South Africa's Truth and Reconciliation Commission

Legislation providing for the establishment of a Truth and Reconciliation Commission (TRC) has recently been passed by South Africa's Parliament. This represents the culmination of a set of debates centred on how best to confront a past characterised by massive violations of human rights in a country which has recently undergone a transformation to democracy. This article tracks these debates from the beginnings of South Africa's transition in 1990 to the finalisation of the TRC legislation in mid-1995. It describes the aims, powers and structures of the TRC and in so doing engages with some of the more controversial and difficult areas of its work.

The delicate historical process of negotiated transition in the period since February 1990, has resulted in the new government of national unity inheriting a dependence on many of the former regime's civil service institutions and personnel. Of particular significance here, are the agencies of state security – including the policing and military institutions – which were central to sustaining the apartheid system deemed illegal at international law.

Many of these institutions and personnel were allegedly directly involved in the clandestine torture, extra-judicial executions and enforced disappearances of those involved in resistance to the system, yet the nature of the transition means they also continue to be depended upon to sustain law and order within a 'new' society confronting a potential upward spiral of political and criminal violence. In addition, many of those who are now in power within the new government of national unity, were themselves actively involved in the armed resistance to apartheid which, it is argued, also entailed the violation of human rights within the country and beyond its borders.

It is in this delicate political context that the question re-emerges as to what is to be done in respect of these past criminal abuses of human rights? Nor is it the first time that these concerns have been addressed. Indeed, from the very outset of the negotiations between the Nationalist government and the African National Congress (ANC), a central bargaining point has been the relationship between indemnification of returning exiles and the associated requirement of full disclosure of their political crimes – demanded by the government as a pre-requisite for the release of all political prisoners. This fed into the negotiations climate and set a premium on bi-lateral agreements between the government and the ANC on these issues, in order to prevent the entire process being derailed.

Whereas the early concerns revolved around the indemnification of returning exiles, subsequent negotiation focused on questions of amnesty in respect of members of the state security forces who had been involved in covert activities which were illegal even by the standards of South African law. The establishment of the Goldstone Commission of Inquiry into Violence and Intimidation further stimulated debate over the merits of a general amnesty, resulting from the Commission's call for such an arrangement in order to better facilitate its task of gathering information on the activities of the SADF, the SAP and the

Kwazulu police, as well as the military wings of the ANC and the PAC.[1] Albeit on different grounds, the issue of indemnity or amnesty was once again linked to the concern for disclosure of information relating to (political) criminal acts.

Whatever its position within bi-lateral talks, politically the ANC had to resist the right of an illegitimate regime to indemnify its own functionaries. Representatives of the liberation movement argued that, although not opposed in principle to the notion of an amnesty, this decision should appropriately fall to a new government of national unity under the new constitution. Despite this, on October 16 1992, The Further Indemnity Bill was introduced in parliament and promised, if passed, to empower then President De Klerk to forgive any politically motivated crime, with the sole condition of review in secret by a government-appointed commission. The only public record relating to the decision – in stark contrast to the conditions set out in the Pretoria and Groote Schuur Minutes which dealt with political prisoners and returnees – would be a list of those to whom immunity had been given … and the records of the review body could be destroyed.

The Bill effectively created an obligation to suppress the truth. It was suggested by authors such as Davis et al. that this explained why a 'Further' Indemnity Bill was required: The State President already had the power, in terms of the Indemnity Act 35 of 1990, to indemnify any person or category of persons, by publication of certain facts in the Government Gazette. It was argued that De Klerk needed the Further Indemnity Bill to give him the power to conceal the truth.[2] Subsequent reports indicated that the National Party government was still attempting to negotiate an extended blanket self-amnesty at the end of 1993. It was reported by the *Sunday Times* newspaper that government sought to have the general amnesty extended to include all political offenses committed before December 1 1993, in terms of which the identity of the killers of at least 10 000 victims of political violence over the previous three years, would, by implication, remain secret – and the victims' families would be denied any right to compensation, whether by law or otherwise.[3]

It is particularly significant that the main principle reflected in the preamble to De Klerk's Further Indemnity Act, was a concern to "promote reconciliation and peaceful solutions". However, as noted by the Parliamentary Committee of the General Council of the Bar of South Africa (GCB), this general concern with reconciliation must

… be balanced in the crafting of the statute itself by a concern for the administration of justice … . It is apparent that a blurred pursuit of "reconciliation and peaceful solutions", without adequate regard for its impact on

policing, the courts, and the control of crime, will do more to threaten social stability.[4]

Despite the ostensibly noble motivations for national reconciliation, any amnesty/indemnity arrangement without a parallel obligation to disclose the nature of the crimes perpetrated, however critical it may have been in driving the negotiation process forward, in fact has grave implications for the longer-term prospects of national reconciliation. In particular, for the victims of these abuses of power – on whichever side of the political spectrum they may reside – the implication is that they may never have access to the information essential to their rehabilitation. The prospect is that there will be no public or private acknowledgement of their past, let alone any capacity for redress at law. One possible consequence of this is that, in the absence of any such public acknowledgment, coupled to the impossibility of restitution though the law, widespread resentment is likely to manifest itself in informal retribution at both an individual and a collective level, resulting in escalating rather than de-escalating violence under the new democratic dispensation.[5]

Equally significant is the fact that in the absence of full disclosure and public knowledge of past human rights abuses, the inherited institutions of the new government may well retain unchallenged their organisational culture of clandestine, unaccountable and covert activity. This institutional culture has historically been fostered by the myriad of legislative measures which have actively preserved secrecy and governmental privilege in the name of state security and which have thus contributed to widespread corruption and abuse of power.[6] In no context has this been more evident than in the spheres of intelligence gathering, law enforcement (in the historical context of criminalised political activity) and activities ostensibly pursuant to state security. Unless it is subject to the public scrutiny which US Judge Louis Brandeis has deemed the "best of disinfectants",[7] this organisational culture of covert activity within state institutions will continue to plague any future democratic dispensation which has the misfortune to inherit a civil service and state security establishment which, at best, may be passively resistant and, at worst, actively hostile to new democratisation initiatives.

In the South African context, therefore, politicians and legal planners alike, ignore the resilience and independent dynamic of traditional forms of civil administration at their peril, particularly in the politically motivated realm of the 'secureaucrats'. Indeed, the growing concern (in the course of the transitional process) with the need to render the activities and internal functioning of policing and other security establishment institutions "transparent", suggests the necessary awareness – at least on the part of some of the politicians.

In this context, the whole question of "recovery of the truth" must have a central pro-active and remedial role. This may take a number of forms. In post-World War II Germany, the vehicle was highly public criminal prosecutions in the form of the Nuremburg Trials. In more

sensitive negotiated transitions such as in the Latin American context, often the mechanism which accompanied the granting of amnesties was a judicial "Truth Commission" which sought to uncover the past without jeopardising the tenuous negotiated truce through the threat of extensive prosecutions. None of these mechanisms really compare with the magnitude of the social and administrative experiment in the new "unified" Germany after the collapse of the Berlin Wall. In this instance, the proposed vehicle of truth recovery has been the granting of extensive rights of public access to the records of the former State Security Service – the Stasi Archives.

Each of these approaches to "truth recovery" articulated closely with the particular dynamics of transition in particular countries and historical contexts. It is therefore important that none are imposed lock, stock and barrel on the different and specific South African situation. However, all these initiatives concerned with various forms of public disclosure in respect of past abuses of human rights, to a greater or lesser extent, claimed to service two clear objectives:

1. On one hand, they were all motivated by a primary retrospective concern with investigating, documenting (and in some instances prosecuting) human rights abuses which occurred under a pervious regime. In most instances they were also concerned with the 'rehabilitation' or reparation of victims of these past abuses.
2. On the other hand, all of these initiatives laid claim to a pro-active, forward-looking or preventative function, frequently manifested by the ostensible concern to either 'purge' or transform the institutions of the state which allowed these past abuses.

It is similarly in relation to these two guiding concerns that the final paragraphs of the interim constitution, under the heading "National Unity and Reconciliation", links the issues of reconciliation, reconstruction and future amnesty arrangements:

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 victimisation. 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 October 1990 and before 6 December 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.[8] (Authors' emphasis)

This "postamble" was included in the Interim Constitution during the multi-party negotiation process which preceded the elections for two reasons. Firstly, it was acknowledged by all parties that South Africa was a country with a conflictual and divided past. The only way that a constitutional solution to the country's problems would endure would be to set a premium on national unity and reconciliation between previously hostile groupings. It was generally felt that to prosecute people who had committed crimes in the course of conflicts of the past would undermine the stability necessary to support a fragile democracy. Secondly, the outgoing National Party wanted to secure for itself and those who carried out their policies, a guarantee that a new government (which in all likelihood would be dominated by their erstwhile enemy, the ANC) would not victimise or persecute those who committed crimes in the course of defending white minority rule. In fact, the National Party categorically refused to allow the transition to democracy and the holding of non-racial elections without a constitutional guarantee that amnesty would be granted.

The postamble compels the present government to grant amnesty to those who have committed political crimes and stipulates that mechanisms, criteria and procedures should be established in order to facilitate this process. In order to fulfil this constitutional obligation the government will establish the Truth and Reconciliation Commission (TRC). The TRC will consist of a number of Commissioners who will direct and manage the activities of the Commission. The commissioners must be South African citizens who are impartial and respected and who do not have a high political profile.

The Commissioners will preside over three sub-committees, the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation. Each of these three committee will serve a different function in achieving the objectives of the Commission. These objectives can be summarised as follows:

- To establish as complete a picture as possible of the causes, nature and extent of gross violations of human rights which occurred between 1 March 1960 and 6 December 1994.[9]
- To grant amnesty to persons who have committed acts associated with a political objectives.
- To establish the fate or whereabouts of victims of gross violations of human rights and to assist in restoring their human and civil dignity by giving them an opportunity to testify as to their experiences and by recommending various measures aimed at providing reparation and rehabilitation to victims.
- To write a report which publicises the work and findings of the TRC and which contains a set of recommendations of measures aimed to prevent the future violation of human rights.

Each of the Commission's sub-committees will adopt the following modus operandi:

The Committee on Human Rights Violations

This Committee will perform its activities in two ways:

Firstly, it will conduct open hearings throughout the country. At these hearings survivors of human rights abuse will be able to testify regarding their experiences. This will serve to acknowledge officially both the suffering of survivors and the fact that they have been treated unjustly. By affording survivors the opportunity to tell their stories, the committee hopes to allow them to come to terms with the past and finally lay to rest the trauma and pain associated with it.

Secondly, the Committee will supervise a research function whereby documents and evidence relating to gross violations of human rights will be collected in order to compile as comprehensive a final report as possible. This process will may also uncover information which may be of use to the Committee on Amnesty, the Committee on Reparation and Rehabilitation or an investigative team.

The Committee on Amnesty

The task of this Committee will be to grant amnesty to those people who have committed political crimes. In order for a person to qualify for amnesty he or she must satisfy two basic requirements:

Firstly, he or she must fully disclose all acts in respect of which amnesty is being sought. If a perpetrator commits two crimes and fails to disclose one of these, then he or she will not be granted amnesty in respect of the non-disclosed crime.

Secondly, the crime which is disclosed must meet the definition of a political crime contained within the Bill. The definition used in the Bill represents a modified version of the internationally accepted Norgaard principles which were used in defining political crimes in Namibia. Professor Norgaard, the President of the European Court of Human Rights was asked to draw up a set of principles that could be used in order to assess whether South West African People's Organisation (SWAPO) guerillas had committed political crimes and should therefore be released prior to Namibia's first democratic election. These principles have been adapted to the slightly different circumstances which exist in South Africa.

In South Africa the concern is not merely with crimes committed by members of the liberation movements in the struggle against apartheid. In fact, the predominant concern is with the human rights violations committed by members of the security forces and other clandestine organisations against members of the liberation movements or

anti-apartheid activists. It will also be necessary to take into account the political crimes committed in the course of inter-organisational conflict (particularly between the ANC and the IFP). The Norgaard principles have therefore been modified to incorporate these other dimensions of political conflict. The fact that the TRC's ambit includes all human rights violations committed in the course of conflicts in South Africa's past has angered many human rights organisations and activists. They argue that no distinction is made between acts performed in the course of an internationally recognised struggle for liberation and self-determination and those acts performed in defence of apartheid, which has been condemned as a crime against humanity. However, those who framed the TRC legislation have argued that it would de-legitimise the work of the TRC and cause considerable political antagonism if it is only seen to investigate human rights abuse emanating from one side of the South African conflict. Both concerns could be addressed in the following manner. The TRC should consider, on a case-by-case basis, all instances of human rights abuse. However, in the publication of its final report, the TRC should assert that their is a considerable difference, both in morality and in law between fighting against and fighting for an unjust system.

Furthermore, in a last-minute concession to the National Party, the ANC agreed to allow a political crime to be defined according to the modified Norgaard principles read in conjunction with the definition of political crimes utilised in the Indemnity Act of 1990 and the Further Indemnity Act of 1992. This concession was granted because the National

Party argued that it was historically inequitable to allow ANC members to be granted "easy" indemnity in a process with no fixed criteria, while the security forces and anyone else who applies for amnesty under the TRC will have to comply with more stringent criteria. The difficulty with this is that, as stated above, the two Indemnity Acts used no objective criteria whatsoever. How then, does one decide whether an act is a political crime if one is required to use a set of objective criteria (the modified Norgaard principles) read in conjunction with a classification (used in the two indemnity Acts) which uses no criteria at all? There can be no satisfactory answer to this question and a very real danger exists that the Truth Commission will classify crimes as political or non-political in a conceptually incoherent manner.

Once amnesty or immunity has been granted a person's criminal, as well as their civil liability is extinguished. This means that a person who has been tortured or a dependant who has lost a bread-winner cannot bring a damages claim against the perpetrator to whom amnesty has been granted. In theory the state assumes moral responsibility for fulfilling this claim by granting some form of reparation or rehabilitative assistance to the victim.

The granting of amnesty to people who have committed gross violations of human rights is not uncontroversial. Throughout the world, citizens in countries which have undergone a transition from authoritarian, repressive regimes to embryonic democracies have had to confront two conflicting imperatives – the need to ensure stability and national unity and the need to create justice by punishing those who have committed crimes. Should those who have tortured, kidnapped and killed be prosecuted, convicted and imprisoned? Or should these perpetrators be forgiven in order to foster a spirit of national unity and reconciliation?

Some argue that punishment of perpetrators is the best insurance against future repression. If those who violate human rights know that at some stage they will be convicted then they will be deterred from committing crimes. If on the other hand they are allowed to commit gross abuses with absolute impunity then they are more likely to resort to actions which violate fundamental human rights when the opportunity again presents itself. It is also argued that tyranny begins where the law ends – if the law fails to punish those who have transgressed it then the very notion of the rule of law is de-valued and undermined.

Prosecutions demonstrate that nobody is above the law. If amnesty is granted it may also result in a great deal of popular disillusionment and cynicism. It may weaken the moral authority of government and reduce the extent to which citizens are prepared to heed its moral calls. Amnesties also represent a significant capitulation to the demands of the security forces. This may leave them with a disproportionate amount of power in an emerging democracy thus undermining the sovereignty of a newly elected government.

Amnesties may be granted simply because it is politically expedient to do so. A new government, eager to remain in office at all costs may simply decide to accommodate powerful interests regardless of the consequences for those who have suffered or the greater imperative of protecting and promoting human rights. Such amnesties may have the effect of entrenching the power of those who have violated human rights and jeopardising any substantial social or political transformation.

There are of course strong counter-arguments to those supporting prosecutions. The most powerful of these is that prosecutions may lead to destabilisation or outright rebellion. This will weaken an already fragile democracy and may lead to a coup where a legitimate government is replaced by a military regime. Those who oppose prosecutions argue that democracy should be consolidated as a first priority in order to ensure the survival of a government which will protect and promote human rights. This is particularly so in the context where a new government inherits a reliance on many of the institutions of the old regime. They contend that prosecutions would undermine the process of transforming institutions such as the police and the military into organisations accountable and appropriate to a democratic state. They believe that to grant amnesty is the lesser of two evils, the alternative being a return to military rule. Opponents of prosecutions assert that it is better to compromise in the short term in order to ensure that the long term objectives of peace, stability and a respect for human rights are achieved.

It is argued here that the Truth Commission takes the "middle road" between the alternatives of prosecution or pardon. The granting of amnesty is not automatic. In assessing whether a crime should be considered "political" the Truth Commission will have to take factors such as the following into account: the gravity of the offence, whether it was motivated by spite or malice or for genuine political reasons, whether there is a reasonable relationship between the political objective sought to be achieved and the means used in order to achieve it, whether the means used were proportional to the ends achieved and whether the act was directed against the government or political opponents or whether private people were targeted.

Perpetrators may not be granted amnesty for particularly brutal, heinous, or barbaric crimes and amnesty will thus not be granted in all cases. In this way proponents of the Truth Commission hope to satisfy both sides of the punishment/pardon debate. By refusing to grant amnesty in some instances the Commission will send out a message that certain perpetrators of gross human rights violations are not above the law. By compelling

perpetrators to disclose their crimes the Commission will call them to account for their past deeds and extract a symbolic commitment to a new era based on a respect for the rule of law. The Truth Commission will publish the names and the crimes of those to whom amnesty has been granted. This constitutes a form of punishment in itself (although it does stop short of full prosecution) and may limit the extent to which a person can continue to occupy public office or a position of social responsibility or hold such a position in the future.

In this context it is interesting to note that an earlier draft of the TRC legislation contained a provision which stated that all amnesty hearings should occur "behind closed doors". This provision was inserted into the legislation as a concession to the National Party as a result of a cabinet level compromise. The effect would have been to conceal essential information relating to the planning and executing of political crimes. If this provision remained then citizens might never have discovered who ordered a particular killing, who the co-conspirators were and how this particular act formed part of a deliberate strategy on behalf of either the security forces or a certain political grouping. Unsurprisingly, this provision caused an uproar among organisations in civil society and victims of human rights abuse who vowed to oppose vigorously a Truth Commission which stopped short of revealing the entire truth about the causes and nature of past human rights abuse. Faced with such virulent opposition, as well as the threat of a challenge to the Constitutional Court, the government backed down and removed the blanket "secrecy provision" from the bill.[10] According to current legislation, the TRC can still hold certain proceedings in camera but it can only do so if it would be "in the interests of justice" or if holding a meeting in public would create a likelihood that a person may be harmed. It remains to be seen how widely these exceptions are construed.

The Commission will hopefully provide a bridging-mechanism between the old regime and the new order. It will promote stability and reconciliation and reassure the security forces that they are not the subjects of a witch-hunt or a campaign of vengeance. This may promote loyalty to the new government and respect for a democratic order. The Truth Commission will attempt to reconcile the competing imperatives of justice and reconciliation in a way that strengthens both and devalues neither. Like many other initiatives in the new South Africa, it represents a pragmatic compromise between politics and principle.

The Committee on Reparation and Rehabilitation

Survivors of gross violations of human rights or the dependants of those who have been killed may apply for some form of compensation to the Committee on Reparation and Rehabilitation. The primary task of the Committee will be to make a set of recommendations to the government as to how to implement a reparations policy. This policy must determine on what basis, and according to which criteria, reparation should be granted. In addition it must determine the authority responsible for granting the reparations. One of the immediate

tasks of the Committee on Reparation and Rehabilitation will be to make recommendations as to how best to assist people who are in urgent need of reparations.

The whole area of compensation/reparation in relation to the Truth Commission has become fairly controversial. This is because the compensation that will be offered to victims by the government will be considerably less than if they brought a civil action against the responsible perpetrator. Certain activists who were assassinated may well have filled top-level government positions if they were alive today. In such cases, their wives/husbands and their dependants would be entitled to civil claims of hundreds of thousands, if not millions, of rands. Once amnesty is granted to a perpetrator then these claims are extinguished – and there is simply no way that a new government will be able to offer a comparable compensation package to such victims.

Certain NGOs have lobbied for the clause in the Truth Commission legislation which provides for the abolition of civil claims to be removed. They argue that this clause violates international law which clearly states that even a "successor" regime has a duty to ensure that victims are provided with proper compensation. They also contend that the clause violates the interim constitution which grants everyone the right to go to court to settle disputes. Those who disagree with this perspective argue that the interim constitution compels the present government to grant amnesty. They state that it was clearly the understanding of the drafters of this constitution that amnesty would include immunity from both criminal prosecution and civil claims. Furthermore, they argue that if perpetrators are not offered the prospect of both criminal and civil immunity then there is no longer any incentive to come forward voluntarily and disclose their crimes – they may not go to jail but they could very well lose everything they own in a civil suit.

This debate will only grow in intensity once the Truth Commission is established and begins to function. What is certain is that a extremely creative and consultative reparations policy is going to have to be formulated if the Truth Commission is to avoid disappointing and disillusioning the very people it is designed to serve.

Access to information

In addition to the establishment of the three sub-committees the Promotion of National Unity and Reconciliation Bill provides for the establishment of investigative units. These units will be able to carry out local inspections both within or outside the country. They will also have the powers of search and seizure.[11] Any person can be subpoenaed to answer questions before the TRC even in instances where this is self-incriminating.

The TRC legislation also makes provision for the establishment of a Witness Protection Programme. This will provide for the protection of persons who testify before the Commission and who may be exposed to some form of danger. This protection can take a number of different forms ranging from detention in protective custody to relocation to

another part of the country or the provision of police bodyguards to ensure a person's safety. In theory it is also possible to move a person outside the country should this prove to be necessary.

The Truth Commission will be fully operational by the third quarter of 1995. It will be a source of considerable interest and controversy and its work is likely to be followed closely both in South Africa and abroad. The Commission's task may prove to be a thankless one: political parties will condemn it if it implicates their members; patriots will condemn it if it threatens to destabilise the Government of National Unity; and NGOs will condemn it if it makes a strategic compromise in the interests of peace and stability. Victims may be angered or disillusioned if they do not discover the truth or receive adequate compensation; so too those who want prosecution if amnesty is granted or those who have committed crimes if they are not indemnified. Tax-payers may become frustrated if millions of rands are spent which could have been allocated to housing or health care. The Truth Commission will require excellent strategists, people of unassailable principle, brilliant lawyers, shrewd investigators, fieldworkers who enjoy the trust of their communities, skilled psychologists and experienced accountants – all of whom have an enduring commitment to human rights. The task it faces is daunting and difficult … although no more so than the process of building a democracy and a culture of human rights in a country which has known only racism and oppression.

Notes:

1 *Business Day* 10/08/1992.

2 Davis, D., Cachalia, F. And Storey, D. "A Power to Conceal the Truth", *The Star*, 23/10/1992. The Bill was defeated in the House of Delegates (Indian House in the tri-cameral parliament). De Klerk's subsequent attempt to push the Bill through via the President's Council attracted a public outcry – including the article by Davis et al written in response to the Bill. A few days later the ANC published its own report on the abuses in the detention camps in Uganda, Tanzania and Angola. ANC President Mandela apologised and took responsibility on behalf of the ANC leadership.

3 Fortunately, the ANC rejected the position put forward by the government at this time. However, the point is made by Davis at al. That any acts such as this, which were passed by the then government, should be treated as disguised self-amnesty laws – passed by a government forgiving itself, and therefore as dispensable. Despite the fact that this may have been the result of wider negotiations involving other non-governmental agencies, in terms of the reviewability of legislation under the constitution, this should not be treated as binding or free from such review … at least until ratified by the current government of national unity.

[4] Memorandum by the Parliamentary Committee of the General Council of the Bar of South Africa (October 23 1992), pp. 1-2.

[5] Simpson, G. "Blanket Amnesty Poses a Threat to Reconciliation", *Business Day*, 22/12/1993.

[6] For a brief discussion on the broad-based definitions of "security" in South African legislation as well as for a partial description of the range of this legislation, see: Africa, SE. "An Assessment of National Security Legislation in South Africa", *Military Research Group*, unpublished (1992). Also see in Williams, R. "Covert Action and Democracy: General Considerations and Concepts", *Military Research Group*, unpublished (1991); and Baxter, L. *opcit.*, pp. 235-6. For a slightly different prism on the pervasive effect of secrecy clauses within security, armaments, intelligence, defence and law enforcement legislation, see: Simpson, G. "Militarisation and the Environment: Secrecy Clauses and the Role of Security Legislation in Environmental Degradation", Unpublished paper (1992).

[7] Baxter, L. *Administrative Law*, Juta & Co.: Johannesburg (1984), p. 233.

[8] Postscript, Constitution of the Republic of South Africa Act, 200 of 1993, p. 180.

[9] It should be noted that gross violations of human rights are defined as killings, torture, severe ill-treatment and abductions or any attempt to commit any such act. In addition it seems possible that the cut-off date for amnesty applications, 6 December 1994, will be extended to May 10th 1995 (the day of President Mandela's inauguration) following calls by white right-wing parties for such an extension. These calls have been made because white right-wingers committed a range of crimes including bombings and murder after 6 December 1993 in a bid to scupper the election held on the 27th of April 1994.

[10] After the TRC bill was passed by Parliament the Minister of Justice, Dullah Omar commented that one of the lessons he had learnt from the legislative process was how valuable a role NGOs played as a lobby in ensuring that the TRC did not become emasculated as a result of political compromise.

[11] An obvious difficulty in relation to accessing information is the fact that thousands of security police files have allegedly been destroyed in the five years since South Africa's political transition began. Evidence gathered by the Goldstone Commission indicates that 135 000 security police files were destroyed after covert police operations were uncovered in mid-1991.