

# THE ETHICS AND POLITICS OF FORGIVENESS: A CHALLENGE TO A JUST SOCIETY

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

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

## **PART ONE: “Forgiveness” and the Case of South Africa**

### **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 wave. This is easier said than done, for I too in the past have written essays overlooking some of the virtues of Ethiopian leaders I severely criticized. Ours 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 the greatest philosopher of moral certitude is 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. Foremost, in the discourse underway in political forums, universities, civic organizations et cetera on “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>2</sup> However, I do not believe the human condition has improved at all due to such effort—thus, this essay.

The much heralded and applauded “Truth and Reconciliation Commission (TRC)”<sup>3</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. 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, 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. Past experiences of reconciliation agreements elsewhere in the world did not succeed in bringing 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.

Plato wrote an entire book [*The Republic*] trying to answer a single question what justice is. In our own time, John Rawls put up a monumental effort in a great work [*Theory of Justice*] addressing a similar question. In ancient and modern Ethiopia the word “*fiteh*,” meaning “justice as fairness,” is the most invocative and revered word of all juridical terms in Ethiopian jurisprudence dealing with human conflicts. Reading through the *Fetha Negest* [The Justice of Kings] opens a truly fascinating and sophisticated Ethiopian philosophy of law. There is a book by Jacques Derrida, Mr. Deconstruction himself, published in 2001 that I read in its English translation, *On Cosmopolitanism and Forgiveness*, Routledge (2001) that was very uncharacteristic of Derrida—interjecting metaphysics in his effort in developing the case for “forgiveness.” Such drastic shift of Derrida’s personality and belief system did not sit well with me.

Later, a couple of years ago, I read an article on forgiveness as a deconstructive process to justice that made me rethink the subject of forgiveness. The article was by Peter Krapp, “Amnesty: Between an Ethics of Forgiveness and the Politics of Forgetting,” 6 *German Law Journal* No. 1 (1 January 2005). This is not a particularly scholarly work, but caught my attention because of its deconstructionist approach in discussing the issue of forgiveness. Initially, I dismissed the argument for forgiveness mistakenly as a self-serving diatribe by “a German” trying to expunge the guilt that Germans in general are forced to feel due to their atrocities in the Second World War, such as the Holocaust and other war crimes. It turned out that Krapp was not a German. Nevertheless, because of recent report and criticism on the lack of follow-up governmental actions in carrying out some of the modest recommendations by the Truth and Reconciliation Commission of South Africa, I became increasingly skeptical about the effectiveness and wisdom of instituting a regime around the concept of “forgiveness” as a political, ethical, or legal tool.

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 first in conflicts. Especially in a fractured society such as that of Ethiopia where millions are crying out for justice, the call for reconciliation/forgiveness in any form is inappropriate and polarizing.

Should we include in the debate on the subject of forgiveness the case of amnesty to millions of illegal aliens in the United States or other countries around the world? 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, thus, 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. In my analysis, I will be using South Africa as a test case.

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.

## **II. The Case of South Africa: The Truth and Reconciliation Commission (TRC)**

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>4</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>5</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>6</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.

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>7</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 "Policies of apartheid of the Government of the Republic of South Africa... 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."

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 represents 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 work because of the injustice of the concentration of blood stained wealth in the hands of the White South Africa's minority.

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. I remember one incident that happened when I was a Fellow at Harvard Human Rights Program in 1993-94. Members of a certain political group from South Africa 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. Harvard at the time was in euphoria, for the establishment of a New South Africa under the "leadership" of Mandela that was in progress. Unknown to me at the time, even the Director of the Human Rights Program was on the band wagon supporting Oppenheimer's effort.

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>8</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>9</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 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.

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>10</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>11</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>12</sup> (Emphasis mine) 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>13</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.

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 become the new black South African super-rich.<sup>14</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>15</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*, (Back Bay Books, 1995). 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>16</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.

By contrast, Mandela, while protecting at least one of the people (Oppenheimer) who dehumanized him and all of Black Africa, took time out unnecessarily to denigrate Ethiopia, his host country in time of his greatest needs that provided him with money, training, and a Passport in 1961. He unabashedly wrote, “The country [Ethiopia] was extremely backward: people used wooden plows and lived on a simple diet supplemented by home-brewed beer.” [*Long Walk to Freedom*, pages 304-305] Mandela’s torrential words of insult are based on his limited observation during his military training in 1961 near *Kolfé*, a suburb of Addis Ababa, an area not larger than four hundred square kilometers, which represents a stamp-sized tiny area. Ethiopia is as large as South Africa, over a million square kilometers. Furthermore, Mandela made a fool of himself by comparing Johannesburg with Addis Ababa stating that “there were few structures [in Addis Ababa] that could compare with the least impressive buildings of Johannesburg.” (Mandela, page 293) Johannesburg is not Mandela’s creation in order to be proud of; he might as well mention London or New York for comparison.

The uncalled for insulting comment of Mandela about Ethiopia is no different in its utter silliness from the burning desire of a young Mandela of years back who tried to adopt Western life-style including parting his African hair in imitation of some Caucasian men’s hairdos. The evidence is preserved in old photographs from over fifty years ago. It is particularly absurd for Mandela to write in 1994 about Ethiopia being “backward” basing his assessment on his borrowed modernity, since his own Xhosa culture never achieved even the rudiments of a “civilized” society—no written language, no agriculture, no cotton-weaving, no plows, no state structure et cetera—until a handful of Dutch adventurers came along in the 17<sup>th</sup> Century and subjugated it and introduced Western civilization.<sup>17</sup> Less than twenty years earlier before he visited Ethiopia, Mandela himself grew up in a small tribal village running around naked except for a loin leather patch and herding cattle before he attended missionary school and became a “modern” man and learned enough English to write such vulgarity.

[I only stepped out of my main theme of discourse to comment on Mandela's remark on Ethiopia simply to correct a seriously flawed perception of the human condition by a man the world holds up as a symbol of morality. As far as I am concerned, the humanity of an individual can never be measured by such standards of "modernity," skimpy attire, skyscrapers, or nuclear arsenal. Whether it is the Xhosa tribe or the people of ancient civilizations like that of Ethiopia, all have answered to the needs of their special circumstances successfully, and their dignity and humanity is unquestionable.]

None of the monetary activities of Mandela or Tutu may have involved an African-style of "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 legislations, 3) in officials 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>18</sup>

Nevertheless, the opinion of the Court have 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>19</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>20</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 have been paid in compensation to the victims, and about 624 million dollars continue to be paid each year to about 100,000 pensioners."<sup>21</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. [I was amazed to hear at a recent panel discussion at a community college on the subject of the TRC and the concept of "forgiveness," a panelist asserting, with a straight face, that Holocaust victims were never compensated by Germany.]

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>22</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.

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>23</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>24</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>25</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>26</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 because of Oppenheimer's Jewish background, for fear of being labeled "anti-Semitic" despite the fact that Oppenheimer is an Anglican Christian convert. 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>27</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 body 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>28</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. 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 or a revolution. Ω

Washington DC, May 20, 2007

**To be Continued:**

**Part Two: Forgiveness: The case of Ethiopia and Other African Nations**

- 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**
- Conclusion**

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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 the History of Ideas*, Princeton University Press, 1998.

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<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>).

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<sup>3</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>4</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 security;*

*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 fulfil in good faith the obligations assumed by them under the Charter;*

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>5</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>6</sup> “On September 13 1985, a group of leading business personalities travelled to Zambia to meet with the leadership of the ANC. The delegation included Gavin Relly, 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 organisations 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 Relly 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>7</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>8</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>9</sup> See Jeffrey Herbst “Mbeki’s South Africa,” *Foreign Affairs*, November/December 2005.

<sup>10</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>11</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>12</sup> Glassborow, Katy, "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>13</sup> Kiapi, Evelyn, Dennis Muhumuza and Gawayya 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>14</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>15</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>16</sup> See Chotiner, Isaac, "Half Nelson," *The New Republic* (December 18, 2006).

<sup>17</sup> In 1652, Johan Anthoniszoon van Riebeeck, an administrator for the Dutch East India Company (DEIC), occupied the Cape, there started the colonization of the region by other European powers. During the same period when the area now designated as "South Africa" and its "primitive" tribes were being colonized, Ethiopia was already a mature two thousand years old civilization. At that precise time of the Dutch colonizing or settling of the Cape area (South Africa), we find in Ethiopia the last end of the thirty-five years illustrious reign of Emperor Fasilades (1632-1667) whose Ethiopian Empire was as vast as the current Ethiopia before the Eritrean secession in 1993. Emperor Fasilades built the City of Gondar with castles and swimming pools, an urban center with over forty four great Cathedrals, and centers of higher learning. It was also the time of the Ethiopian philosopher Zer'a Yacob who wrote his now famous book *Hateta* in Ge'ez in Ethiopic script. It is unconscionable for Nelson Mandela, a man who recently (seventy or so years ago) shaded his loin leather patch for European attire, to call Ethiopia as "extremely backward." Let me put few things in perspective. A century earlier before the Dutch settlement in the Cape area (South Africa), a Portuguese missionary named Father Francisco Alvarez (1465-1541) came to Ethiopia in 1520 and stayed until 1526 and met Emperor Lebne Dingle. Alvarez later wrote a glowing description of Ethiopia and Emperor Lebne Dengil. See Francisco Alvarez, *The Prester John of the Indies*, Translation and notes by C.F. Beckingham and G.W.B. Huntingford (Cambridge: Hakluyt Society, 1961). That was also the period when the Portuguese were navigating in southern coastal Africa leading to the colonization of the Cape area a century later as indicated above. After all, Ethiopia is a nation of great antiquity and civilization and ranked among the world great civilizations by great historians Strabo, Hippocrates, et cetera.

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<sup>18</sup> *Azanian Peoples Organization (AZAPO) and Others v. President of the Republic of South Africa and Others* 1996 (4) SA 671 (CC).

<sup>19</sup> van Boven, T., (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>20</sup> Dugard, John, "International Law and the South African Constitution," *European Journal of International Law*, Vol. 8 (1997) No. 1, 77ff.

<sup>21</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.

<sup>22</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>23</sup> Tutu, Desmond M., *No Future Without Forgiveness*. Image, Doubleday, 2000.

<sup>24</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>25</sup> *Infra* note 26

<sup>26</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>27</sup> Anthony Edward Rupert, Johann Rupert & family, Donald Gordon

<sup>28</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.