" is paired with "victimization" that indicates the meaning of that concept of "ubuntu."

Here is the actual wording of the Preamble of the Act that seems to provide some degree of guidance on the alleged high moral/legal standard: "And since the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization; And since the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past."

There seems to be a run-away an out of control avalanche of ever expanding reading into this African concept "ubuntu" by overenthusiastic hitherto traumatized humanity. However, such enthusiasm and emphasis on the "ubuntu" concept must be tempered with the fact that the concept developed out of the needs of tribal communities where individual dependencies on groups as unities or on few members of such groups is drastically different from relationships observed between individuals in modern political and economic social structures. The modern emphasis on "individual freedom" as a basis for social, political, and economic structure is not without reason, and democratic form of government is not an accidental, for both political and political structures evolved out of similar tribal behavior to meet the needs of evolving civilizations over a long period of war and conflicts and experiments.

The overwhelming focus on "forgiveness" in discussions has eclipsed the principle of the "need for reparation but not for retaliation." The "need for reparation but not for retaliation" is the same concept as justice as restorative or as the concept of "ubuntu." The Human Development Index Report of 2007 issued by the United Nations lists South Africa as the one hundred twenty first in a field of one hundred seventy seven nations of the World; where in the United States is listed as twelfth. A number of countries that seem to have very limited resources compared to South Africa, with its fabulous mineral wealth, score much higher than South Africa. For example, Jamaica, with no resources to speak of, is listed as one hundred first with far more fulfilling life of its citizens compared to South Africa. The wealth of South Africa is in the hands of people such as Oppenheimer who looted the wealth of that nation for centuries protected by the Apartheid system. And now the same people, who were beneficiaries of the Apartheid system, in collaboration with corrupt black political South African leaders have established a system that continues to maintain and protect that blood-socked wealth of Apartheid era from confiscation and nationalization.

In an interview on April 14, 1997 conducted by Harry Kreisler of the University of California at Berkeley, on "Conversation with History" series, Richard J. Goldstone, a

member of the Constitutional Court of South Africa and a former Chief Prosecutor for the International Tribunals for Rwanda and the former Yugoslavia, identified the characteristic of the TRC in very graphic terms. "I think the first point that must be recognized is that the Truth and Reconciliation Commission was, in fact, a political compromise rather than a moral agreement. It was a compromise between two poles."<sup>21</sup> Ten years later, Goldstone clearly expressed his reservation in using "amnesty" to resolve conflicts especially in light of the establishment of the International Criminal Court (ICC). The Rome Statute that created the ICC has been ratified to date by 104 Members of the United Nations.<sup>22</sup> He is reported to have stated in the talk between the Ugandan Government and the Lord's Army his reservation on the appropriateness of granting "amnesty" to rebel leaders. "Judge Goldstone is *adamant* that basing a peace agreement on an amnesty for those who have committed 'the most terrible mutilations and rapes' amounts to cheating the victims and will not end in permanent peace."<sup>23</sup> By entering into peace talks and offering amnesties from domestic prosecution, Museveni is in direct breach of Uganda's treaty obligations. "Museveni is acting in contravention of international law...His government signed the Rome Statute, and offers of amnesty violate the letter of the law."<sup>24</sup>

There is no doubt in my mind that there was no moral or ethical consideration of "forgiveness" when the provision dealing with truth and reconciliation was added after a last minute struggle for power between the ANC and the National Party, in the 1993 Interim Constitution of South Africa. The incessant preaching about "forgiveness" by Tutu or Mandela and their supporters is simple rationalization for compromising the rights and interests of Black South Africans. The only religious group that won a parliamentary seat pursuant to the 1994 popular election was the African Christian Democratic Party [ACDP]. Even such avowedly "Christian" organization carefully avoided the term "forgiveness" in its program: "The ACDP has taken as its platform the biblical standard of reconciliation, justice, compassion, tolerance, peace and the sanctity of life, the individual, the family and community. It proposes to direct the political debate towards these issues and to unite people around the common values, instead of focusing on ideological, historical and racial differences."

One of the main reasons for the creation of the TRC was to facilitate the recovery of secretly murdered and buried victims of Apartheid and to bring a degree of closure to the families and communities of such victims. It is argued that without amnesty, such disclosures by those government functionaries may be impossible. It is also argued that it would be extremely difficult and very expensive to convict suspects of such murders and atrocities in a court of law due to the problem of gathering of evidence to help convict such criminals. The problem with such arguments is the fact that they cancel out each other. For the criminal who already knows about the difficulty of producing evidence against him or her, he or she will not be compelled to confess under a grant of amnesty either. This may be one of the reasons why there was low application for amnesty with the Commission. [The case of de Kock is a case in point.]

Tim Butcher in his article "Mandela accuses ANC of racism and corruption," in the *Telegraph* of June 19, 2001, has quoted Mandela as saying, "Little did we suspect that

our own people, when they got a chance, would be as corrupt as the apartheid regime. That is one of the things that has [sic] really hurt us." Mandela may have thought of his life as pure and untainted by any existential blemishes when he uttered such words. However, the reality speaks of an individual no different than most leaders in Africa who are more often than not suspected of corruption. Reporters Wisani wa ka Ngobeni, Dumisane Lubisi and Dominic Mahlangu, in their shocking article, "Dirty war over Mandela millions: Startling claims of tax dodges and foreign accounts," *Sunday Times*, 25 February 2007, wrote about the feud between Mandela and his lawyer who was accused of diverting millions from the Trust established for Mandela collecting contributions from rich individuals. "South Africa's top lawyers are fighting a dirty court battle over former President Nelson Mandela's millions. At the centre of the war is the whereabouts of R2.2-million from the R18-million Nelson Mandela Trust. The money was raised by Mandela from top businessmen, including the Oppenheimer family, for the benefit of his children and grandchildren after his death." We may add to the list of contributors' names such as Cryl Ramaphosa and "Tokyo" Mosima Gabriel Sexwale, the later alleged to have contributed to the Mandela Trust fund a million dollars. Only a decade and a half ago, Saxwale was a penniless ex-political prisoner who has now become the new black South African super-rich.<sup>25</sup>

At any rate, long after the conclusion of the TRC process in 1998, both Chairman Tutu and his Deputy Chair Yasmin Sooka have stated in several interviews in recent years (2005-2007) that the TRC has failed to meet the needs of the victims of Apartheid.<sup>26</sup> This is a kind of cynicism that sneers at the poor of South Africa. This type of reflection seems to be far too late to reverse the poorly thought out process of governmental power transfer and redistribution of the great wealth looted from the people of South Africa. I often read and hear in discussions the comparison with Zimbabwe's steep decline due to Mugabe's effort to redistribute to Black Africans the most fertile huge farm lands owned by white Settlers through colonial policy and administration, with that of the "peaceful" transition taking place in South Africa. The comparison is flawed because it does not take into account the difference of the basis of wealth in the two countries and the relentless interference of Western powerful nations often sabotaging the efforts of the Government of Zimbabwe.

The problem I see in society in general is its eagerness either to edify or demonize individuals far too quickly and get caught in the web thus created of delusions and lies. I see the world of human beings as too fragile a place to accept reality as is without embellishment, thus the tendency to smokescreen limitations by creating super beings whose reality has minimal truth-content. Mandela's lapse of judgment is clear in his autobiographical book, *Long Walk to Freedom: The Autobiography of Nelson Mandela*.<sup>27</sup> It is beyond comprehension to me how anyone could write a book about an African controversial life in Apartheid South Africa without ever mentioning the crime committed by the De Beers Company and affiliates and the Oppenheimer family looting the wealth of South Africa and in the process dehumanizing tens of thousands of human beings in an apartheid system that spanned for over fifty years. That is precisely what Mandela omitted in his book, not ever mentioning De Beers or Oppenheimer not a single time in a six-hundred plus paged book. Even worse, it was very suspicious that Harry

Oppenheimer has bought thousands of copies of *Long Walk to Freedom* indirectly funneling hundreds of thousands of dollars/Rand to Mandela, adding to the mystery why Mandela did not even mention in a footnote De Beers or Oppenheimer.

Even more troubling is the fact that Mandela, in an effort to protect the interest of De Beers and the Oppenheimer family interest, found it necessary to protest and admonish the producers of the film “Blood Diamond” by a letter,<sup>28</sup> which letter that even Mandela’s most ardent admirer, Oprah Winfrey, found to be disappointing. Whether Mandela likes it or not, every single carat of diamond ever mined in South Africa until 1990, is “blood diamond.” On reflection, there might be an insidious narrow ethnic politics involved in the unconscionable decision of Mandela to display such immoral support of De Beers and Oppenheimer and also in omitting the crimes committed by Oppenheimer and other miners and industrialists from his book. Most of the mine workers come outside of Mandela’s tribe and a good number of the mine workers are brought from Lesotho and other neighboring Southern African regions for better control and security reasons. Does it seem that in the eyes of Mandela the suffering of such migrant workers is of less value than pleasing white Mine owners in order to protect the overall economy of South Africa? As a matter of fact, Mandela’s first act of foreign policy was to expel some ten thousand migrant mine workers from neighboring countries from South Africa.

None of the monetary activities of Mandela or of Tutu may have involved an African-style of blatant and open “corruption” like that of Mobutu, for example, we are used to reading about. However, such activities of Mandela and Tutu, as recorded above, might cast serious doubt as to their moral authority in promoting “forgiveness” as an act of reconciliation. I may be cynical in my perception of the activities of the two “great” moral leaders, whose claim to moral authority is irreparably tarnished due to the questionable great wealth they have amassed since the 1990s. It is very hard for any victim of the Apartheid system to forgive so easily when there is no comparable compensation in real money like the millions of Mandela and Tutu have collected from awards, “gifts,” et cetera directly connected to the fact of having suffered the Apartheid system. “*Besew qusel sinter seqsiqbet.*”

The absence of the word “forgiveness” 1) in both the 1993 and 1996 Constitutions, 2) in secondary legislations, 3) in official government statements such as press releases, 4) in the famous *Azanian* case opinion of the Constitution Court et cetera tells us the fact that “forgiveness” is not the policy or law of the Government of South Africa. If there is any doubt in anyone’s mind about the concept of forgiveness not being entertained in the Act of the TRC, one only need to read the very first case brought by the widow of Biko and others that was decided by the Constitution Court of South Africa. The judgment of the Cape Provincial Division in the case of *Azanian Peoples' Organization (AZAPO) and Others v. Truth and Reconciliation Commission and Others* (1996) explained the purpose of the Act and the meaning of the concept of “amnesty” and never once used the term “forgiveness” in its very long opinion.

In the *Azanian* case, Judge Mahomed DP wrote, “The Act seeks to address this massive problem by encouraging these survivors and the dependants of the tortured and the wounded, the maimed and the dead to unburden their grief publicly, to receive the collective recognition of a new nation that they were wronged, and crucially, to help them to discover what did in truth happen to their loved ones, where and under what circumstances it did happen, and who was responsible. That truth, which the victims of repression seek so desperately to know is, in the circumstances, much more likely to be forthcoming if those responsible for such monstrous misdeeds are encouraged to disclose the whole truth with the incentive that they will not receive the punishment which they undoubtedly deserve if they do. Without that incentive there is nothing to encourage such persons to make the disclosures and to reveal the truth which persons in the positions of the applicants so desperately desire. With that incentive, what might unfold are objectives fundamental to the ethos of a new constitutional order. The families of those unlawfully tortured, maimed or traumatized become more empowered to discover the truth, the perpetrators become exposed to opportunities to obtain relief from the burden of a guilt or an anxiety they might be living with for many long years, the country begins the long and necessary process of healing the wounds of the past, transforming anger and grief into a mature understanding and creating the emotional and structural climate essential for the ‘reconciliation and reconstruction’ which informs the very difficult and sometimes painful objectives of the amnesty articulated in the epilogue.”<sup>29</sup>

Nevertheless, the opinion of the Court has very many seriously contestable and questionable assumptions in the Court’s interpretations of the responsibilities owed victims of Apartheid by the many mining, manufacturing and agro-industrial businesses and business owners who have amassed great fortune taking advantage of a system that dehumanized indigenous and other people for over fifty years. Furthermore, the Court erred in excluding the Geneva Conventions of 1949 and the international law regime developed around the Nuremberg trials after the Second World War and many of the resolutions of the General Assembly from its consideration.<sup>30</sup> South Africa’s Truth and Reconciliation Commission (TRC) has been a subject of numerous articles and several books. It has been diced and synthesized thoroughly.<sup>31</sup> One poignant and persistent remark through most of the literature in that regard is about the neglect or absence of follow-up to compensate victims of the apartheid system fairly and adequately. So far, seventeen thousand claimants out of a total of over fifty six thousand victims were each paid the equivalence of about five hundred dollars in Rand. Such miserable payments are shameful and a far cry from what was anticipated or envisioned in the TRC.

By contrast, Germany having signed the 1952 Agreement with the Government of Israel and the Jewish Claims Conference of some Jewish organizations, has paid billions of dollars as compensations for the Holocaust crimes and other crimes including for slave labor of Jewish victims. Recent governmental source/report states, “Germany has also worked to face up to the crimes committed by the Nazi regime and acknowledged its obligation to provide material restitution. A total of 104 billion US dollars has been paid in compensation to the victims, and about 624 million dollars continue to be paid each year to about 100,000 pensioners.”<sup>32</sup> These compensations paid out by Germany are in addition to the multiple trials and convictions and punishment at Nuremberg of several

Nazi leaders. However, my comparative evaluation here is not in anyway meant to imply that the Apartheid system was comparable in its severity and horror to the Holocaust. It is only meant to indicate the right approach to issues of restorative justice.

In the case of South Africa, the defect in the process of the transfer of power and in the dismantling of the Apartheid system is mainly due to the unwarranted compromise made by the ANC leadership conceding to the National Party and the business interest of Oppenheimer<sup>33</sup> and company during the drafting of the Interim Constitution of 1993 and carried over in the TRC Act itself. The continued “feel-good” and self-congratulatory posturing by South Africa’s black elite and their counterparts from the old Apartheid system who are still maintaining their blood-soaked wealth and power is doomed to catastrophic failure. The conflict of economic and political power between the Black Africans who made up over seventy eight percent of the population and the White minority of not more than ten percent (and yet control almost eighty five percent of the fertile land and almost ninety five percent of the mineral wealth of South Africa), has not been resolved, but simply postponed for the next generation to handle.

## VII. The Deluge after the TRC?

After the conclusion of the work of the Commission, Bishop Tutu has penned a far more sober book, especially compared to his occasional emotional outburst about forgiveness during the hearings of the TRC, titled *No Future Without Forgiveness*.<sup>34</sup> And yet after almost ten years from the conclusion of the work of the TRC, the book still failed to show us the philosophical justification for forgiveness, except revamping the old worn out appeal to our emotion based on the psychological “feel-good” argument. I believe that Tutu should have titled his book “No Future Without Coughing Back the Wealth of South Africa,” a title that might reflect his own disappointment, which he expressed in recent interviews, in the breached process of restorative justice<sup>35</sup> as well as the reality of African life in South Africa. Echoes of such seemingly appealing moral concept of forgiveness are to be found all over the world in institutions of higher learning and non-profit humanitarian organizations. What all these charlatans of ethics do not seem to grasp is the fact that they are subverting civil society that is already tittering on the edge of political precipice, and pushing into a capricious chaotic despotism by allowing murderers and torturers go free.

At any rate, at the end of the day, we find the sum total of the work of the Commission lacking proper resolution. In fact, its effect on the pain and suffering of the victims of Apartheid is truly dismal when seen in light of its long term impact on South Africa.<sup>36</sup> This is not the fault of the Commissioners or those who worked at the Commission, for their work product was beyond any human endurance. For example, the Report of the Commission is superbly written—a great masterpiece in its own right. The problem lies elsewhere: The Commission’s term of office was far too short for the Commission to have carried out effectively its mandate. It had very limited budget and work force. Because of such serious limitations, it left very many murders and atrocities still unaccounted for. The twenty one hearings were token hearings staged for public consumptions.



Of the tens of thousands Apartheid era government officials, agents, and functionaries such as Judges and prosecutors, who were either suspected of much of the atrocities against South Africans or were instrumental for such atrocities indirectly involved in the Apartheid system, only about seven thousand two hundred seventy four individuals had filed petitions with the Commission. The number of application by victims or their representative family members is in tens of thousands.<sup>37</sup> None of the leadership and parliamentarians, and none of the judges and prosecutors of the South African Government, and none of the leaders of the National Party were ever charged of any wrong doing. All this hoopla about the success of the TRC revolves around a handful of public hearings of crimes and a venue for public display of the anguish of victims. It is truly uneventful in terms having a role of changing the serious contradiction in South Africa of the exploitation of the vast majority of black Africans by a minuscule number of white settlers.

It is sad in the current situation in academia, in social interactions, in world politics et cetera, especially in the United States, that one cannot honestly criticize an individual such as Harry Oppenheimer without thinking twice. If Oppenheimer was named "Patel" or "Kruger," it would not have changed anything about my criticism of Oppenheimer's activities on how he manipulated the political and economic situation in South Africa in the 1980s and 1990s to protect the misbegotten wealth of the family and his effort to be loved and hailed as a hero of some sort in history. For that matter, there are very many White owners of mines, industries, agro-industries, banks and other financial institutions et cetera<sup>38</sup> who have done even worse damage to the human and economic rights of Black Africans in South Africa than Oppenheimer, but none of them try to pass as benefactors and moral agents.

With such dismal imbalance of wealth between the overwhelming majority of the South African black population and the distinct minority of white South Africans controlling almost all the arable land, mines, and industries, it will be very difficult to speak of "forgiveness" in the context of the TRC. I suspect, in the near future, even mentioning the word "forgiveness" in connection with the work of the TRC even in a casual conversation with black South Africans will send such long suffering black Africans into rage and convulsion.

The Truth and Reconciliation Commission of South Africa may end up as the most reviled public entity by Black South Africans in the future. In all these subtle and not so subtle maneuvering and schemes by wealthy "White South Africans," the losers are the poor majority of Black South Africans and the poor minority Whites. White South African industrialists, diamond and gold mine owners, rich farmers et cetera have succeeded to retain their ill begotten possessions and are now protected by an iron-clad Constitutional provisions of their property and rights.<sup>39</sup> We may add to this group the new "Black" super-rich South Africans, a number of whom are former political and labor leaders who have, for all practical purposes, betrayed and abandoned their Black South African brothers and sisters.

To wit, the 2007 Human Development Report by the United Nations placed South Africa in terms of its human development among nations that have very limited resources. It is ironic that South Africa with the richest diamond, gold, magnesium, cobalt et cetera deposits and great expanse of farm lands could be placed one hundred twenty first (121) in such scale even below Jamaica that is listed as one hundred and first (101). The United States is listed as Twelfth. The Oppenheimers, the Patels, and the Krugers who have dehumanized the Black South Africans, and looted and exploited mineral resources of South Africa should cough up and give back every penny that they have acquired during the sixty years of the Apartheid nightmare. The resentment and dissatisfaction of forty five percent of unemployed Black South Africans compared to four percent of unemployed Whites, is not something that can be ignored, for South Africa is heading toward a major collapse of civil government and a revolution. Ω

Tecola W. Hagos

Washington DC

**[\*This essay is an extract from a book manuscript that is in the process of being reviewed and completed. Revised on December 6, 2007.]**

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<sup>1</sup>“*Aus so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden*” Immanuel Kant (Akademische Ausgabe, Band 8, page 23). Berlin, Isaiah, *The Crooked Timber of Humanity: Chapters in tThe History of Ideas*, Princeton University Press, 1998. Judge Mahomed DP wrote the same quotation in his decision in *Azanian Peoples Organization (AZAPO) and Others v. President of the Republic of South Africa and Others* 1996 (4) SA 671 (CC).

<sup>2</sup> From the Movie “*Conan the Barbarian*” (Arnold Schwarzenegger as “Conan”), Dino De Laurentiis Company, Universal Pictures (1982).

<b>Country</b>	<b>Date of Commission</b>	<b>Time Covered</b>	<b>Report Publicly Issued?</b>
Uganda	1974	1971-1974	1975
Bolivia	1982-1984	1967-1982	Commission Disbanded
Argentina	1983-1984	1976-1983	1985
Uruguay	1985	1973-1982	1985
Zimbabwe	1985	1983	No
Uganda	1986-1995	1962-1986	No
Philippines	1986	1972-1986	No
Nepal	1990-1991	1961-1990	1994
Chile	1990-1991	1973-1990	1991
Chad	1991-1992	1982-1990	1992
Germany <sup>a</sup>	1992-1994	1949-1989	1994
El Salvador	1992-1993	1980-1991	1993
Rwanda <sup>b</sup>	1992-1993	1990-1992	1993
Sri Lanka	1994-1997	1988-1994	1997
Haiti	1995-1996	1991-1994	Limited, 1996
Burundi	1995-1996	1993-1995	1996
South Africa <sup>c</sup>	1995-2000	1960-1994	1998
Ecuador	1996-1997	1979-1996	Commission Disbanded
Guatemala	1997-1999	1962-1996	1999
Nigeria	1999-2001	1966-1999	Report in Process
Peru	2000-2002	1980-2000	2003
Uruguay	2000-2001	1973-1985	Report in Process
Panama	2001-2002	1968-1989	2002
Yugoslavia	2002	1991-2001	Commission Ongoing
East Timor	2002	1974-1999	Commission Ongoing
Sierra Leone	2002	1991-1999	Commission Ongoing
Ghana	2002	1966-2001	Commission Ongoing

<sup>a</sup>While Germany conducted a truth commission consistent with the definition adopted here, it focused on the former East Germany. Comparative regional measures do not exist for the pre- and post-unification East. Because comparisons cannot be made, the case is not included in the analysis.

<sup>b</sup>Rwanda is included because the commission was granted quasi-official status and received some cooperation from authorities.

<sup>c</sup>Although the commission issued its report in 1998, it continued to work on the granting of amnesty and making reparation recommendations. [So far over fifty six thousand victims have been listed out of whom about seventeen thousand victims have been compensated tiny amount of money of no significance.]

Sources: (Hayner, 1994; Bronkhorst, 1995; Hayner, 2001; USIP, <http://www.usip.org/library/truth.html>).

<sup>4</sup> The Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. In accordance with its article 125, the Statute was opened for signature by all States in Rome at the Headquarters of the Food and Agriculture Organization of the United Nations on 17 July 1998. Thereafter, it was opened for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute was opened for signature in New York, at the United Nations Headquarters. It has come into force as of 1 July 2002, in accordance with article 126.

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<sup>5</sup> From the Movie “*Conan the Barbarian*,” (Arnold Schwarzenegger as Conan), Dino De Laurentiis Company, Universal Pictures (1982).

<sup>6</sup> “Nature seems (the more we look into it) made up of antipathies: without something to hate, we should lose the very spring of thought and action. Life would turn to a stagnant pool, were it not ruffled by the jarring interests, the unruly passions, of men. The white streak in our own fortunes is brightened (or just rendered visible by making all around it as dark as possible; so the rainbow paints its form upon the cloud. Is it pride? Is it envy? Is it the force of contrast? Is it weakness or malice? But so it is, that there is a secret affinity, a hankering after, evil in the human mind, and that it takes a perverse, but a fortunate delight in mischief, since it is a never-failing source of satisfaction. Pure good soon grows insipid, wants variety and spirit. Pain is a bittersweet, wants variety and spirit. Love turns, with a little indulgence, to indifference or disgust: hatred alone is immortal. Do we not see this principle at work everywhere? Animals torment and worry one another without mercy: children kill flies for sport: every one reads the accidents and offences in a newspaper as the cream of the jest: a whole town runs to be present at a fire, and the spectator by no means exults to see it extinguished.”

<sup>7</sup> “Although most Egyptologists and biblical Archaeologists do not believe the Exodus occurred based on the lack of archaeological evidence for the Event, in Egypt, the Sinai, Negeb, Transjordan and Canaan, some do allow for the possibility that some kind of historical event may have occurred that has been transformed, reformatted and embellished. Even myths very frequently have a historical kernel buried under the later embellishments. My research reveals that the Bible preserves two different dates for the Exodus. ca. 1560 BCE (Hyksos Times) and 1446 BCE (Pharaoh Amenhotep II). The former date is derived from chronologies preserved in the books of Judges and Samuel whereas the second date is derived from 1 Kings 6:1. In either case, the Biblical narrator understands that the Exodus took part sometime during the course of the 18th Egyptian Dynasty (the Canaanite Late Bronze Age period, ca. 1570-1200 BCE).” Walter Mattfeld

<sup>8</sup> Homer, *Odysseus*, Book XXIV (Translated by Samuel Butler)

“Now Athene spake to Zeus, the son of Cronos, saying: ‘O Father, our father Cronides, throned in the highest, answer and tell me what is now the hidden counsel of thy heart? Wilt thou yet further rouse up evil war and the terrible din of battle, or art thou minded to set them at one again in friendship?’ Then Zeus, the gatherer of the clouds, answered her saying: ‘My child, why dost thou thus straitly question me, and ask me this? Nay didst not thou thyself devise this very thought, namely, that Odysseus should indeed take vengeance on these men at his coming? Do as thou wilt, but I will tell thee of the better way. Now that goodly Odysseus hath wreaked vengeance on the wooers, let them make a firm covenant together with sacrifice, and let him be king all his days, and let us bring about oblivion of the slaying of their children and their brethren; so may both sides love one another as of old, and let peace and wealth abundant be their portion.’”

<sup>9</sup> J. Obi Oguejiofor “Resources for Peace in African Proverbs and Myths,” <http://www.afrikaworld.net/afrel/obioguejiofor.htm> as retrieved on May 26, 2007.

<sup>10</sup> <http://nexusnovel.wordpress.com/2007/01/03/forgiveness-in-different-religions/> as retrieved on Jun 28, 2007.

<sup>11</sup> *The Gulistan of Sa'di* by Sheikh Muslih-uddin Sa'di Shirazi (Muslih-ud-Din Mushrif-ibn-Abdullah) (1258) Translated by Sir Edwin Arnold (1899).

<sup>12</sup> Simon Wiesenthal, *The Sunflower: On the Possibilities and Limits of Forgiveness*, Random House 1998, p 53. [Wiesenthal is the author of many books, including *The Murderers Among Us*, *Justice Not Vengeance*, *Sails of Hope*, and *Every Day Remembrance Day*.]

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<sup>13</sup>The TRC was established by parliamentary legislation (the Promotion of National Unity and Reconciliation Act, 34 of 1995, called "the Act" below) in December 1995, pursuant to the concluding provisions of the interim Constitution of 1993, 1993 Constitution of the Republic of South Africa Act 200 OF 1993 (Interim Constitution, 1994 -1996). “[Chapter 16] National Unity and Reconciliation: This Constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of color, race, class, belief or sex. - The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. - The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. - These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization. - In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 Oct 1990 and before 6 Dec 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed. - With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.”

<sup>14</sup> *Resulting from the Policy of Apartheid in the Union of South Africa, April 13, 1961*

*The General Assembly, Recalling its previous resolutions on the question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa, . . .*

*Recalling also that the Government of the Union of South Africa has failed to comply with the repeated requests and demands of the United Nations and world public opinion and to reconsider or revise its racial policies or to observe its obligations under the Charter,*

*1. Deplores* such continued and total disregard by the Government of the Union of South Africa and furthermore its determined aggravation of racial issues by more discriminatory laws and measures and their enforcement, accompanied by violence and bloodshed;

*2. Deprecates* policies based on racial discrimination as reprehensible and repugnant to human dignity;

*3. Requests* all States to consider taking such separate and collective action as is open to them, in conformity with the Charter of the United Nations, to bring about the abandonment of these policies;

*4. Affirms* that the racial policies being pursued by the Government of the Union of South Africa are a flagrant violation of the Charter of the United Nations and the Universal Declaration of Human Rights and are inconsistent with the obligations of a Member State;

*5. Notes with grave concern* that these policies have led to international friction and that their continuance endangers international peace and serenity;

*6. Reminds* the Government of the Union of South Africa of the requirement in Article 2, paragraph 2, of the Charter that all Members shall fulfill in good faith the obligations assumed by them under the Charter;

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7. *Calls upon* the Government of the Union of South Africa once again to bring its policies and conduct into conformity with its obligations under the Charter.

**Source:** from United Nations, General Assembly, *Official Records, Fifteenth Session, Supplement No. 16A, Resolution No. 1598 (XV)*, pp. 5-56.

<sup>15</sup> - International Convention on the Suppression and Punishment of the Crime of Apartheid Adopted and opened for signature, ratification by General Assembly Resolution 3068 (XXVIII) of 30 November 1973, *entry into force* 18 July 1976

- UN Doc. RES/39/72A (1984)

<sup>16</sup> “On September 13 1985, a group of leading business personalities traveled to Zambia to meet with the leadership of the ANC. The delegation included Gavin Reilly, Chairman of Anglo American; Tony Bloom, Chairman of Premier Milling and Zach de Beer of Johannesburg Consolidated Investments. This meeting took place despite strictures from Mr Botha about 'disloyalty' and went a long way to establishing recognition within the then dominant minority community of the reality that there could be no solution to the crisis of legitimacy that excluded the organizations of the historically oppressed.” ANC Submission to Special Truth and Reconciliation Commission Hearing on The Role of Business, November 1997. <http://www.anc.org.za/ancdocs/misc/trcbus.html>

Harry Oppenheimer’s racism and affinity to the apartheid system, notwithstanding the self-serving oration of Mandela and Mbeki, is honestly evaluated in the record of the Commission on business and labor, as well as by Narandran Jody Kollapen, Chairperson of the South African Human Rights Commission. Kollapen stated, “The contrary, however, was the case where business formed alliances and made common cause with the government of the day supporting tacitly, and at times expressly, the policies of the ruling party. Harry Oppenheimer, for example, according to his approved biographer, ‘never subscribed to the view that apartheid was morally wrong.’ In his view it was at root ‘an honest attempt to cope with overwhelming racial problems.’ In the same light his successor Gavin Rely was not in favour of one-man one-vote for South Africa because ‘that would simply be a formula for unadulterated chaos at this point in time in our history.’ Anton Rupert, the leading Afrikaner businessman agreed, ‘After many African countries became free they got dictatorships like Amin’s. We have to find a solution that won’t end up giving us one-man one-vote.’” See Narandran Jody Kollapen, “Human Rights and Business: The Apartheid Experience” <http://www.novartisfoundation.com> as retrieved on Mar 12, 2007. Much can be written on the psychological make-up of Oppenheimer and successors that is a far cry than the benign often gullible synthesis one reads about that family and its fortune.

<sup>17</sup> “The Natives Land Act No. 27 of 1913 "legalized" the previous *de facto* allocation of 87% of the land area of South Africa to the whites and prohibited the sale of any such white-held land to Africans... In 1923 the Native Urban Areas Act was enacted as a supplement to the Land Act. It restricted the residence of Africans to the reservations and allowed only the temporary residence of domestic workers in the rest of South Africa.” [assaultonblacksanity.blogspot.com/2007/03/south-africa-land-or-toilets.html](http://assaultonblacksanity.blogspot.com/2007/03/south-africa-land-or-toilets.html).

<sup>18</sup> DPI's Blue Books Series -- "The United Nations and Apartheid, 1948-1994," with introduction by Secretary-General Boutros Boutros-Ghali, 1996 United Nations Publications.

<sup>19</sup> *Supra* at note 6. During the period 1985 to 1990, Oppenheimer allegedly took out capital asset out of South Africa the equivalent of 10 billion dollars. It is to be recalled starting in the early part of the 1980s rich white South Africans have been removing capital asset out of South Africa due to fear of political turmoil and economic sharp decline because of sanctions.

<sup>20</sup> See Jeffrey Herbst, “Mbeki’s South Africa,” *Foreign Affairs*, November/December 2005.

<sup>21</sup> Goldstone said the following powerful statement: “I think the first point that must be recognized is that the Truth and Reconciliation Commission was, in fact, a political compromise rather than a moral agreement. It was a compromise between two poles. The African National Congress, if it had its way, would have liked Nuremberg-style trials of Apartheid leaders. On the other hand, the former Apartheid leaders, the then government, wouldn't have agreed to a settlement, wouldn't have handed over, if they knew they were going to then face trials and possible imprisonment for life. The former government wanted blanket indemnity. So those were the two very contradictory poles. The compromise was to have a Truth and Reconciliation Commission where there was a trade-off. For truth you would get an indemnity, subject to certain conditions. The conditions are important. There had to be a political motive for the crime, for the human rights violation (and they go back to 1960). And secondly, there had to be proportionality. That's a difficult area because, by any decent person's lights, to murder somebody is not proportionate to anything. But the context is that reality had to be recognized.”

<sup>22</sup> Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

<sup>23</sup> Katy Glassborow, “Peace Versus Justice in Uganda: Can the International Criminal Court’s demand that Ugandan rebel leaders face trial coexist with the need to achieve a workable peace deal?” in *IWPR*, The Hague (AR No.77, 27-Sep-06). [www.iwpr.net](http://www.iwpr.net).

<sup>24</sup> Kiapi, Evelyn, Dennis Muhumuza and Gawaya Tegulle in Kampala and Katy Glassborow in northern Uganda “Museveni Faces LRA Dilemma,” in *IWPR* (AR No. 112, 15-May-07). [www.iwpr.net](http://www.iwpr.net).

<sup>25</sup> In September 1995 only 1 percent of the market capitalization on the Johannesburg Stock Exchange was under black control. Today, the figure has risen to 16.3 percent. Last year, black companies made 130 major investments worth R21 billion (£2.1 billion) compared with R5 billion (£0.5 billion) in 1997 and R1.6 billion (£0.16 billion) in 1996. A new generation of black tycoons has been created, including Ramaphosa, Moseneke and Sisulu, Nail's directors. “South Africa: the fraud of ‘black empowerment,’” By Barbara Slaughter, 25 May 1999 World Socialist Web Site [www.wsws.org](http://www.wsws.org).

<sup>26</sup> “Tutu says more apartheid crimes should have gone to court,” -17/12/05. Published on Ekklesia (<http://www.ekklesia.co.uk>); Zoe Daniel, “Ten years on from the Truth and Reconciliation Commission,” <http://www.abc.net.au/pm/content/2006/s1618509.htm>];

<sup>27</sup> Nelson Mandela, *Long Walk to Freedom: The Autobiography of Nelson Mandela*, Boston MA, Back Bay Books, 1995.

<sup>28</sup> See Chotiner, Isaac, "Half Nelson," *The New Republic* (December 18, 2006).

<sup>29</sup> *Azanian Peoples Organization (AZAPO) and Others v. President of the Republic of South Africa and Others* 1996 (4) SA 671 (CC).

<sup>30</sup> T. van Boven, (Special Rapporteur of the United Nations), Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: Final Report, UN Doc. E/CN. 4/Sub.2/1993/8, 2 July 1993.

<sup>31</sup> Dugard, John, “International Law and the South African Constitution,” *European Journal of International Law*, Vol. 8 (1997) No. 1, 77ff.

<sup>32</sup> The experience of Germany/Holocaust compensation: “Germany’s 60-year reflection on World War II” *People’s Daily Online*: [http://english.people.com.cn/200505/08/eng20050508\\_184006.html](http://english.people.com.cn/200505/08/eng20050508_184006.html) as retrieved on Apr 18, 2007.

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<sup>33</sup> “The submission by the Anglo-American Corporation was an improvement on that of the Chamber of Mines. Anglo-American accepted that it could have been a better corporate citizen. It had the honesty to note that, despite many representations by Harry Oppenheimer to government about the need for a more stable workforce, the Corporation failed to provide even the limited amount of family accommodation allowed within the bounds of the law.” Volume Four, Chapter Two: Institutional Hearing: Business and Labor.

<sup>34</sup> Desmond M Tutu., *No Future Without Forgiveness*. Image, Doubleday, 2000.

<sup>35</sup> “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.” Bishop Desmond Tutu, Foreword, Truth and Reconciliation Commission of South Africa Report, released on 21 March 2003. [www.info.gov.za/otherdocs/2003/trc/](http://www.info.gov.za/otherdocs/2003/trc/).

<sup>36</sup> Infra note 26

<sup>37</sup> “By the end of the Commission's lifespan, 21,000 people had come forward, women and men, old and young, and told the Commission about nearly 38,000 gross violations of human rights. In the process, the broad outlines of the past emerged with undeniable clarity. Ninety percent of those who came forward were black. Most of them were women. The greatest number of these approached the Commission on behalf of dead men to whom they were related.” TRC Report Vol. 1 (6) Appendix Two, Section 29.

<sup>38</sup> Anthony Edward Rupert, Johann Rupert & family, Donald Gordon

<sup>39</sup> “How far has the TRC influenced transformation in South Africa? Given that the Commission was born in compromise and negotiation, and given the balance of forces at that time, it is questionable whether the TRC could have brought about transformation, especially in the economic and social sphere. The TRC could bear the weight of transformation only in legal and moral areas, so laying the foundations for others to build on. Tragically, so little transformation appears to be occurring elsewhere that the foundations of reconciliation and openness are in danger of being undermined. Government defenders can justifiably point to a number of measures in land, housing, infrastructural improvements, provision of electricity, and so on. However, many believe that the government is wedded to a neoliberal programme that has little chance of overcoming the inequalities and economic oppressions of the past, or of alleviating poverty.” Brandon Hamber and Steve Kibble, “From Truth to Transformation: South Africa's Truth and Reconciliation Commission,” Catholic Institute for International Relations Report, February. 1999. Centre for the Study of Violence and Reconciliation, <http://www.csvr.org.za/papers/papbhsk.htm> as retrieved on May 2, 2007.

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