

Truth and Reconciliation Commission, South Africa

Madeline Fullard¹ Speech on the Third Regional Forum on Mechanisms of Truth-seeking and Truth-telling about the War Crimes in the former Yugoslavia in Belgrade, Serbia, February 11, 2008.

Firstly let me greet everybody here and tell you how privileged I feel to be here and to learn about the situation in this region. I will try talk quite slowly so that the translators have a chance to keep up. What I am going to do today is to give you an overview of the work of the South African Truth and Reconciliation Commission. Obviously there are parts of the South African experience that are very different to this particular region. But I hope that some of the things I will discuss with you this afternoon will be relevant to the issues you are busy discussing. The South African truth commission has a number of controversial aspects about its work which I will also discuss. I think I need to start of by just giving you a short two minute introduction to the nature of the conflict that took place in South Africa. I'm not sure how much the audience here is aware of South African history but basically it was a Dutch and British colony for over 400 years where the settlers basically seize the land of the indigenous people, brought about systems of enforced labor and committed virtual genocide on sections of the indigenous people. South Africa is also mostly known for its policy of apartheid and I would be curious if you would indulge me. I want to know how many people here have heard about the apartheid and what it means. Apartheid was a system of legalized racism which excluded the black majority. Black people made up 80% of the population of South Africa. The settler white population made up about 12% and 8% were what we called mixed or colored. Throughout the 20 century there were organizations which emerged to a struggle against the policy of the apartheid. This was mainly done through the nonviolence struggle. But in 1960 the state banned all such political organizations. And they were forced to do exile. And then began the period of the most severe political violence from 1960 to 1994. In that period we estimate that we experienced roughly 25.000 deaths inside the country. And this took place in the forms of the clashes between civilians and the security forces, between exiled guerillas and security forces, and significant number died in conflict between civilian groups. We had more than 60.000 people detained without trial, of these many thousands were tortured under the state of emergency and another forms of detention. We had more that 30.000 political prisoners who were sentenced to long prison terms and I'm sure all of you know about our most famous prisoner, our previous president Nelson Mandela who served over 26 years on Rubben Island. We had a number of people over 150 who were sentenced to death and hang for political offences. So that's just to give you the picture of violence that took place in South Africa. The creation of the South African truth commission comes in quite a different way to other countries. It emerged through the process of political negotiations between 1990 and 1994, the final 4 years of our conflict. And basically it was agreed during these political negotiations at the last minute that there would be some form of amnesty. But it was not specified what form this would take. This was included in our Interim constitution. Now, after the 1994 democratic elections it was decided that we

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could not just have the amnesty process that victims had to be involved, they had to be made the central part of this process and therefore it was decided to look at the options that Latin American countries like Argentina and Chile had followed in having truth commissions which looked at the experience as the victims. And so in this way, this is how the South African truth commission came to, in a sense bring together an amnesty process and the truth commission. Now, I know that this is very controversial aspect here and I would like to say that we were the only truth commission that is ever included the amnesty process as the part of its work. So I don't want to give the impression that truth commissions are about amnesty in any way. It was a particular context in South Africa that led to the situation. The truth commission also did not just fall from the sky, readymade. We had over 2 years of consultation work in parliament, among civil society groups about the nature of this truth commission, what shape it should take, what was its mandate, what was its task. In fact, if I recall correctly, it was the most debated piece of legislation in South African history. There is no other piece of legislation that is had such a length of debates about its work. What was also important was that during this 2 years period before the establishment of the truth commission is that victims' structures and victim groups came together and formed a single united victim organization which managed to lobby very effectively for its interests to be properly represented in the truth commission process. So finally, towards the end of 1995 we have the promotion of national unity and reconciliation law which was passed. The commission was headed by 16 commissioners; the chair person was Archbishop Desmond Tutu, who had been Nobel peace prize winner. And I would like to explain the process of selection. These were not just government appointed commissioners. There was a public nomination process where anybody, any member of the public, any organization could nominate people to serve as commissioners. And then this list was assembled, people were interviewed in public interviews by a special committee set up in parliament and finally the list was narrow down and they were approved by president, by president Mandela. The qualities that we were looking for were people of integrity, people who had credibility, widespread credibility, who had the ability to be independent and were also representative. We wanted everybody in South Africa to feel that their interests will be represented, that it was not only one particular side that was represented there. I should say that many of the commissioners had a strong human rights background of work. There was also an attempt to make sure that issues of race and gender were addressed in the representation of the commissioners. Now, although it was a state funded body, and in fact our work fell under the department of justice, we were independent institution that could make our own budget decisions, our own allocation decisions so there were no interference of government, although the funding came from the department of Justice. Our truth commission had three legs, three legs of work. Not all truth commissions have these three legs, but this was our South African experience. The first was the Human Rights Violations Committee of which six commissioners served. And this was to focus on victim experiences, to take statements, to hold hearings, to direct investigation and so on. The second area of work was our Amnesty Committee which a number of commissioners and other judges served on, to hear, to receive and hear applications for amnesty from perpetrators. Again I want to emphasize that we were the first and only truth commission to include amnesty component. This is not a feature of truth commissions in general. Lastly the third area of work was the Reparations Committee whose task it was to consult

with victims, experts and so on and to develop a reparations and rehabilitation proposal for government to consider. And the crucial thing here is that this committee and the TOC did not had the power to implement that proposal, we could only make proposal to government, it was up to government to approve and implement it. Now, what was the task of the truth commission? Our task was described as to investigate and to establish as complete a picture as possible of the nature, the causes and extent of gross human rights violations committed during the conflicts of the past from 1960 to 1994. So you can see it has a strong investigative component. Now the gross human rights violations that we addressed were much wider than any other truth commission had addressed before. We addressed killings, torture, severe ill treatment and abduction and disappearances. Severe ill treatment has again not been used by any other truth commission before nor since South Africa and it was a category that we even struggled to define. If your house was burned down that constitutes severe ill treatment, what if you were shot but the bullet missed? It was an attempted killing, but was that a gross human rights violation? We had a lot of difficulties with that term. To look at the structure and staffing of the truth commission, we established 4 national offices across the country in the 4 main provinces in the city of Johannesburg, Cape Town, Durban and East London. There were 16 commissioners as I already mentioned. We had on our staff between 30 and 40 statement takers although later we also contracted with other NGOs and trained them to act as statement takers in different regions. We had over 60 investigators and 12 researchers; these were all spread amongst the 4 offices. We had a number of data processors and data analysts. In all at our peak we had more that 400 staff members. It was quite a significant sized organization. And in the 4 offices we were divided into the region teams because our task that we felt was to work closely on the ground with victims. And we developed a method of work, a kind of three month cycle where we would go into the particular region, we would start of by taking statements, they would be then a process of the research and investigation to try to corroborate those statements to establish that they were indeed authentic cases. The statements would then be analyzed and we would have the process where we selected certain statements for public hearings, and I would talk about that later. And lastly the public hearings itself. And then we would go into another area and the cycle will begin again. The statement taking was for many victims the only place where they really make the truth commission because as I would explain latter, only a minority of victims actually testified in public hearings. We took 22.000 statements from victims but only 2000, approximately, testified in public hearings. That means 10 % of victims went to public hearings, which means that the statement taking is sometimes for most victims the only encounter that they have with the truth commission itself directly. And that makes it very important encounter. OK, data processing, coding, of course was very important. To talk about how we selected statements for public hearings. Firstly, once we have taken the statement from the region we would sit down and analyze them. What is the picture of violence, what are the natures of gross human rights violations that are represented in that particular area? Does each area experienced political conflict in quite different ways? We also looked at what were the important events for that particular community. Maybe there were important events that we don't know about or very important events that even tough there was lot of information it is still important for the people in that community to hear that events represented in public testimony. What are the different kinds of violations in that region? What with the

different victim groups? We need to ensure that in our public hearings we ensure representation from all different victim communities. We also tried to have a gender, age and race representation amongst those, because the public hearings were our main way of getting the message to the public about who should come to the truth commission. And that was everybody, everybody who experienced gross human rights violations was entitled to come. It was not only for victims of the state, for example. Even people who had been targets of the liberation movements could come and give statements. So it was an important process of public education, those public hearings. Here is a picture of our first public hearings and I'm just going to point out a few aspects so you can see the structure. We have 11 official languages in South Africa and we would try to have simultaneous translation for the dominant languages spoken in that region. Here on a stage you see the commissioners, there was a special table set up for the victims and somebody to accompany them. The front rows of the audience were reserved for victims and we would have the very solemn ceremony when the hearing began. The audience would sit and the victims would file in last. Everybody would stand up and the victims would sit down and the names would be read out one by one and they would be greeted by the commissioners because that acknowledgement and that giving the dignity was one of first and foremost functions of the truth commission. What you cannot see here is the enormous media interest. We intended to keep the media just out of the faces of the victims to some extent. But we had massive media coverage of these hearings. Live radio, live television, newspapers from all over the world came. It received saturation media coverage. And also we held these hearings in state buildings because this for us was the important part of it. It was about the state acknowledging finally what had been denied for so long. So we used the recourses of the state to honor the victims. Now, the kind of testimony, the form that public hearings took. In general, we had three days of testimony in each area. Perhaps we were in some small little town, we made the selection of victims and, it varied a lot but generally we had between 10 and 30 victims testifying on each day. So it could be between 30 and 90 victims. Depending on the link of the testimony and some of our regions gave a short time to victims than in other region so it varied. What is important is that the day of testimony was not the first time that those victims meet each other. We worked with them before the hearing, few days before we brought them to the venue to see, they introduced themselves to each other, they came to understand what was the nature of the different experiences and they were able to build a kind of a group solidarity and support to each other as victims across different affiliations, across different experiences. Each individual person who was going to testify had a trained briefer or the support person who would meet with them before and in the end and discuss their concerns, worries etc. and if that person wanted them they would accompany them on stage or you could have a family member with you. They also would each meet the particular commissioner who was going to speak with them in the public hearing and kind of lead the testimony. After the hearing there was also immediately the process of deep briefing and support after testifying because naturally it was very often extremely emotional experience for the victims. The power of these public hearings was enormous. It meant that the public of South Africa saw in front of their eyes things that...For years state had denied that torture had taken place and here we saw again and again victims testifying to their experiences very graphically, with great authentic emotion about their experiences. Here is one of our victims testifying with the briefer by

her side. This was incredibly important component and I think that later I'm going have to say a little bit more about this. The most critical thing was the fact that we were engaged in an official acknowledgment of the ordinary person's experience. You know, of course in any country there are many cases that become famous and well known, but the majority of these are not well known, they are not cases that are covered in newspapers and so on. We gave the space for the poor, for the illiterates, for the ordinary citizens whose stories would never be told and this was really powerful. As I've said these would cover live on TV and radio and news reports. I think when we look back what we achieved through those public hearings and that was something that we didn't even expect because we were the first truth commission to have public hearings so we were just learning as we were going but these public hearings built recognition of our common humanity in a very powerful way through listening to each other's experiences across different political parties, the experience of suffering and loss amongst all communities was extremely powerful. You must remember that in South Africa because of the apartheid we lived very segregated life. White South Africans and black South Africans lived in separate areas, they were not allowed to sit in the same chairs, the same buses, the same trains. Most white South Africans had only met black people in a context of their laborer or domestic worker. Most white South Africans have never been into a township where black South Africans lived. So to suddenly have this public hearing where people are expressing their experiences and their emotions actually introduce black people as living human beings with emotions to a lot of South Africans for the first time. What we did in these public hearings was to build a common identity of shared suffering rather than stressing on the common identity of race, ethnicity, or political affiliation. And in this way we were able to reshape national identities and challenge racist ideas. This was very, very powerful national education process. The public hearings acted as a site of inclusion and widening of citizenship of breaking down the racial hierarchy of South Africans and the value placed upon the lives and upon their dead. Of course our hearings were not perfect and I'm going to raise now some of the problems we experienced. This is now a delicate issue but there is something about the human rights language and the notion of the victim that suggests that in order to be a victim you must be innocent and passive. So for example many of our victims were shot while engaging in resistance with police but it was as if they couldn't say that they've been doing that, there would always have to be "I was just walking along the road" or "I was watching" or "I was going to the shop". It was as if to be a victim you could not be actively engaged in agency or in resistance. And this was a problem because it came to mean that in order to qualify as a victim you had to be seen as this passive person who had done nothing. And we found that very difficult to grapple with, to enable victims to speak about the full range of experience and their agency. In South Africa of course because of some local nature of our conflicts that took place victims are also sometimes perpetrators. In many of our local communities there were clashes between different political parties, there would be attacks, counter attacks and so on. And when you have the public hearings only for victims you basically are writing out a certain sector of the conflict itself. Just to give you an example, we had a case of a man whose sister was shot dead by policeman which made him a victim; he was then the part of a group which went to attack that policeman's house, grab the uncle, took the uncle out, beat him up and burned him alive. He's then a perpetrator. One hour later he's arrested by police, severely tortured to the point of near

death, becoming the victim again and was later put on trial and sentenced to death, again the victim because we found the death sentence to be a gross human rights violation. So in the course of one day or one afternoon, one evening, the person went through a range of experiences, but of course in his testimony he never speaks about the incident where he's attacking the family of the policeman. So in a way public hearings can simplify conflicts in a way that does not really help our understanding of the complexity of violence. Another problem that we had in South Africa was our use of human rights categories means that soldiers and combatants were not included as victims. You could not be considered as victim if you were a soldier killed by a bomb while working in a particular area. And the same for guerillas combatants for the liberation movements. The kind of human rights discourse that we adopted tended to exclude. And yet, of course for South African citizens, those individuals also formed part of the losses and the cost of the conflict. I've mentioned earlier that our public hearings had a limited reach. We were not able to hear every single case in the public hearing, only about 10% testified at public hearings. And this sometimes led to some anger and upset at local level "why this person was chosen and not this one" and that can cause some problems. Our truth commission had investigation mandate and most victims when they were testifying or giving statements said that they want to know what had happened and who did it. So in another words these investigative questions are really important for victims but we as a short term structure that only existed for a few years we are not able to investigate 22.000 cases in 18 months, it's just not possible. So you open up many questions for victims but you cannot resolve them. There was also a tension between the acknowledgment and the investigation function of the hearings. When a victim is testifying and then you are asking "well, did the attacker had a beard or what clothes he was wearing, did he had a uniform" or are you just there to listen to the victims and acknowledge the experience or are you there to try and obtain further information. Is a public hearing a form of investigation or is it just a cite of acknowledgement? Another problem, we tended, I think because we were one of the early truth commissions, and I think that the debate has moved on quite a little bit, that we had a simple idea that to testify and to speak out can lead to healing and closure to victims. We had a slogan in the truth commission and that said: Revealing is Healing. But what we learned is that of course it is not that simple. For some victims testifying can actually retraumatize them. Some victims had developed the method of coping and we disrupt that. And of course because we are a short term organization we cannot afford ongoing support especially when I show you a three months cycle it's a little bit like the circus comes to town: we come in, we are there, we take statements, we hold the hearing and then we leave. And it's finished. And the victims are left there. Another difficult issue - what exactly is truth? And in our truth commission reports we have a chapter which addresses this question of truth and suggests that there are many different kinds of truth. Firstly we can say that there is personal or narrative truth, and that is the truth of a person's subjective experience. That is what testimony is. Testimony is the victims' accounts of their subjective experience. There is also factual or forensic truth. The person could say that, because of the dark, the hundred of people went to attack my house, but in fact we latter find out that it was 4 or 5, and it was...of course it is dark, there's terror... so the subjective account is not necessarily exactly the same as the factual or forensic truth. There is also what we termed social or dialogue truth where by a community comes to accept a particular version as truth

through debate amongst itself. And lastly we spoke about healing and restorative truth which is really about trying to put the truth in context of relationship between the citizens, between the states and responsibility. At the end of the day I think we came to feel that public hearings were not there to establish forensic, factual truth but there were there as form of acknowledgment for personals, for victims personal experiences. And of course all of these different kinds of truth were important for the work of the truth commission even though in general society only tends to acknowledge forensic or factual truth as meaningful. We had other types of hearings; I'm going to mention some of them. We had event hearings, where we took particular events that were meaningful to particular communities. There were incident where police hid in a truck and than all jumped out at the last minute and shot the children, there were events...seven day war in which there was the big clash between different communities etc. and we structured hearings with witnesses, experts and so on to look at those particular events. We had Special hearings for particular groups that tended to get ignored or lost in the narratives, for example woman's experiences, women tended to come and talked about the experiences of the men in their life, of the deaths and so on and they didn't talked about the traumatic experience for 10 or 15 years afterwards of having to sustain the family, of having not known what's going on with her husband. Also children, the experience of children. We had special hearing on that. We had Social sector hearing, where we looked at what was the role of certain sectors of society in the conflict of the past. What role did the media play? How about the justice system? What about the churches and religious groups? What about business? What role these social formations have in the conflicts of the past. Very important we questioned political parties about what were their policies, and their practices and languages they used that incited violence for example. We subpoenaed the two former state presidents P.W.Both who refused to attend and F.W. De Clerc who did come and attend but basically denied any responsibility. And all other liberation movements, the leadership of those parties came and we questioned them about what did you meant when you sang the song about killing these people? Don't you think that song was going to lead civilians to go to attack people? Holding people responsible for their actions, their policies and their practices. Also we questioned the armed forces directly. The police, the military, the armed wings of the liberation movements, we questioned them on their policies, practices, what were their lines of command and control. We could also have what we called the Camera hearings, behind closed doors where we would subpoena particular perpetrator for questioning and we could also offer confidential hearings to victims who wanted that confidentiality. Now, I'm going to be very brief on the question on the amnesty hearing because I want you to understand that the particular nature of South African experience of amnesty. We did not have a general or blanked amnesty. An individual perpetrator had to apply and made full disclosure of everything that they had done in public hearings attended by victims, by the lawyers, by the local community and by the media. And these were broadcast on television and radio. Amnesty was not automatic; you had to fulfill certain criteria: you had to make full disclosure, you had to show that you acted with a political objective and you had to act with the political authorization. Here's an example of the public amnesty hearing. Very powerful naming and shaming component of holding individuals accountable for what they had done. And also across all political parties and all role-players in the conflict torture victims could confront to the torturers and question them. Torturer had to

demonstrate the forms of torture that they had implemented which meant that denial was completely impossible. There were positive and negative things to amnesty hearings. On the one hand it was very powerful to hear the perpetrators speak about what they had done and it had enormously shocking value in society, an enormously shocking impact. There was a strong sense of personal accountability to the victims who could question the perpetrators. Of course there were many problems, I'm not going to go to them all. But they intended to focus more on the trigger pullers rather than on the people who gave orders and the policy makers. The last area of work was reparations. And what is important to stress is that reparations is not just the concept of compensation it's broader. The truth commission asked victims in their statements what were their problems and needs, we consulted experts and we developed a proposal for the government but we did not have the power to implement that proposal. The proposal had different components. It included individual reparations, a payment for 6 years, the total amount about 56.000 dollars. Community reparations and reconstruction, symbolic reparations, exhumations, memorials and so on. And of course institutional reform, policy changes. In overview we received 22.000 victim statements, we ran I think it's over 160 public hearings over 2 years in all different parts of the country, we received about 2000 genuine amnesty applications which ran for 5 years, we produced the seven volume report which included a findings of responsibility, the findings of investigations etc. One volume of our report I want to mention because it is connected to the earlier presentations and that is that one of our volumes contained a short summary of each victim case that came to the truth commission. Just one or two sentences, of the 22.000 cases that came. So there for example... it's like the telephone directory from A to Z, every single victim case. To try to evaluate the truth commission, particularly the public hearings I've spoken about enormous public impact of these public hearings, much more powerful than our report. You know our report is seven volumes, it costs about 150\$ it is so expensive nobody can afford it, some libraries have got it but we are a poor country with high illiteracy. The report isn't something that reaches many people, but the impact of our public hearings reached just about everybody. That is what people remember. The power of one story, one story that stays in a memory of a person. Like my father for example who can still remember what he saw on television. That stays with him, not the reports. I'm not saying that the report is not important but what stays with the public is the public work. And really what the truth commission gave through its public hearings was insights into the experience of the other, insight into the experience of other people in the conflicts of the past. We learned a lot about what we can call the culture of war that enabled violence in our country. We gathered the most comprehensive collection of information about who died, where, when and how, although it is not complete, definitely not. I estimate we only got about 30% of all victims came to the truth commission. And it ended ongoing denial about the violence of the past. No one in the South Africa today can deny that torture and secret killings took place. But it's not all a happy story. The truth commission in a way was much more effective during its existence that afterwards. The government did not really implement the reparations proposal. They just gave once of small payments to victims, much less than was proposed and it took 6 or 7 years to take place and most of the other reparations proposals have not been implemented and many victims feel betrayed. They put their trust in this process, they spoke, they gave their hearts and emotions and at the end of the day what did they get. Also we have only had a handful of

prosecutions. Very few prosecutions and there has been strong pressure on us not to do any further prosecutions. Lastly, the truth commission did not really look at the bigger picture of violence in South Africa. We looked at physical violence that affected a limited number of people but the real story of violence in South Africa is ongoing racial discrimination and economic injustice. And that is what underlies the conflict in our country in the past and still. And that is why we didn't feel we succeeded in addressing that the systemic landscape of violence in our country. Thank you very much.