Restorative Justice in the South African Truth and Reconciliation Commission

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Abstract

The Truth and Reconciliation Commission (TRC), established in South Africa, is a model for other TRCs because it addresses the injustice, reparations, and healing processes that took place during the post-apartheid era in South Africa, which has been classified as a crime against humanity. It is critical to consider how restorative justice is applied and the kinds of remedies it might provide for South Africa. The victims, their families, society, and the country can benefit from restorative justice. Restorative justice seeks to bring about healing by viewing trauma as a social problem that everyone in society must deal with rather than an individual issue since trauma is a common experience that is collectively shared. This paper uses the doctrinal research methodology to employ restorative justice in resolving the education conflict in post-apartheid South Africa. The Bantu Education Law during the apartheid regime in South Africa severely limited black people's right to an education. This resulted in a generation-long conflict that is challenging to resolve, one that has also had an impact on future generations. Restorative justice, which was tried in South Africa after apartheid, provided an avenue to resolve this conflict and provided the only way to start talks that would lead to positive peace. The simplest definition of restorative justice's fundamental tenet is "repairing damage, replacing it, or compensating it.

Key Words: Restorative Justice, Bantu Education Law, South Africa, Truth, and Reconciliation Commission.

1. INTRODUCTION

The International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973, states that: 'The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination'. [1] The Convention goes further to define apartheid as 'crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.'[2] From these, it is clear that discrimination based on race and resultant discriminatory state policies geared at the suppression of a group of persons based on their race is frowned upon in international law and may constitute a threat to international peace and security. This instrument, though entered in 1973, did not deter the apartheid regime in South Africa from continuing for another two decades before the emergence of democracy in the country. It is also worthy of note here that apartheid was, by this instrument, termed a 'crime', yet it persisted under the watch of the international community until 1994 when South Africa, through a series of negotiations, events and memoranda that lasted about four years, finally transitioned from an apartheid State to a democratic State.

During the apartheid era, blacks were deprived of their fundamental rights, including the right to education. Black South Africans, who suffered from generation to generation from the deprivation

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[1] Article 1, International Convention on the Suppression and Punishment of the Crime of Apartheid G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976 https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf Accessed 25/9/2024

[2] Article 2, *ibid*

of these rights, could not develop economically, socially and even culturally. As a result, the effect of discrimination has been handed down from generation to generation. To date, it is evident that the remnants of the adverse impact of apartheid could still be felt by the black community of South Africa, which faces a continuous struggle to defeat poverty and attain financial liberation.[3]

In 1994, following years of negotiation, which began in 1990, the world finally saw the end of the oppressive apartheid regime in South Africa and the emergence of democracy. To attain lasting peace, the democratically elected government headed by President Nelson Mandela identified the need to establish structures to aid healing and promote peace. This birthed the Truth and Reconciliation Commission of South Africa. The Commission, headed by the respected Archbishop Desmond Tutu, was saddled with the responsibility of brokering peace through reconciliation in what was now a fragile new State known as the Republic of South Africa. According to the Archbishop, 'we have the luxury of being able to complain because we are now reaping the benefits of a stable and democratic dispensation. Had the miracle of the negotiated settlement not occurred, we would have been overwhelmed by the bloodbath that virtually everyone predicted as the inevitable ending for South Africa.'[4]

The focus of the TRC is restorative justice. It employed the tool of storytelling to equip the victims to narrate some of the atrocities they faced. It also allowed the perpetrators of violence to narrate their stories and admit to the allegations against them with the possibility of being granted amnesty in the end. These acts of narration provided the victims and perpetrators alike the opportunity for healing. Given the many years of conflict as well as inhumane practices and possible crimes against humanity, if real peace and reconciliation in society are desired, then it is essential to examine the events of the past to find healing through restorative justice and also prevent the reoccurrence of acts that led to the events. The restoration of justice in a system that has been ravaged by physical and structural violence, as was seen during the apartheid regime, can be a slow and delicate process. In this article, we hold that for justice to be achieved and the lives of the marginalised black community to be improved, it is necessary to pay serious attention to their rights that were neglected for decades, with particular emphasis on the right to education. A careful examination of the system will reveal that the neglect suffered as a result of the Bantu system of education is still felt among South African blacks.[5]

According to Archbishop Tutu, 'Let that society be a new society - more compassionate, more caring, more gentle, more given to sharing - because we have left the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice and are moving to 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.[6]

2. THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION (TRC)

The South African TRC model focused on developing a victim-centred, restorative and participatory truth commission model that was open to the broad participation of the public. It

[3] Peter Goodman, 'End of Apartheid in South Africa? Not in Economic Terms' (*www.nytimes.com*, 24 October 2017) https://www.nytimes.com/2017/10/24/business/south-africa-economy-apartheid.html Accessed 10/2/2024

[4] Padraig O'Malley, 'The Heart of Hope: South Africa's Transition from Apartheid to Democracy' (*Nelson Mandela Foundation*, 1999)

[5] Wilson Macha & Kadakia Aditi, 'Education Systems Profiles: Education in South Africa' (2 May 2017) *World Education News + Reviews*, 2 May 2017 https://wenr.wes.org/2017/05/education-south-africa Accessed 12/9/2024

[6] Desmond Tutu, 'Vol 1 The Truth and Reconciliation Commission of South Africa Report' (*Truth and Reconciliation Commission*, 29 October 1998) <https://www.justice.gov.za/trc/report/finalreport/Volume%201.pdf> Accessed 22/2/2024

adopted a transparent and open method where victims and perpetrators testified in public hearings, relating testimonies of individual recovery to reintegrate perpetrators into society.[7]

The TRC, at its inception, attempted to draw lessons from similar commissions seen in other countries by trying to alleviate some of the problems some of those commissions faced.[8] For example, a transparent method was used to determine the commission members, which started with its acceptance in May 1995. While in other commissions, the members were determined by the Heads of State, in South Africa, the members were selected with civil society participation. Thus, it was aimed to convince the public about the impartiality of the elected members. Different racial groups and people from diverse academic backgrounds were selected. Of the 17 members, seven women and 10 men comprised 7 lawyers, 4 clergymen, and other members working in medicine, psychiatry and non-governmental organisations. Nobel Peace Prize winner Archbishop Desmond Tutu, Archbishop of the Anglican Church, served as the Chairman of the Commission.[9]

The Commission was divided into three Committees to foster its mandate: The Human Rights Violation (HRV) Committee, saddled with the responsibility of investigating human rights abuses that occurred between 1960 and 1994; the Reparation and Rehabilitation (R&R) Committee, saddled with the responsibility of supporting victims to restore victims' dignity and promote rehabilitation and healing of survivors of violence. The R&R Committee achieved its mandate through a President's Fund funded by Parliament and private contributors. The Amnesty Committee, the third and probably most controversial committee of the TRC, considered applications for amnesty according to the provisions of the Amnesty Act. When a perpetrator was granted amnesty, it meant he was free from future prosecution, whether in the criminal court or in the civil court, for the particular act for which amnesty was granted.[10] The Committee received more than 7000 applications for amnesty. Of the over 7000 applications, 3031 were thrown out because they did not meet the conditions required for the grant of amnesty, and 841 applications were granted.[11]

One of the most important and, at the same time, the most controversial task of the TRC was to evaluate and decide on the applications of individuals who applied for amnesty for their political acts. On the other hand, it is also among the commission's duties to provide victims with a platform to share their stories openly with the public and determine the amount of compensation to restore their reputation and eliminate their grievances. The primary reason why the South African experience constitutes a significant turning point in the institutional development of truth commissions is undoubtedly the fact that the truth-finding process, which is attributed to reconciliation and healing roles, and the Truth and Reconciliation Commission at its centre are based on an alternative understanding of justice called restorative justice. Thus, for the first time, truth commissions should be defined within a normative framework, a moral superiority attributed to the trials aimed at restoring the victim, the perpetrator, and society rather than merely punishing the perpetrators of injustice.[12]

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[7] Patricia J Campbell, 'The Truth and Reconciliation Commission (TRC): Human Rights and State Transitions--The South Africa Model' [2000] 4(3) African Studies Quarterly 41 - 63

[8] *ibid*

[9] Desmond Tutu, note 6

[10] Truth & Reconciliation Commission, 'The Committees of the TRC', *Truth: The Road to Reconciliation*, https://www.justice.gov.za/trc/trccom.html. Accessed 2/9/2024

[11] James L Gibson and Amanda Gouws, 'Truth and Reconciliation in South Africa: Attributions of Blame and the Struggle over Apartheid' [1999] 93(3) American Political Science Review 501-517

[12] Padraig O'Malley, note 4

The TRC provided victims with a platform where they could share their stories with the general public to promote healing. For eighteen months, victims came forward, and South Africans heard their stories and, indeed, the whole world. The horrors that they lived during the days of apartheid were brought to the limelight. Perpetrators were also allowed to be heard regarding some of the atrocities they were accused of committing with the possibility of being granted amnesty and, in effect, immunity from further prosecutions.[13]

3. RESTORATIVE JUSTICE IN SOUTH AFRICAN TRC

Restorative Justice is a relatively new and innovative movement in the field of criminology[14] that utilises a problem-solving approach to crime involving the victim, perpetrator, and the community in an active relationship with statutory agencies[15]. Restorative justice primarily concerns itself with the needs/interests of the parties. It also expands the definition of stakeholders from merely the State/Government and the accused person to include others like the victim, the victim's relatives and even the society where the alleged crime was committed.[16] Restorative justice, however, in no way seeks to replace the existing legal system because even promoters of restorative justice recognise the fact that restorative justice may only be the best option in some circumstances. In addition, restorative justice is more than just the opposite of retributive justice.[17] Restorative justice seeks to expand the avenue for attaining justice within the existing legal system.

According to the Centre for Restorative Justice and Reconciliation, restorative justice is 'a theory of justice that emphasises repairing the harm caused by criminal behaviour. It is best accomplished when the parties meet cooperatively to decide how to do this. This can lead to transformation of people, relationships and communities.'[18] The focus of this dispute resolution is not merely to find the perpetrator guilty of the criminal act that harmed the victim; it also emphasises the mending of relationships between the perpetrator, the victim and the society at large. In addition, restorative justice also seeks to rehabilitate the offender and reintegrate him into society. Truth commissions are transitional justice mechanisms based on a restorative justice approach. The essence of restorative justice is the restoration and affirmation of the human and civil dignity of the victims. Even if the facts about past crimes are known, society's expectation of justice requires public and official recognition of the existence of those crimes.

Restorative justice prioritises the legitimate demands of victims and survivors; it aims at the social reintegration of perpetrators. Its primary purpose is to correct violations' consequences and restore relations between people. It engages victims, perpetrators and the community in pursuing justice that will support reconciliation and trust building. States and international organisations have echoed the desire to evolve from retributive justice to restorative justice. For example, since 1989, New Zealand has made restorative justice at the core of its juvenile justice system.[19] The United Nations recommends that 'the development of restorative justice policies and programmes for the

[13] *ibid*

[14] Centre for Justice & Reconciliation at Prison Fellowship International, 'What is Restorative Justice?' (May 2005) *Restorative Justice Briefing Paper* https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj%20brief.pdf Accessed 3/5/2024

[15]Tony F Marshall, 'Restorative Justice: An Overvie' (*Antoniocarsellaeu*, 1999) http://www.antoniocasella.eu/restorative/Marshall_1999-b.pdf Accessed 3/5/2024

[16] *ibid*

[17]*ibid*

[18] CJRPFI, note 14

[19] Howard Zehr and Ali Gohar, The little book of restorative justice (Good Books, Pennsylvania, USA 2003) 2

benefit of victims of relevant forms of discrimination is desirable and should be seriously considered.'[20]

The Truth and Reconciliation Commission of South Africa identified the need to mend the relationship between members of the various races that reside and are citizens to move the country forward. During the apartheid rule in South Africa, there was a clear class difference cut across the racial divide that guaranteed the superiority of white South Africans and the discrimination of other South Africans, especially black South Africans. The harm caused by decades of abuse cannot be overlooked if the country is to transition to democracy and move forward. The democratic government of Nelson Mandela identified from the onset that there could be no meaningful development in the country if they did not find ways to move past the hurt and suffering caused by the apartheid policy in government.

The TRC has been critiqued for some of its limitations. However, it has successfully given the South African people a platform from which the healing process can begin. Although it cannot be said that the healing has been complete in all spheres, the TRC has given the victims a voice by giving them a platform to tell their story, thereby allowing their healing to begin. Perpetrators of violence during the apartheid regime have also been allowed to mend their relationship with the victims and the society, but also notably, with themselves. Using the power of storytelling, perpetrators have let go of some of the guilt for their acts. The TRC has also granted amnesty to some of the perpetrators for the role they played during apartheid. Restorative justice is familiar to Africans and Africans. The South African TRC report acknowledges the role of *Ubuntu* in promoting restorative justice. It also reiterates the task of the Commission in 'restoring the human and civil dignity of victims'.[21]

So, *Ubuntu* played a central theme in the establishment of the TRC. Desmond Tutu used the *Ubuntu* approach based on people's needs and relationships with each other and his Christian background.[22] Its origin is based on traditional African culture, which highly values humanity. It is expressed in a social context in which people express their personality and dignity in their relationships with each other. The identity of the individual is shaped by respecting the identities of the other and collectively others. An essential feature of Ubuntu is its focus on restorative justice and reconciliation. The dominant theme is that another person's life is at least as valuable as one's own. Respect for the dignity of each person is an integral part of this concept. Cruelty, ruthlessness and degrading behaviour are the absence of Ubuntu. Although critics have questioned the link between Ubuntu and restorative justice[23], it remains a fact that it was central to the work of the TRC. Ubuntu is also featured in the constitution of post-apartheid South Africa. In the words of Desmond Tutu:

> *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*

[20] United nations, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Declaration and Programme of Action (United Nations Department of Public Information, New York 2002) 108 https://www.lawteacher.net/oscola-referencing/reference.php 28/5/2024

[21] Truth and Reconciliation Commission of South Africa report, Volume 1, Chapter 5, Concepts and Principles, page 125

[22] Ibawoh B. 'Beyond Retribution: Truth and Reconciliation in South Africa as Universal Paradigm for Restorative Transitional Justice', (2014) (2) (2) Covenant University Journal of Politics and International Affairs

[23] *ibid*

> *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 … 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.*[24]

In Christian B.N. Gade's article titled 'Restorative Justice and the South African Truth and Reconciliation Process' he came to the conclusion that the TRC only really started to pay attention to the term 'restorative justice' after April 1997, when the South African Law Commission published an Issue Paper on Restorative Justice. He did this by looking at how and when the term restorative justice appeared in the TRC hearings. According to the article,

> *Some Reflections on the Appearance of the Term 'Restorative Justice' in the Public TRC Hearings and the TRC Report RJ does not seem to have been an issue of much debate during the day-to-day proceedings of the TRC. As explained, my research shows that the term 'restorative justice' appeared only in three public TRC hearings, which is a tiny minority of the large number of hearings. It should also be noted that the term 'restorative justice' does not appear in the legal documents that form the background to the TRC. The Interim Constitution (Act 200 of 1993), which adjudicated that there should be amnesty after apartheid, does not contain the term 'restorative justice', and neither does the Promotion of National Unity and Reconciliation Act (No. 34 of 1995), which established the TRC and defined its mandate. Against this background, it may be surprising that the TRC Report depict the TRC as an institution that attempted to promote RJ. I have found no evidence that the TRC considered itself as an institution committed to RJ when it began to conduct public hearings in April 1996. As pointed out above, my hypothesis is that the TRC first really began to take notice of the term 'restorative justice' after the South African Law Commission had published Issue Paper 7 in April 1997. This publication was important in bringing RJ onto the legal agenda in South Africa. In fact, the term 'restorative justice' did not appear in any South African legal documents before this publication. Since publication of the issue paper, however, the term has appeared in 4 Acts, 27 judgements by High Courts, 15 judgements by the Constitutional Court, 8 judgements by the Supreme Court of Appeal, and one judgement each by the Equality Court and the Land Claims Court.3 The TRC Report does, as I have noted, refer to Issue Paper 7 as the background to its understanding of RJ, and I find it likely that it was this issue paper (maybe in combination with Dullah Omar's reference to the Law Commission's work when he testified to the TRC on 27 October 1997) that made the TRC aware that the idea of RJ could be used to explain its work. If this is true, then the TRC Report's*

[24] Desmond M. Tutu, *No Future Without Forgiveness* (Doubleday, 1997) 39

> *description of the TRC as an institution committed to RJ represents, to a considerable extent, a retrospective self-interpretation*[25]

We analyzed the South African TRC Report using the NVIVO software. In the analysis of the Report which consists of 7 Volumes and a total of 4554-page report, we find that there are only 16 references to Restorative Justice and only 13 references to Ubuntu. In a report consisting of 4554 pages, we can say that the terms 'Restorative Justice' and 'Ubuntu' have not been given enough importance. The report's main aim is to focus on restorative justice; however, with this analysis, we can say that it doesn't focus on many of these terms.

4. EDUCATION IN SOUTH AFRICA

While apartheid has affected every sphere of the South African State, we have decided in this article to focus on the effect it has had on the education sector and the need to improve the education sector to fully achieve restorative justice. According to Amnesty International, the education system in South Africa 'continues to be dogged by stark inequalities and chronic underperformance that have deep roots in the legacy of apartheid, but which are also not being effectively tackled by the current government.'[26] Sad as this may seem, almost 3 decades after the transition to democratic rule, education in South Africa continues to suffer the effects of the remnants of apartheid policy. In 2013, the South African government enacted the Minimum Norms and Standards for education facilities, setting a November 2016 target to ensure all schools had quality infrastructure such as electricity, access to sanitation and even standard buildings. Unfortunately, these promises have still not been met, and according to the Limpopo Education Department, it will take an estimated 14 years to replace all pit latrines in public schools. This clearly shows that the safety of the pupils is not of utmost importance to the government.[27]

It should be noted that the decay in the education sector is largely suffered by the low-income communities which are predominantly the black communities. In addition to the infrastructural decay suffered by most of the schools in the low-income areas, those schools also suffer over-crowding, and a significant number of the pupils lack transportation services thereby having to walk long distances in order to access education. Students are reported to walk up to 1 hour before getting to school.[28]

Despite these challenges, there has been remarkable progress in widening the access to education for all South African children since the end of apartheid. This is a hopeful development, yet a lot needs to be done in this sector to bridge the inequality gap. As Shenilla Mohamed, the Executive Director of Amnesty International has pointed out 'South Africa has one of the most unequal school systems in the world. Children in the top 200 schools achieve more distinctions in mathematics than children in the next 6,600 schools combined. The playing field must be levelled.'[29]

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[25] Christian B.N. Gad, Restorative Justice and the South African Truth and Reconciliation Process, https://pure.au.dk/portal/files/53264449/Restorative_Justice_and_the_South_African_Truth_and_Reconciliation_Process.pdf

[26] Shenilla Mohamed, 'South Africa: Broken and unequal education perpetuating poverty and inequality' (*Amnesty.org*, 11 February 2020) <https://www.amnesty.org/en/latest/news/2020/02/south-africa-broken-and-unequal-education-perpetuating-poverty-and-inequality/> Accessed 21/5/24

[27] *ibid*

[28] *ibid*

[29] Mohamed Shanilla, note 24

4.1 Bantu Education Law

It is important to examine the Bantu Education Law in order to understand the reason behind the inequality identified within the South African Education sector. The Bantu Education Act is an Apartheid South African law, enacted in 1953 which had effect from January 1, 1954[30]. The law was based on racial segregation and discrimination against the black and colored people in the country. Bantu Education Law was mainly designed to provide black South Africans education 'aimed at training the children for the manual labour and menial jobs that the government deemed suitable for those of their race, and it was explicitly intended to inculcate the idea that Black people were to accept being subservient to white South Africans'.[31] It produced uneducated black individuals that were equipped only with enough skills to be good servants of the white South African population.

According to Dr. Verwoerd the then Minister of Native Affairs (who was the figure central to the Bantu Education Act) in 1954:

> *More institutions for advanced education in urban areas are not desired. Deliberate attempts will be made to keep institutions for advanced education away from the urban environment and to establish them as far as possible in the Native reserves. It is the policy of my department that education would have its roots entirely in the Native areas and the Native environment and Native community. There Bantu education must be able to give itself complete expression and there it will perform its real service. The Bantu must be guided to serve his own community in all respects. There is no place for him in the European community above the level of certain forms of labor. Within his own community, however, all doors are open. For that reason it is of no avail for him to receive a training which has as its aim absorption in the European community, where he cannot be absorbed. Until now he has been subjected to a school system which drew him away from his own community and misled him by showing him the green pastures of European society in which he was not allowed to graze. This attitude is not only uneconomic because money is spent for an education which has no specific aim but it is also dishonest to continue it. It is abundantly clear that unplanned education creates many problems, disrupting the community life of the Bantu and endangering the community life of the Europeans.*[32]

Bantu Education was based on segregation and racial marginalization. The system emphasized the superiority of the white race over the blacks and sought to provide education that would ensure the continuation of that ideology. The fundamental tenet of curriculum development in schools in South Africa, according to Verwoerd's philosophy of education, would be that of development by internal growth. Majority of the black South Africans understood this to mean denying them access to modern professions and maintaining their inferior status. This response wasn't wholly inappropriate. Verwoerd believed that because white people had improved, they should be the ones to judge what was best for black people and what qualified as considerable advancement for them.[33]

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[30] Patricia Bauer, 'Bantu Education Act' (*Britannica*, 2 March 2018) <https://www.britannica.com/event/Bantu-Education-Act/additional-info#history> Accessed 10/5/2024

[31] *ibid*

[32] Christie, P., & Collins, C. (1982) Bantu Education: Apartheid Ideology or Labour Reproduction? *Comparative Education, 18*(1), 59-75. http://www.jstor.org/stable/3098501 Accessed 28/5/2024

[33] JJ Venter, HF Verwoerd (1999): Foundational Aspects of his Thought, Koers 64 (4): 415-442

Apartheid lasted for almost five decades in South Africa. The white minority, particularly the dominant Afrikaans community, strove to subjugate the natives and marginalize them in society during this time with the black population experiencing extreme oppression in every aspect of their existence. The comparatively low literacy level among black South Africans can be attributed to the Bantu Education Act of 1953, which established a system of education for the indigenous. The white elite directed native education with the intention of instilling a white supremacist mindset.[34]

In a survey of Afrikaners conducted by Insig magazine on July 1, 1989, it was found within the Afrikaans' school textbooks the following:

- •Legal authority was not to be questioned;
- •Whites were superior, while blacks were inferior;
- •The Afrikaner had a special relationship with God;
- •South Africa belonged to the Afrikaners;
- •South Africa was an agricultural country, and the Afrikaner was a farmer;
- •The Afrikaner was independent, isolated, physically strong and bound to tradition;
- •The Afrikaner was ingenious regarding military matters;
- •The Afrikaner was threatened.[35]

In a statement made by Nelson Mandela from the dock at the Pretoria Supreme Court on 20th April 1964, he said:

> *There is compulsory education for all white children at virtually no cost to their parents, be they rich or poor. Similar facilities are not provided for the African children, though there are some who receive such assistance. African children, however, generally have to pay more for their schooling than whites. According to figures quoted by the South African Institute of Race Relations in its 1963 journal, approximately 40 per cent of African children in the age group between seven to fourteen do not attend school. For those who do attend school, the standards are vastly different from those afforded to white children. In 1960-61 the per capita Government spending on African students at State-aided schools was estimated at R12.46. In the same years, the per capita spending on white children in the Cape Province (which are the only figures available to me) was R144.57. Although there are no figures available to me, it can be stated, without doubt, that the white children on whom R144.57 per head was being spent all came from wealthier homes than African children on whom R12.46 per head was being spent.*
>
> *The quality of education is also different. According to the Bantu Educational Journal, only 5,660 African children in the whole of South Africa passed their*

[34] Gerard, Adrienne, "Apartheid Transition: Assessing a Black Township Education in South Africa's Disparate Social System" [2011]. Honors Projects Overview. 47. https://digitalcommons.ric.edu/honors_projects/47 Accessed 15/6/2024

[35] IvanR Wills, 'The History of Bantu Education: 1948 - 1994' [March, 2011] 1(1) PhD Thesis submitted to the Australian Catholic University https://acuresearchbank.acu.edu.au/download/f6bb666ae24a99af27caf82f697d4328b132299cec03800214325a88e393c081/2003673/Wills_2011_The_history_of_Bantu_education.pdf Accessed 5/6/2024

> *Junior Certificate in 1962, and in that year only 362 passed matric. This is presumably consistent with the policy of Bantu education about which the present Prime Minister said, during the debate on the Bantu Education Bill in 1953.*[36]

A range of policies facilitated this discriminatory system, including the 1953 Bantu Education Act, which enforced racially segregated educational facilities, and the 1959 Extension of University Education Act, which banned universities from accepting black students unless special permission was obtained which meant that such students could only attend white universities when "their" universities were overcrowded.[37] In addition, we have seen that the inequality in the education sector continued even during the post-apartheid era. Although apartheid and Bantu Education Law come to an end, today there is still no equality of opportunity in education between blacks and whites. According to the 2016 Education Series document, 'the science fields were largely dominated by whites with 48.4% white graduates in life sciences, 49.6% in physical sciences and 47% in mathematics and statistics. Whites have 3,678 times greater odds of high levels of education than black Africans.'[38]

4.2 Right to Education

Human rights refer to those rights that are available to a person by virtue of his/her humanity. The only qualification necessary for the guarantee of these rights is that a person is born human. Article 1 of the Universal Declaration of Human Rights (UDHR) provides that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'[39] Article 26(1) of the UDHR goes further to state that 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages…'[40] This Article provides in clear terms that education indeed is a human right that is recognized and protected by the instrument. Article 26(2) goes further to qualify the kind of education that is to be provided by virtue of this provision. It states that 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.[41] Generally, the right to education, just like the right to life, right to own property and right to vote and be voted for are right that are recognized under the UDHR, however, the right to education unlike the aforementioned rights is not a right that is guaranteed under the municipal laws of many countries.

Today, when human rights are mentioned, it is not possible to ignore the right to education. Education affects not only the individual, but also society in terms of system and content. It determines to a large extent the way a society will develop. Education, especially compulsory basic education, is of great importance for raising people who understand human rights and democracy and in fact will provide them with survival skills.

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[36] On Freedom "I Am Prepared to Die" Nelson Mandela's Statement from the Dock at the Opening of the Defense Case in the Rivonia Trial, Pretoria Supreme Court, 20 April 1964. Available at https://www.un.org/en/events/mandeladay /court_statement_1964.shtml, Accessed 10/11/2024

[37] Shenilla Mohamed, note 24

[38] Education Series Volume III: Educational Enrolment and Achievement, 2016 / Statistics South Africa Report 92-01-03, p. Xiii

[39] Universal Declaration of Human Rights [1948] 217A/1

[40] *ibid*

[41] i*bid*

5. CONCLUSION

We have seen that South Africa has not succeeded in completely eliminating the effects of decades of discrimination, racial division, conflict, crime, heavy human rights violations that characterized the apartheid regime with the establishment of the TRC, despite its good intentions. Generally, the TRC succeeded in publicizing the gross human rights violations in the apartheid period to the world. It has even been cited as an exemplary model for other countries coming out of conflict. However, the Commission has not been as successful as was hoped for in promoting healing and closing the gap created by marginalization. As we have seen in this paper some of the victims of apartheid have still not been able to break free from the effects of apartheid and continue to suffer poverty and even unequal opportunity to State resources. Despite this fact, we still maintain that the TRC provided a platform for the commencement of healing for a country that has suffered decades of apartheid rule.

As a result of the apartheid Bantu Education Law, blacks and whites from the same generation have not enjoyed the same education opportunities. This has led to social injustice, deprivation of rights, poverty, among others. We see that this trauma which has been handed down from generation to generation persists. According to the Education White Paper 3 of 1997- A Program for Higher Education Transformation said 'if higher education is to contribute to the reconstruction and development of South Africa and existing centers of excellence maintained, the inequities, imbalances and distortions that derive from its past and present structure must be addressed, and higher education transformed to meet the challenges of a new non-racial, non-sexist and democratic society committed to equity, justice and a better life for all.'[42]

In order to heal the trauma caused by apartheid every South African should have access to equal opportunities. Socio-economic factors and race should not play a role in determining who qualifies for quality education. Equal funding should be provided for schools within the upper-class areas and those within the lower-class areas. Where necessary, those areas that have suffered marginalization should be given priority with regards funding in order to ensure they are able to meet up with their counterparts. Also, the continuing education of teachers is a condition necessary if the education sector is to truly recover from decades of policies geared towards the degradation of the blacks.

Finally, for emphasis we would like to add that although the South African TRC was not as successful as was hoped for and despite criticisms it has faced, we still maintain that it has helped in providing a platform for the healing of a deeply scared country.

[42] Straatskoerant, *Education White Paper 3* (South African National Commission for Higher Education, 2024) <https://www.justice.gov.za/commissions/FeesHET/docs/1997-WhitePaper-HE-Tranformation.pdf> Acccessed 15/10/2024