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TRUTH AND RECONCILIATION IN SOUTH AFRICA: ACCOUNTING FOR THE PAST

*Honorable Abdullah Omar**

Chairperson, distinguished guests, friends, ladies and gentlemen; it is a great honor for me to be here. I did not expect such a warm welcome and I am deeply moved by the reception which we have received. I would like to make one or two preliminary remarks. The first is to thank Buffalo, the University of Buffalo, the City of Buffalo, the county and, indeed, all the people of Buffalo for its support for the anti-apartheid struggles during those difficult years when many others did not support that struggle. We in South Africa are very much aware of the role which was played by you during those years. We know that you have also made sacrifices, amongst other things, the disinvestment in South Africa, joining the movement for sanctions, and international solidarity in general. Those solidarity activities contributed to the fall of the white minority regime in our country. I want you to know that we appreciate that support, and we believe that as we go forward to build democracy in our land and transform our society, we need to take the hands of those who are like minded, who believe in creating a fair and just society based on a respect for human rights. I knew before I came that I was coming to a university, a city, a country, which in many ways expressed solidarity with our struggle. In coming here, I am convinced that there is much room for establishing a cooperative relationship between us. I hope that I shall be able to make a contribution toward building that kind of cooperation. So, thank you to all for your contribution.

I am going to say a few words about our Truth and Reconciliation Commission (TRC) and its work, but before doing so I would like to state what truth and reconciliation is not, because I think there is often a misunderstanding. Reconciliation is not a reconciliation between democracy and apartheid. It is not reconciling our people to their condition. It is not reconciliation between good and evil, because if that were to be the case there would be no reconciliation in our country. Reconciliation is reconciliation between people, but it must be on a morally acceptable basis. It must be based upon values which the human community internationally has found to be important for the maintenance of human dignity no matter where we find ourselves. Therefore, reconciliation can only be coupled with transformation in our country. Reconciliation must never

* Minister of Justice for the Republic of South Africa and Member of Parliament. The following address was made at the State University of New York at Buffalo, School of Law on April 11, 1997.

be seen in isolation, at least in our situation. The reason for that is even though legal apartheid has ended, and even though we have been able to end white minority domination in our country, the legacy of apartheid remains. Our country needs social and economic transformation. We need institutional transformation. We inherited the bureaucracies of the old apartheid order: the same army, the same police, the same civil service, and the same courts. These institutions served the apartheid order during the apartheid years, and not only were offices and positions filled by whites only in most cases, and generally by white males, but the ethos in those institutions reflected the apartheid order. It, therefore, means that transformation of those institutions, which are important in any civilized society, need to occur in the following ways.

First, those institutions must be made representative of our people. We have embarked upon a process to ensure that over the shortest possible period of time those institutions do become representative. Secondly, the institutions need to change from ones that reflect the ethos of an old, repressive, and authoritarian culture and thinking to one that serves a democracy based on human rights. A human rights culture does not arise automatically. We are not born with respect for human rights. At least in our country, we need active interventions to bring about that kind of transformation so that there is a respect for human dignity. We need to transform our institutions in that regard.

Thirdly, and if I may take the Justice Department with which I am involved as an example, we need to address the legacy of apartheid in another sense. We inherited eleven separate departments of Justice, departments which were based upon apartheid lines. You will recall that as the pressure mounted in the world, and as the threat to the existence of the apartheid regime increased, the regime introduced a new constitutional dispensation, which they presented to the world as reforms. They introduced a tricameral system and a Bantustan system. In terms of their dispensation, South Africa was divided into eleven entities. One is the old Republic of South Africa, in which whites were citizens, and the others were the ten Bantustans or homelands. The indigenous people of our country were categorized in such a way that they fit into one or the other of these homelands. The objective was to break the unity that existed between the indigenous African people. All of you are aware that the African National Congress was formed in 1913. It is known as the African National Congress (ANC) because the organization believed in uniting the people of Africa. In that part of Africa in which we find ourselves, Southern Africa, as time went on, the people were able to unite. There were many stirring moments of struggle between people who were Zulu speaking, Xhosa speaking, Venda speaking, Sotho speaking and so on. In the ANC, when we meet, we do not

speak of ourselves as Sotho, Zulu, or Xhosa, even though we are proud of our origins. We do not deny ourselves and we do not deny that diversity; it is a rich diversity. But, in political terms, to achieve the objective of emancipation, it was necessary that all our people unite to fight the evil of apartheid and the divisions caused by apartheid. So, the objective of the constitutional dispensation introduced in the early 1980s was to reverse that process of unification which had taken place, and thereby make it possible for the apartheid system to survive.

In addition to splitting the indigenous African community so that they see loyalty to a tribe as greater than loyalty to a nation, the strategy also sought to create division between indigenous Africans, people of Indian origin and people of mixed origin, or people classified as "colored." In the old Republic of South Africa, everybody who was an indigenous African did not enjoy citizenship rights at all because theory had it that they were citizens of one or the other homeland or Bantustan and not of the Republic of South Africa. To create and deepen the division between colored and Indian on the one hand and indigenous African on the other, citizenship rights of a form were granted to people classified as Indian and colored. The tricameral parliament was created in the old Republic of South Africa so that there existed a separate white parliament, a colored parliament, and an Indian parliament. The only way in which the liberation movement could overcome that strategy was to build a unity of all the oppressed people of our country. But we went further. We argued that we must isolate the apartheid regime in the same way that the apartheid regime was isolated internationally. We sought to isolate the apartheid government and win over as many people as possible into our liberation movement. It is because of this that the nonracial edict of the ANC was so important. That is why we speak of building a nonracial South Africa.

We speak of South Africa as a country in which we build one nation and not many nations. We believe that we are one nation entitled to enjoy citizenship rights. Everyone is entitled to equal rights as citizens. At a political, economic, and social level, every individual should enjoy equal rights and equal citizenship. At the same time, we recognize the diversity of our people, and that we are a country consisting of people of different religions, different cultures, and people who speak different languages. We want our people to be proud of their cultures, proud of the languages they speak, and proud of the religions to which they adhere. So the ethos and culture which developed in the liberation movement, and in particular in the ANC, of which I have had the honor to be a part, were precisely building that kind of unity, and as a part of that unity, to recognize the essential human worth of every single person.

The issue that needs to be emphasized is that in trying to promote reconciliation in our country, we are not sacrificing the people. We believe that reconciliation must be built upon the basis of that ethos. Therefore, we have separated, and always have separated, white domination from white people. We have always argued that our struggle is not against white people. It is against white domination. It is against the system and not against people. Of course, people promote systems and defend systems, and to that extent, your struggle is also against people who defend certain causes. That distinction is very important because it is on the basis of that distinction that we build a nonracial ethos in our society. Reconciliation requires transformation of our country and that ethos, which formed the value system of the liberation movement, must become the ethos of our country. I say that because there has been, in certain quarters, a misunderstanding or a distortion as to what is reconciliation. Not everyone will agree with me in South Africa that this is the way reconciliation should be promoted. There are proponents of the old apartheid order, those who enjoyed privileges during the apartheid order, who believe that we have had sufficient transformation. There are those who believe that the 1994 elections represented the end point of transformation and transition, whereas we regard it as the starting point of transformation. So not everyone is in agreement with our view. Therefore, the issues of transformation and reconciliation, as we see it, are part of a single process not to be taken for granted. We may have had a miracle transition in the sense that we were able to remove the white minority regime from power through elections, but ours is not a fairy tale ending that everything has ended happily ever after. There is still a long struggle ahead to affect that transformation and reconciliation of which I speak.

I now turn to the question of the Truth and Reconciliation Commission, having given some indication of the context as we see it. I think many of you may be aware of the structures which were created, but let me mention them briefly. The law which sets up the Commission creates an overarching, controlling body known as the Truth and Reconciliation Commission, consisting of just about fifteen or sixteen persons. There are three subcommittees of the Truth and Reconciliation Commission and each of them is very important. The first is an amnesty committee headed by a judge, the second is a human rights violation committee, and the third is a committee on reparation and rehabilitation. The functions and role of each of these committees are defined in the law which creates that particular structure. Why did we choose a structure of that kind? During the course of negotiations in our country, it was very clear to us that different parties entered the process of negotiations with different objectives.

The objective with which the liberation movement entered negotiations was essentially to achieve democratic one-person-one-vote nonracial elections throughout our country. Now, you will remember that the context was that there were eleven entities making up that South Africa, four of them were nominally independent; Transkei, Bophuthatswana, Venda, and Ciskei, and the apartheid regime, or its representatives, came into the negotiation process arguing that any constitutional change cannot affect the status of the four other independent states. Their objective was not the reunification of South Africa, but some formula that would maintain the balkanization and fragmentation of our country.

The objective which they had in mind was something different from what the ANC had in mind. Our objective, and indeed, the centerpiece of our struggle, was how do you remove the white minority regime from power? When armed struggle was necessary, we embarked upon armed struggle. When underground struggle was necessary, we embarked upon underground struggle. When mass action was necessary, we embarked upon mass action. Mass action was always the central objective. When we saw the opportunity arising, that we could reduce to a minimum the suffering of our people in the achievement of that objective and achieve that through the process of negotiation, we prepared for negotiation and we entered the negotiation process. I am saying that objective was not necessarily shared by other parties that entered the negotiation process. The negotiation process and the platform itself became a site of a struggle in our country as we pitted competing objectives against each other. Nobody could guarantee to you that the negotiation process was going to end the way it did. There were times when we ourselves had doubts.

There were times when we realized that blockages were reached, and we called upon our people to embark upon mass actions, strikes and so on. I believe that all of those compelled the other side to give way in terms of objectives. But we could not say to the apartheid regime, we could not say to the Klerkanese National Party, who were then the government of this country, "you must abdicate, give up power," because giving up power and having democratic elections would have meant that they would be swept out of power and a democratic regime would take its place. We could not say to De Klerk and the Klerkanese, "abdicate and, thereafter, we are going to charge you with crimes against humanity." They would never have agreed to democratic elections. Therefore, South Africa had a price to pay in order to achieve its future; a future of peace, a future of democracy, a future of transformation. We therefore, had to agree to make concessions, and we think that we were justified

in that agreement. We defend it. We think it was a good thing for our country. We still think it is a good thing that amnesty shall be made available in the appropriate cases.

So, as part of our interim constitution and total settlement of our country, and in the negotiation process, provision was made for amnesty. Therefore, in the post-script to the interim constitution, there is a provision which says, "there shall be amnesty for crimes committed with a political objective, or offenses associated with a political objective arising from the conflict of the past." The post-script goes on to say that there shall be legislation to deal with all these matters. Now, on the basis of that total settlement and many other areas of that settlement I have not mentioned, not being relevant for the present, the De Klerk (Klerkanese) Government at the time agreed to democratic elections. It is on that basis that we managed to have our first democratic elections in our country.

Soon after the elections, when we came to office, we were obviously faced with the responsibility of giving effect to the Post-script in the Constitution. We always believe that we must keep our word that there is the integrity of a liberation movement which is very important. Its morality says that when you come to an agreement, you stick to that agreement. So one of the first things we did when we came to power was to look at the Post-script to see how we can give effect to this call for amnesty. Again there was no unanimity in that regard. On the part of the National Party there was a call that we should proceed with legislation which gives general amnesty in our country. They asked for automatic amnesty without application, which we rejected.

In the National Promotion of National Unity and Reconciliation Act, which sets up the Truth and Reconciliation Commission, provision is made for amnesty in a way which we believe would be morally acceptable to our people. So there is no general amnesty and there is no automatic amnesty. Amnesty can only be on the basis of individual application. The applicant must make full disclosure of the offense in respect of which the application is being made. Thirdly, we created criteria legal which have to be satisfied before amnesty can be granted. In other words, we defined what is an offense or act associated with a political objective, for example, the motive of the offense, whether it was pursuant to a decision by an organization, whether the person was instructed. Proportionality is another element of that definition: was the act proportionate to the objective sought to be attained? There are a number of elements which form the criteria of what is an act associated with a political objective. The amnesty committee would consider each application and decide, first of all, whether the application complies with the requirements. In other words, is

there sufficient information, has there been full disclosure, and is there compliance with the criteria? Where the application fails on any one of those grounds, the Committee will refuse the application for amnesty. Over the past year and a half, some applications have been granted and others have been refused. I may say at this stage that the mere existence of an amnesty process does not mean that there will be no prosecutions. We have always said that the law requires prosecutions, and where there is sufficient evidence on which to base a conviction, the prosecuting authority in our country is bound to prosecute. The responsibility will be on the perpetrator to apply for amnesty. There have been a number of prosecutions in our country. Some of them have been successful and led to convictions, and there were others in which there were no convictions. The point I am making is that the existence of the amnesty process does not exclude prosecutions.

There is also a cut off date for amnesty applications. In other words, persons who want to apply for amnesty must do so by a particular date. The date fixed is May 10, 1997. Beyond May 10, 1997, the right to apply for amnesty lapses. Persons who do not obtain amnesty or have not applied for amnesty will open themselves to prosecution. We believe that we have created rules for amnesty which we could morily justify to our people in South Africa. We rejected the approach of other countries, which choose the root of general amnesty.

We also argued that amnesty addresses the concern of perpetrators. It does nothing about the plight of victims and the concerns of victims. Therefore, the function of the Human Rights Violations Committee is to hear the stories of victims of human rights violations. There is an elaborate procedure making it possible for victims to come forward to tell their stories. The objective of that exercise is to identify why those violations occurred, and the commission is required to make recommendations to the Government on steps to be taken to avoid similar violations in the future. Then, there is the third committee, which is called the Reparation and Rehabilitation Committee. This too is victim-centered. The idea being that there should be reparation for victims, there should be rehabilitation and steps taken to restore the dignity of victims, the dignity of communities and ultimately, the dignity of the nation as a whole. So, whilst the Post-script in our Constitution did not require the setting-up of those last two committees, we consider them to be essential so as to create a moral framework to allow us to deal with the issue of amnesty on a basis that would be acceptable to our people.

The Commission has now been in existence for over a year. According to the law, it has a life span of two years. Initially, it was eighteen months with

the right to extend it for a further period of six months, and we have extended it to a period of two years. The Commission enjoys the support of the overwhelming majority of our people, even though there have been voices in opposition. Some victims have also expressed bitterness and do not accept the process. The Biko and Mkenka families, for example, have not accepted the Truth and Reconciliation Commission. But, there are hundreds and hundreds of other victims who have and, generally, the Commission has enjoyed overwhelming support.

One of the reasons for the success of the Commission and the support which it enjoys lies in the fact that we have always embarked upon a consultative process at every level. Our Commission differs from other commissions because the Commission was created through legislation. In other words, it is a democratically elected representative of the people who created the Commission through legislation. Before we proceeded with legislation, there were lengthy consultative processes in our country with human rights organizations and the public generally. There was a public discussion which followed our announcement to proceed with a Truth and Reconciliation Commission and, in the seminars which we organized to work out the legislative framework for setting up the TRC, we also invited human rights groups and international experts to participate so as to ensure that the ultimate product will not only be acceptable to our people, but will also enable us to meet our international law obligations. Following up on that process, we went to the Cabinet and sought approval for the draft legislation. Thereafter, there was another lengthy process in Parliament as our standing committees invited human rights organizations and the public generally to make representations. That, too, was a very useful exercise. It resulted in changes in the draft that had been presented to Parliament and, ultimately, were passed in Parliament.

Following up on the adoption of the law, we proceeded with the appointment of the members of the Commission. The law provides that the President appoints the members of the Commission in consultation with the Cabinet, but the President and the Cabinet decided to adopt a method that would once again involve public participation, especially by human rights organizations. The President set up a selection panel which announced its intention to receive applications and nominations. There were advertisements in the media calling for nominations from members of the public. A large number of nominations were made by members of the public in general, but by human rights organizations in particular. The panel produced a short list of names for interviews. Public interviews were held at which the media was also present. Archbishop Tutu, for example, was required to present himself and

submit to questioning in public like all other candidates. Ultimately, the selection panel, which was chaired by Bishop Storey, a very eminent religious leader in our country, submitted a short, short list to the President. It is from the final short list submitted by the selection panel that the President and the Cabinet appointed the members of the Commission. That process was not legally necessary, but we believe it was necessary to legitimize the process and legitimize the Commission itself.

Another reason that the Commission has been successful lies in the fact that, in general, the Commission has operated in public . . . in the open with media presence as well. There have been occasions when that has not happened, but that has been the exception rather than the rule. The result has been that the work of the Commission has received a great deal of coverage in our media and there has been a great deal of public participation. The meetings of the committees are held in different parts of the country, thus enabling people from different parts of the country to actually attend the hearings and large numbers of people have actually attended them. So, generally speaking, I think that the Commission has generally been a success.

Lastly, it has been a success because the Commission has succeeded in getting political parties to subject themselves to public scrutiny. The TRC called upon all political parties, including the ANC, to make submissions with regard to its own record and how it conducted itself during the years in question. So the National Party, ANC, PAC, IFP, and Democratic Party, all the major parties, did indeed submit themselves to the process. You may ask why is that important. I think all those things are important because what we are trying to achieve is not only reconciliation between people, but also to establish the principle of accountability for human conduct. Every individual must be accountable for his or her actions. We believe that is the only way that we shall be able to establish the rule of law in our country.

We have a tradition of violence, a culture of violence, a history of violence, a history of people taking the law into their own hands, and a history of people who have not been held accountable for what they did. Terrible murders and other types of crimes have been committed and people have not been accountable. The highest police officer in the land has now applied for amnesty for murder during the apartheid years. Now, if the person most responsible for maintaining law and order comes forward and says "I broke the law in the worst possible way, I participated in planning the murder of people," then you will understand what the culture of violence is about. During the course of the struggle we were aware of the fact that those who were required to enforce the law were in fact responsible for breaking the law, and were

responsible for much of the violence that was being inflicted upon our people. So, ending violence is a priority. Ending the culture of violence is a priority. Creating accountability and establishing the rule of law is a priority. We would not be able to achieve that through general amnesty. We would not be able to achieve that through a secret process. We can only establish that by establishing accountability with respect of the past, as well. And so, getting the political parties to subject themselves to scrutiny, questioning, and criticism, no matter how noble their ideals -- such as the ANC for example -- if we committed human rights violations during the course of conducting our noble struggle, we must be held accountable because that is the only way we will send a signal to our people that every person who commits a violation in the future will be held accountable. That is the only way we will establish peace and stability in our country and create an environment of safety and security for all our people.

So, in conclusion today, I can say to you that for us the TRC has been a success. It has been a painful experience for me, and I am certain that as the Commission completes its work there will still be a great deal of pain. But my belief is because it is an inclusive process, because it is participatory in nature and because our people generally have participated in its formation, the appointment of the Commission and in the proceedings, it will be generally acceptable to our people. And that in the process, because it is victim-orientated to address the concern of victims, we will make a contribution to transform the justice system in our country itself. Because, where you grant amnesty and you address the concerns of victims, you must begin to introduce principles of restorative justice. You need to redefine justice in our country. It is a big challenge for us. My view is that those challenges are of a kind which is very relevant for us and challenges which we shall be able to meet. We do not pretend that it is a model for other countries. It has arisen because of our own dynamics and our own history. It is a product which arises out of our own requirements and it is designed to meet those requirements. If it does contain some lessons for others, that will be an additional bonus. Thank you.