

IS AMNESTY A SUBSTITUTE FOR JUSTICE?

**BY GEORGE BIZOS SC
CONSTITUTIONAL LITIGATION UNIT
LEGAL RESOURCES CENTRE
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Email: zanu@lrc.org.za**

At the commencement of our legal studies relying on the Institutes of Justinian we were told that Justice was rendering what was due to a person. We were not told of the interrogation by Socrates of the Sophist's similar definition recorded in Plato's Republic. During the latter half of the 20th Century, a string of adjectives were added before the word: retributive, restorative, transformative, constitutional, political, transitional, economic, environmental and social Justice.¹

Amnesty has been used since time immemorial by divine decree in order to put an end to the blood feud amongst members of the family: Orestes for killing his mother and Cane for killing his brother. More recently tyrants grant themselves and their henchmen amnesty from prosecution and deprive their victims of all other remedies available to them. Amnesty provisions are found in treaties to end wars between nations or civil wars. Victorious forces have put the leaders of their enemies on trial and punish them but come to terms with at least some of them for their own purposes.

Some Nazi leaders were convicted and punished, others were recruited to serve the leading victorious allies because of their special skills in making arms of mass destruction.

There was apparently consensus amongst the people of Spain that no action should be taken against anyone for crimes committed during and after the civil war, after General Franco died, in the interests of the democratic order that was emerging. Not so in the South and Central American Republics and more particularly Argentina and Chile where the victims cried out for the identification,

prosecution and punishment of those guilty of gross human rights violations by those who had overthrown democratic institutions, assumed power for themselves, invariably claiming that they did it for the benefit of the people and their country.

By the mid 1980s tentative talks were taking place between Kobie Coetzee the South African Minister of Justice and Nelson Mandela. Coetzee claimed that he did not have authority from President PW Botha to do so. Mandela made it clear to Coetzee that he had to consult the ANC in exile and particularly its President Oliver Tambo.

Despite the brave words and daring actions by both sides, it became apparent to both that neither side could win. It seems that this is a prerequisite for a settlement. If there is no balance between the opposing forces, the stronger is more likely to strive for victory. In 1989 both the Apartheid Regime and the African National Congress realized that neither side could win. The ANC adopted the Harare Declaration in which it indicated it was prepared to come to terms with the Regime. The National Party pushed out President PW Botha and the more pragmatic FW de Klerk took over.

The release of political prisoners was a major concern particularly to Nelson Mandela who declared that he would want to be the last political prisoner to be released. But how were the perpetrators of serious violations by the security forces to be dealt with? The Regime insisted on blanket amnesty. The ANC would not agree.

A temporary solution was agreed upon codified in the 1990 Groote Schuur Minute and shortly thereafter the Pretoria Minute. The Norgaard Principles were adopted and two Indemnity Acts gave President de Klerk and a Committee of three retired judges to advise him powers to grant indemnity to wrongdoers. The process was a useful temporary solution but was arbitrary. President de Klerk

would simultaneously release high profile prisoners to appease both the Liberation Movement and rightwing racists who accused him of capitulating to the ANC.

While South African security forces who had committed serious crimes against the people of Namibia were never particularly concerned about their future, being sure of government protection, those in South Africa feared that they might be held accountable for the wrongs they had done in apartheid's name. Their wrath was not directed against Mandela but against FW de Klerk and his equally spineless politicians for having capitulated. The least de Klerk was expected to do was to provide in the Interim Constitution for unconditional indemnity or amnesty for every policeman and every soldier irrespective of rank for anything they might have done. 'Let us start with a clean slate,' said de Klerk. He was met with a chorus from the ANC: 'The very least that we must do is to write on the slate what happened and then decide who is entitled to amnesty and who is not.'

There had been debates within the ANC about the fate of those members of the security forces who had committed gross violations of human rights. In general three options emerged: Nuremberg-type trials, Chilean-style blanket amnesty, and collective amnesia along Argentinian lines. During the negotiations the ANC abandoned the Nuremberg option, and made it abundantly clear that the South American route was out of the question. The Liberation Movement was not going to have anything of the Argentinian solution, which instructed those who felt they had to confess, to go to their priest and not to the newspapers, nor with the Chilean formula that the price to be paid for the partial withdrawal of a tyrant should be the perpetuation of a conspiracy of silence. Kader Asmal, the well-read law professor, found support for his and the ANC's view in Alexander Solzhenitsyn: 'By not dealing with past human rights violations, we are not simply protecting the perpetrator's trivial old age; we are thereby ripping the foundations of justice from beneath new generations.'

It was only as the turbulent negotiations for an Interim Constitution were drawing to a close towards the end of 1993 that a breakthrough was made on the vexed question of amnesty. Two paragraphs were handed over to the drafting committee, who were told not to change them but to incorporate them in the Interim Constitution. Both sides feared that any attempt to alter even the grammar might give those who had reservations about the ambiguous provisions relating to amnesty an opportunity to change their minds. There was no time to polish them up or even to number them in the appropriate place in the Interim Constitution. They were tacked on as a postscript at the end of the Constitution under the heading '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 colour, 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 offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

'With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.'²

Soon after the 1994 election and the formation of the new government with Nelson Mandela as President, Minister of Justice Dullah Omar, Archbishop Desmond Tutu, Alex Boraine, Professor Kadal Asmal, Advocate Albie Sachs, Advocate Mohamed Navsa of the LRC, Johnny De Lange of the Parliamentary Justice Committee and I, together with a number of others, worked on the drafting of the legislation envisaged in the Constitution.

During the course of the negotiations it became apparent that it was intended that amnesty should be available to both sides of the struggle. The most difficult aspect was to provide for the manner in which amnesty would be granted by the Amnesty Committees chaired by a judge. Section 20 of the *Promotion of National Unity and Reconciliation Act*³ defined an 'act associated with a political objective' as any act or omission that constituted an offence or delict which was associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic of South Africa during the period 1 March 1960 to 10 May 1994, in general by:

- any member or supporter of a known political party or liberation movement acting *bona fide* in support or on behalf of such party or movement in

furtherance of the political struggle waged against the state or any former state or another known political organization or liberation movement;⁴ or

- any state employee or any member of the security forces against *bona fide* in the course and scope of his or her duties and within the scope of express or implied authority directed against a known political organization or liberation movement engaged in a struggle against the state, provided that the act was committed with the objective of countering or resisting the struggle.⁵ The applicant had to tell the truth. If there was no full disclosure the application would be refused.

The following factors were also prescribed to determine whether an act, omission or offence was an act associated with a political objective:

- the motive of the person who committed the act, offence or omission;⁶ Derby-Lewis and Janusz Walus killed Chris Hani, whom they called the anti Christ, in the hope that blacks will kill whites so that the army and police would overthrow de Klerk to prevent a settlement. The fatal blow that killed Biko was struck because he insisted on sitting on a chair whilst interrogated;
- the context in which the act took place and in particular whether it was committed in the course of, and as part of, a political uprising, disturbance or event, or in reaction to them;⁷
- the legal and factual nature of the act including the gravity of it;⁸
- the object or objective of the act and in particular whether it was directed at a political opponent or state property or personnel or against private property or individuals;⁹

- whether the act was committed in the execution of an order, on behalf of or with the approval of the organization, institution, liberation movement or body of which the person was a member or supporter;¹⁰

Clive Derby-Lewis and Janusz Walus claimed authority from the Conservative Party which had denied any involvement shortly after the killing. The provision also excluded loners or male groups who gathered in pubs and then went out to kill pedestrians and cyclists on the road. Craig Williamson, 'the superspy', to whom John Kani alluded in his play *Nothing But The Truth*, spoke of his great achievement of having killed two women and a child. They were Ruth First, Jeannette Schoon and her daughter, Katryn. He was granted amnesty because he said that the authority came from a minister and a brigadier, both of whom had died. See also the Zapiro cartoon on page 19 hereof.¹¹

- the relationship between the act and the political objective pursued, and in particular the proximity of the relationship and the proportionality of the act to the objective pursued;¹² and
- acts, offences or omissions committed for personal gain, or committed out of malice, ill-will or spite against victims, which were pertinently excluded from amnesty.¹³

Eugene De Kock did not get amnesty on only two of the many convictions because he received a handsome bonus for killing innocent people and falsely alleging that AK47's were in their possession. In fact they were planted by him and his co-conspirators.

In addition, the Amnesty Committee could take into account the criteria contained in the Indemnity Act 35 of 1990, the Indemnity Amendment Act 124 of 1992, and the Further Indemnity Act 151 of 1992.¹⁴

Those who were shy to admit that what they did was a crime or delict did not get amnesty.

The President of the International Centre of Transitional Justice and UN Special Advisor on Prevention of Genocide, Juan E Mendez, and many others praised South Africa for what we tried to achieve.

Mendez at a conference near Cape Town in March 2005 said:

‘By far the most thoughtful, dedicated effort to learn from others was made here in South Africa. At the same time, that effort recognized that there are no ready-made solutions and that each country has to find its own path to reckoning with the past. In the most parts of the world, the South African example stands out as an attempt to achieve reconciliation and forgiveness without impunity. Others decry the fact the most perpetrators of the worst crimes of apartheid did evade justice. In my view, however, the South African exercise with truth, justice and reconciliation is notable for its insistence on hearing the victims, consulting with all members of society, allowing participation by all stakeholders, and conducting the exercise in complete transparency. It is in this sense that the South African example continues to inspire all those who decide to turn a page in a country’s history without forgetting the plight of those who suffered’.¹⁵

But not everyone in South Africa was satisfied with the granting of amnesty. The Azanian People’s Organization (AZAPO) together with the Biko and other families challenged the validity of the legislation because it deprived them of their right to prosecution and the right to claim compensation from the wrongdoers. They did not succeed. The then Deputy President of the Constitutional Court Ismail Mahomed said:

‘It is specifically authorized for the purposes of effecting a constructive transition towards a democratic order. It is available only where there is full disclosure of all facts to the Amnesty Committee and where it is clear that the particular transgression was perpetrated during the prescribed period and with a political

objective committed in the course of the conflicts of the past. That objective has to be evaluated having regard to the careful criteria listed in section 20 (3) of the Act, including the very important relationship which the act perpetrated bears in proportion to the object pursued'.¹⁶

Professor Hugh Corder wrote:

'It must be acknowledged, nevertheless, that some of the cases ...show that the disjuncture, which is often present between 'law' and 'justice', can perhaps be explained by the pursuit of some greater goal. In other words, while it is accepted that there is often no good reason for rules of law not to further justice, sometimes it may be that a noble goal, such as successful political transformation and compromise or the value of adherence to a relatively predictable and fair legal process, might justify such discrepancies and apparent injustice to some. Thus, instead of arguing that 'an injury to one is an injury to all', perhaps it would be justified to acknowledge that 'an injustice to one leads to greater justice to all.'¹⁷

In South Africa, the TRC hearings were a good substitute for a trial. Talking about things has a cathartic effect. I want to take an example in the most notorious city in South Africa, Port Elizabeth, where amnesty hearings were held for the killers of Steve Biko and the 'Cradock Four' Fort Calata, Matthew Goniwe, Sparrow Mkhonto and Sicelo Mhlauli. There was great symbolism in it. Here were the security policemen who, during the apartheid years had had plush offices in the center of the city with quiet sealed rooms to avoid the screams of the victims being heard, were now supplicants for amnesty. The hearings were held in New Brighton, the black residential area, in a hall used for basketball games and other functions which accommodated more than 1 200 people.

At one of the early hearings in the Methodist Church Hall in the center of Johannesburg, I experienced for the first time the difference between a trial and an Amnesty hearing. Beneath the huge metal cross sat the commissioners, a

suitably representative collection of men and women, chosen to hear the harrowing tales of torture, violence and loss. Archbishop Desmond Tutu, the chairperson of the Commission, occupied center stage, consoling the witnesses, offering them some comfort as they relived their tales of horror. Diminutive, robed in purple, the Archbishop invested the hearings with a mystical element, repeatedly invoking the grace of God, a solvent to wash away the pain of the past.¹⁸

The all-powerful men of the past were brought before the Commission to answer the questions of someone they considered a traitor in the past, asking them to tell the truth. The shame that they brought on themselves and others, when Daniel Siebert of the Port Elizabeth Security Policy admitted that he had probably delivered the final punch to Biko's head because he, as a white security officer, would not accept that a black man had the right to sit on a chair whilst he was interrogating him. When he admitted that, like a chorus in a Greek play, the sighs of disbelief of the crowd brought shame on him. It was a cathartic experience for the victims.

When the Biko family and others applied to the Constitutional Court for the amnesty hearings of the TRC to be declared unconstitutional, Ismail Mahomed, then sitting as Deputy President of the court, turned down the application, stressing the importance of reconciliation in South Africa, and quoting the epilogue to the constitution. He said it was a difficult, sensitive, perhaps even agonizing balancing act between the need for justice to victims of past abuse and the need for reconciliation and rapid transition to a new future; between encouragement to wrongdoers to help in the discovery of the truth and the need for reparations for the victims of that truth; between a correction to the old and the creation of the new. It was an exercise of immense difficulty involving a vast network of political, emotional, ethical and logistical considerations. It was an Act calling for a judgment falling substantially within the domain of those entrusted with law-making in the era preceding and during the transition period. The

results might well often be imperfect, supporting the belief of Kant that out of the crooked timber of humanity no straight thing was ever made. The court in AZAPO concluded that parliament intended to offer 'amnesty' in the fullest sense, 'so as to enhance and optimize the prospects of facilitating the constitutional journey from the shame of the past to the promise of the future'.¹⁹ The Act establishing the TRC, with its power to grant amnesty, was not unconstitutional.

One can understand the feelings of members of a family when amnesty is given to those who murdered their loved ones. When the conspiracy of silence was broken by Buta Almond Nofemela, Dirk Coetzee and, later, others in the Eugene De Kock case, one could understand their sense of revulsion and their demand for justice. But, on the other hand, if amnesty had not been promised there would have been no political settlement. If there had been no settlement, there might have been civil war, from which untold injustices would have resulted. It may not be perfect justice, but justice is not something that can be found in its perfect state, and compromises have to be made to avoid even greater wrongs.

One must also admit that amnesty has been crucial in exposing the truth. The granting of amnesty and indemnity has persuaded people to talk who might otherwise not have done so, and has exposed the wrongdoers who otherwise might not have become known. Moreover, there is provision for reparations, though obviously these are not as good as being compensated or having the satisfaction of seeing the wrongdoer punished.

Indeed, there can never be adequate compensation for the murder of a loved one. The wrongs of the past can never be put right. They are written in blood, on the floors of our jails, in our hearts. Those killed by apartheid are there to remind us, to accuse us when we falter in our quest for a just society. Such a quest is less likely to be achieved by the call for blood than the just call for full disclosure of the truth.

Amnesty can only come with truth: pardon cannot be given for nameless crimes, nor forgiveness for concealed sins. There is no better evidence than that coming from the perpetrators, freely and voluntarily, given publicly. Had it not been for the litany of violence which has flowed from the mouths of perpetrators, the false denials would have gone on, the history of the country might have been distorted for ever. Full disclosure has to be made. Nonetheless, many applicants have said no more than what they knew was known to the victims, their relatives and the Amnesty Committee, thereby protecting their comrades who have not applied within the prescribed period. Many applicants have not been prepared to say that they received direct instructions from above, preferring to rely on the implied authority of political speeches exhorting them to battle. At times it is clear that their loyalty lies not with the truth but with their partners in crime.

Indeed, right at the top, both P W Botha and F W de Klerk maintained that they did not know. If that is so, they must have worked diligently at distancing themselves from the truth. Botha refused to appear before the TRC, variously offering as excuses his ill health and the so-called bias of the Commission (which he described as a circus). His public statements when charged for failing to answer a subpoena and his behaviour in and out of court have led many to believe that the clown's headgear would suit him best. De Klerk, on the other hand, agreed in his suave manner to testify. But when counsel for the Commission, Glen Goosen, started his cross-examination, there was a theatrical withdrawal. The reason given was that the documents emanating from the Security Council and the archives had not been shown to him earlier. He made it clear he would not come again. Members of their cabinet followed their example. Eugene De Kock has said of them: 'They want to eat lamb, but they did not want to see the blood and guts. Leon Wessels was the first member of the former government to apologise. He was embraced by Nelson Mandela at a conference in Denmark. Recently Adriaan Vlok washed the feet of Chikane. It prompted President Thabo Mbeki to quip that P W Botha owed him a bath.

All the same much has emerged about our tragic past from the proceedings of the TRC. Amnesty applicants in respect of the killing of Biko and Goniwe confirmed the correctness of what we said all along, though we and our clients had been accused of being liars, propagandists for and willing tools of the enemies of South Africa. Archbishop Tutu is right when he says that 'for all its flaws, the TRC remains the best chance we have of discovering the truth, believing it, and living with it'.²⁰ In truth lies catharsis. The perpetrators are not expected to suffer like Oedipus, who gouged his eyes out to rid himself of guilt.

And yet we quail at allowing murderers to walk away from their heinous crimes with not even an admonishment. It cannot be otherwise. The rush for amnesty was not born of remorse or even regret, but as a result of Attorney-General Jan D'Olivera's successful prosecution of Eugene De Kock. It was the thought of sharing the dock with him that drove the flood of applications. Once De Kock was convicted and received two life sentences plus 212 years imprisonment, his declaration that he would tell all forced many to apply for amnesty who would otherwise not have done so. De Kock gave notice that he would submit his application for amnesty at the very last minute. He did not want to be in this alone; he wanted all to come forward and, in particular, he wanted to implicate the politicians and the generals who had abandoned him. His submission ran to over a thousand pages. Those who suspected they may have been implicated could not afford to take the chance, and applications flooded in.

On 28 October 1998 the TRC handed its report of over three and half thousand pages to President Mandela. The President, on receiving it, praised the Commission for its work and made the report public. The handing-over ceremony took place amid allegations of bias, applications to court and threats of further legal action. In finding that all the major protagonists, both in defence of and in opposition to apartheid, were guilty of gross human rights violations, the report did not please any of them. Among its main findings, the report held the National Party government, its security forces and their collaborators primarily

responsible for a host of violations, including the torture, abduction and assassination of opponents, and the training and funding of hit squads. Although the report also found that the ANC had fought a just war, leading members of the ANC objected strongly to the findings which might be interpreted as the 'criminalisation of the liberation struggle'.²¹

Most of those who failed to get amnesty have not been prosecuted. There are a variety of reasons for this – a lack of resources, the passage of time, and maybe even a sense of letting bygones be bygones. Some of us do not agree with this, although there are some steps being taken at least to prosecute some of them. There are still innumerable unsolved cases. You may have read in our media that there are attempts being made to dig up and identify people who were killed, and their relatives only hope to unearth some evidence to prosecute, but the perpetrators have not come forward.

According to Alex Boraine, the Chairperson of the International Centre for Transitional Justice and Former Deputy Chairman of the South African Truth and Reconciliation Commission, says that Transitional Justice is not a contradiction of criminal justice. He wrote 'transitional justice offers a deeper, richer and broader vision of justice which seeks to confront perpetrators, address the needs of victims and assists in the start of a process of reconciliation and transformation'.²²

Thousands of perpetrators have been confronted who accepted responsibility for their actions. Many senior politicians, high ranking military and police officers insist that they did no wrong despite evidence to the contrary. The acquittal of some of them is not enough in the minds of the victims to enable them to become reconciled.

The needs of the victims have not been met. The paltry sums paid as reparations are insufficient and far less than they would have been awarded if

their right to claim damages had not been barred by the grant of amnesty. They contrast their treatment with the large pensions and severance packages paid to the perpetrators.

Our society has to a certain extent and is continuously been transformed but hardly to the extent of it being egalitarian. The victims of apartheid are not only those who were killed, tortured, imprisoned or abducted. There are millions who were disadvantaged and yearned for political and social justice.

The amnesty process clearly helped to bring an end to the conflict, to record a substantially truthful historical record; to bring closure for some of the victims and their families and to reconcile some victims and some of the perpetrators.

But these are unresolved issues:

- Hardly any of those who publicly admitted having committed very serious crimes and who were refused amnesty have been prosecuted;
- What is to be done to those who have committed serious crimes, have not applied for amnesty, some on the advice of their political leaders, but there is now evidence of their guilt;
- Are those who have been granted amnesty for criminal acts committed beyond the South African boundaries immune from prosecution in the foreign countries;
- Should South Africa extradite any of them to foreign countries or international tribunals?

The National Prosecuting Authority claims that due to the lapse time, the inadmissibility of the evidence given by perpetrators before the Amnesty

Committee, the reluctance of witnesses to come forward and the lack of resources it is unable to mount prosecutions. Its failure to secure convictions in the cases of the high-profile generals, Malan and Basson, has discouraged them.

A policy has been adopted in terms of which indemnity from prosecution may be granted if full disclosure is made.²³ Victims of Human Rights Organisations and others have expressed their disagreement with the policy and doubt its constitutional validity.

Although their authority to act may not easily be questioned by the courts in relation to prosecutions, they cannot claim authority to deprive victims of the right to claim compensation.

There is no doubt that amnesty has deprived many victims of justice in its primary ordinary meaning.

Justice Albie Sachs has written:

'But what hurts so much is that those who committed terrible crimes still benefit from the privileges that apartheid gave them, while most of those who suffered under that same system will go home to unacceptable conditions. The TRC cannot be blamed for not achieving equality. It was never in its mandate to even try to do it. Filling our jails won't do this either. It could even ...militate against achieving the well being needed to obtain some level of social equality'.²⁴

At a lecture on October 9 at Stellenbosch University, Chief Justice, Pius Langa, of South Africa's Constitutional Court, spoke about 'transformative constitutionalism'. He said 'transformative constitutionalism' has the goal of healing the wounds of the past and guiding South Africa to a better future of substantive equality through social and economic revolution. In his concluding remarks, he said, "These then are the challenges that I see facing transformative constitutionalism: legal education, legal culture, maintaining the separation of

powers while ensuring that all arms of government work together and reconciliation. Can we overcome these dilemmas? I do not know. But I take solace in the idea that perhaps rather than obstacles, these factors can be viewed as enabling conditions for transformation. For as long as they exist, there will be a drive to overcome them, there will be a tension that keeps alive the idea that things can be different. When all the challenges are gone, that is when the real danger arises. That is when we slip into a useless, self-congratulatory complacency, and misplaced euphoria that where we are now is the only place to be. That is when we stop dreaming, imagining and planning that things could be different, could be better. That, for me, is the true challenge of transformation.”²⁵ This challenge raised by Justice Langa is not easy to address.

But let us all be guided by his wisdom.

¹ Generally, see (a) Charles Villa-Vicencio and Erik Doxtader, *The Provocations of Amnesty. Memory, Justice and Impunity*. Institute for Justice and Reconciliation, Cape Town: David Philip Publishers, 2003 [*Provocations*]; (b) Alex Boraine and Sue Valentine, *Transitional Justice and Human Security*. Cape Town: International Center for Transitional Justice, 2005 [*Transitional Justice*]; and (c) George Bizos, *No One To Blame? In Pursuit of Justice in South Africa*. Cape Town: David Philip Publishers, 1998 [*No One To Blame*].

² *Interim Constitution of the Republic of South Africa Act*, 200 of 1993.

³ *The Promotion of National Unity and Reconciliation Act*, No. 34 of 1995 [*National Unity Act*].

⁴ *Ibid*, *National Unity Act*, s. 22(2)(a).

⁵ *Ibid*, s. 22(2)(c).

⁶ *Ibid* s. 22(3)(a).

⁷ *Ibid*, s. 22(3)(b).

⁸ *Ibid*, s. 22(3)(c).

⁹ *Ibid*, s. 22(3)(d).

¹⁰ *Ibid*, s. 22(3)(e).

¹¹ *Supra* note 1(c), *No One To Blame*, pp.221-225; See also the cartoon by Zapiro, p.118, annexed to the back of this paper.

¹² *Ibid*, s. 22(3)(f).

¹³ *Ibid*, s. 22(3)(f)(i)-(ii).

¹⁴ *Ibid*, s. 22(4).

¹⁵ *Supra* note 1(b), *Transitional Justice*, p.20.

¹⁶ *Azanian Peoples Organisation (AZAPO) and Others v President of the Republic of South Africa and Others*, 1996 (4) SA 671 (CC), para. 32 [AZAPO].

¹⁷ Hugh Corder: 'The Law and Struggle: The Same, but Different', in Villa-Vicencio, Charles and Wilhelm Verwoerd (eds.) *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town: University of Cape Town Press; London: Zed Books, 2000, p. 106.

¹⁸ *Supra* note 1(c), *No One To Blame*, p. 2.

¹⁹ *Supra* note 16, AZAPO, para. 50.

²⁰ *Supra* note 1(c), *No One To Blame*, p.236.

²¹ Truth and Reconciliation Commission of South Africa Report, Five Volumes, Cape Town: Juta & Co. Ltd., 1998.

²² *Supra* note 1(b), *Transitional Justice*, p.25.

²³ National Prosecuting Authority Policy, produced in accordance with s. 179(5) (a) of the Constitution of the Republic of South Africa, 1996, amended with effect on 1 December 2005, <<http://www.polity.org.za/pdf/npaProsecutionPolicy.pdf>>.

²⁴ *Supra* note 1(a), *Provocations*, pp.21-22.

²⁵ Pius Langa, CJ. 'Transformative Constitutionalism,' Prestige Lecture Delivered at Stellenbosch University, 9 October 2006.