**South Africa Template**

**Model Name**:

Truth and Reconciliation Commission (TRC) – As authorized by the National Unity and Reconciliation Act

**Country**:

South Africa

**Time Period**:

December 1995 – 2002 (originally set to end in 1998, but was extended) (USIP)

**Background:**

**USIP**

* *“Apartheid was a system of legally enforced racial segregation in South Africa between 1948 and 1990. The National Party that controlled the government formalized and expanded segregationist policies that had existed less formally under colonial rule. Institutionalized racism stripped South African blacks of their civil and political rights and instituted segregated education, health care, and all other public services, only providing inferior standards for blacks and other non-Afrikaans. Internal resistance was met with police brutality, administrative detention, torture, and limitations on freedom of expression. Opposition groups, such as the African National Congress (ANC) and other movements, were banned and were violently repressed.*
* *After a series of international sanctions – and the end of the Cold War – a mostly peaceful transition from the Apartheid system started with a series of negotiations between the government party and the ANC between 1990 and 1993. Democratic elections were held in 1994, and an interim constitution was passed. The Truth and Reconciliation Commission was set up by the newly elected parliament and was endorsed by opposition leader Nelson Mandela and other prominent South African figures.”*

**Asmal**

* 1948 – National Party election win “inaugurated a period of consolidation and caution as apartheid’s whites-only electoral majority was stabilized” (9)
* ‘50s – civic agitation against apartheid -> led to banning of liberation movements (ushered in period of underground activity, starting 1960)
* 1976 – student uprising in Soweto
* 1980s – growing agitation
  + United Democratic Movement – aim to make South Africa ‘ungovernable’
  + Growing economic sanctions from abroad – impact on business leaders
  + 1989 – F. W. de Klerk assumed presidency, recognized Botha’s aggressive use of force not working; began move towards transition (still with minimal black control of government in mind)
* 1990s
  + Release of Mandela
  + Increase in National Party’s use of force through hit squads; innocent civilians killed; trying to frame conflict as black-against-black violence
  + Bloodiest period of apartheid between 1990-94
  + 1994 – ANC election victory (63% majority vote)

**Llewellyn**

* “The system of apartheid introduced by the National Party (NP) government in 1948 was maintained and perpetuated by acts of manipulation, coercion, and violence. The result was a country premised on lies, secrecy, and the abuse of basic human rights. South Africa endured decades of war waged for liberation from this racial oppression. Apartheid was an all-pervasive system seemingly secure and unstoppable” (365)

**Insurgency Description**

*Summarize the group that was intended to be reintegrated - e.g. name, size, location, religious influences, influential texts, speeches*

* No insurgency group to be specifically reintegrated – method applicable to all members of South African society; aim for national healing

**Civilian Agency Involvement**

*Which local, state, and federal agencies were involved in the model? How did social services, healthcare services, police, etc. participate?*

* African National Congress (ANC) – “acknowledged as the legitimate representative of apartheid’s victims” (Borer, 1093)
* National Party – perpetrators of apartheid
* Security Forces
* South African Constitutional Court – passed constitutionality of National Unity and Reconciliation Act (gave authority for TRC)

**Gibson**

* “The ANC traded Amnesty for Peace; the leaders of the apartheid government accepted freedom from persecution for human rights abuses in exchange for power sharing” (541)

**Llewellyn**

* Program Structure
  + Human Rights Violations (HRV) Committee
    - “responsible for conferring victim status on those individuals who qualified under the Act and came forward to the Commission to make a statement” (367)
    - need victim status to receive reparations
  + Amnesty Committee
    - “responsible for fulfilling the imperative contained in the interim Constitution that ‘amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of the conflicts of the past’” (367)
  + Reparation and Rehabilitation (R&R) Committee
    - “responsible for making recommendations to the government regarding the provision of reparations and rehabilitation of victims” (368)
    - recommendations on prevention of future abuses

**Cornell**

* “The TRC operated outside of South Africa’s domestic legal system, but the Amnesty Committee’s amnesty decisions were binding on domestic courts”
* “The commission had powers of subpoena, search, and seizure enforced by domestic law enforcement officials”

**Military Involvement**

*What was the role of the military in implementing the model?*

N/A

\*Look into military reconstruction? – Asmal article alludes to this

**International Agency/Expert Involvement**

*How - if at all - did your model, consciously or not, build upon previous models? How did they solicit the input of other governments, the academic community, and/or the UN?*

**NGO Involvement**

*How - if at all - did your model leverage assistance from NGOs?*

**Impetus for Reintegration**

*What motivated the creation of a reintegration program? Surrendering soldiers, international pressure, conflict resolution, etc..*

**Gibson**

* “The creation of the Truth and Reconciliation Commission, with the power to grant amnesty, was the price the liberation forces had to pay in order to secure a peaceful transition to a majority rule” (541)

**Gibson 2**

* included broad objectives such as “creating a collective memory for the society, establishing and nurturing a culture of human rights in South Africa, transforming the society, and enhancing reconciliation, in addition to granting amnesty to those admitting to involvement in gross human rights violations” (412-413)

**Asmal**

* “although the ANC rejected all ideas of a blanket amnesty, part of the rationale for setting up the Truth and Reconciliation Commission (TRC) was the need to prevent further alienation of right-wing elements” (11)
* “the crucial requirement of the South African transition (was) the need to reconstruct society and to abolish the horrendous inequalities which were produced by the apartheid system” (11)

**Llewellyn**

* Despite election of government of “national unity” in 1994, needed more to “make unity a reality”. “The transition to a past marred by human rights abuses to one based on the principles of democracy and respect for human rights could not be had simply by a transition in government” (366)

**Criteria for Reintegration / Reconciliation / Program Involvement**

*How were insurgents determined to be eligible (or ineligible) for reintegration? Did they have to give up their arms voluntarily (as opposed to being captured by force)? Were people who committed certain types of acts or crimes excluded from reconciliation programs?*

**Asmal**

* “while (the TRC) conferred amnesty in respect of criminal and civil liability for human rights abuses, this was subject to various important criteria, notably requirements that there be full disclosure of the facts surrounding the abuse; that the abuse be associated with a political objective (as opposed to for instance to motivation for personal gain); and that the abuse was proportionate to the political goal that it sought to advance” (1-2)

**Llewellyn**

* “*Individuals* had to apply for amnesty for *specific acts*. Such acts must have been committed in pursuit of a political objective; must have occurred before the cut-off date provided for in the Act; application must have been made before the deadline; and individuals were required to offer full disclosure to the commission” (367)

**Cornell**

* “A successful application for amnesty had to meet the following criteria:
  + A violation of human rights must have occurred. Less serious crimes would not be forgiven.
  + The act had to occur within a specified time period (1960-1994)
  + The violation had to be ‘associated with a political objective.’ As part of this criterion, the applicant had to be an affiliate of one of the political parties to the conflict, e.g. NP or ANC. To determine whether the act was political, the Committee could consider the motive, objective, whether it was directed against the state or an individual, whether it was committed on behalf of a political organization, and the proportional relationship between the act and the political objective
  + The applicant had to admit fault (possibly with an excuse/justification like self defense)
  + The applicant had to make a ‘full disclosure of the relevant facts’”

**Prosecution/Punitive Component**

*Were insurgents granted any sort of amnesty - i.e. any sort of protection from prosecution conditional on completing the program? Was there any transitional justice component? To what extent did your model incorporate punishment as part of the reconciliation program?*

**Mamdani**

* “First, there would be no blanket amnesty. Amnesty would be conditional. It would not be a group amnesty. Every perpetrator would have to be identified individually, and would have to own up to his or her guilt – the truth – before receiving amnesty from legal prosecution. Second, any victim who is so acknowledged would give up the right to prosecute perpetrators in courts of law” (33)
* Focus on restorative justice (rather than criminal justice)
* Acknowledgement of crimes follow by reparations
* “individual amnesty for the perpetrator, truth for the society, and acknowledgement and reparations for the victim” (33)

**Gibson**

* distribution justice – victims who came before TRC expected some form of “compensation for their injuries” (541)
* amnesty to “acts motivated by political objectives” (541)
* “those whose actions were committed for personal gain or out of ‘personal malice, ill will or spite’ were not eligible for amnesty” (541)

**Gibson 2**

* truth telling as a means for reconciliation (410)
* “truth process facilitated reconciliation because it was able to apportion blame to all sides” (411)

**Borer**

* TRC decriminalized “the actions of the majority of those who opposed the former state” (1095)
  + People who had been sentenced for arson, public violence, attempted murder released

**USIP**

* Covered any and all crimes committed during the period 1960-1994 including abductions, torture, killings
* Included crimes committed by both the state and liberation movements
* “The TRC was empowered to grant amnesty to perpetrators who confessed their crimes truthfully and completely to the commission”
* **Structure**
  + 17 commissioners – 9 men, 8 women
  + Chaired by Archbishop Desomond Tutu
  + Supported by ~300 staff
  + Divided into 3 committees:
    - Human Rights Violations Committee
    - Amnesty Committee
    - Reparations and Rehabilitation Committee
  + Public hearings broadcast on tv

**ICTJ**

* “Former President Thabo Mbeki’s presidential pardons process—publicly described as a means for resolving “the unfinished business of the TRC”—conducted secret proceedings which excluded victim representation.”

**Asmal**

* “while the commission itself was not a prosecutorial body, the door was left open for prosecutions to be brought in respect of all acts for which no amnesty had been sought or where, having been sought, it was denied” (11)
* feeling that “criminal trials will not restore rights to those who were deprived in the past” (12)
* “we argued that transitional justice was not a mere matter of criminal trials; that it had to be part of a systematic process of: acknowledging the illegitimacy of apartheid; acknowledging the need for corrective action to under apartheid’s racially skewed socio-economic legacy; establishing equality before the law, which meant reforming the criminal and other justice systems, far from placing them in the driver’s seat of transition; placing property rights on a legitimate footing, which means redistribution; facing up the collective responsibility of the apartheid privileged, the majority of whom put their whites-only ballots behind the system for four decades; and acknowledging the claims of the regional and international communities, including the prevailing norms of international law” (12)
* “We also realized that over-reliance on trials would be a wasteful diversion of administrative and political resources; the trials would traumatise the country and derail redistribution of power and resources” (23-24)
* “Refused to grant amnesty without fact-finding” (24)

**Cornell**

* As a result of amnesty, “any pending legal proceedings were terminated and those serving a sentence for a forgiven act were immediately released. Any criminal record of the offense was also expunged”
* “amnesty afforded transactional immunity, unless the Committee later discovered that the applicant had failed to make full disclosure”
* names of those granted amnesty made public

\* Look into criminal trials that did take place (trial of P.W. Botha; Magnus Malan; Eugene de Kock)

**Community Engagement**

*Were community attitudes assessed, engaged, families involved, and more?*

* Focus on victims’ voices

**Reconciliation, Social & Political Elements**

*Were there efforts to reconcile combatants with their victims or communities? What aspects were included for social reintegration?*

**\*Impetus of the entire program (again see notes under prosecution/punitive component)**

**Gibson 2:**

* Reconciliation consisted of 4 sub-dimensions:
  + “1) Interracial reconciliation (rejection of interracial stereoytypes or prejudice)
  + 2) Political tolerance (willingness to allow one’s political foes full rights of political contestation)
  + 3) Support for human rights principles (and, in particular, the rule of law)
  + 4) The extension of legitimacy to the political institutions of the new South Africa (Parliament and Constitutional Court)”

**Incentives**

*Were there incentives for participation? If so, what were the incentives and how did they affect participation and/or reintegration?*

* Amnesty and truth telling (see notes under prosecution/punitive component)

**Follow-up / Outcomes**

*Does the program have mechanisms for monitoring following reintegration? How is failed reintegration dealt with?*

**USIP**

* TRC report embraced by government (Mandela) – ANC had some serious reservations (particularly regarding findings of ANC members as perpetrators)
* 2006 – body created to monitor implementation (particularly reparations)

**Cost Estimate**

*How much did the program cost - rough estimate in inflation-adjusted US$ per year, if possible*

* “the clear conclusion of the research is that the truth and reconciliation process was worth its considerable price because it contributed positively to the initiation of democratic reform in South Africa” (Gibson 2, 411)

**USIP**

* TRC had annual budget of USD$18 million
* **reparations**
  + “the commission proposed that each victim or family should receive approximately $3,500 USD each for six years”
  + long delay in payment, amounts were far less than they were originally intended to be
  + only victims who testified could receive reparations

**Cornell**

* Annual cost ($18 mil) funded by taxpayers and international donors
* Reparations to equal $640 million total – equaling 0.25% of annual GDP
* Ended up only doing a one-time payment to 21,000 victims, lower amount than recommended

**Financing**

*How did the country in question pay for the reintegration program? Government funds exclusively - or did they seek financing from the international community or NGOs?*

**ICTJ – Reparations**

* reparations to be funded through “the collection of a ‘wealth tax’ to fund reparations from industries that benefited from apartheid” – was never actually implemented
* “Instead the government established a reparations fund with money from the State and from donors; using this fund, it paid a lump sum of R30,000 each to about 23,000 persons who registered with the TRC as ‘victims’. It has also provided around R800,000 in reburial expenses to 47 families of disappeared persons whose remains were found and reburied.”
* As of 2013 – reparations fund at about 1 billion Rand
* “Victims and survivors have criticized both policies, and have argued that medical and higher education assistance should be given as well to around 30,000 more survivors who, for various reasons, were not able to register with the TRC.”
* “Various examples of symbolic reparations have been initiated since the end of the TRC by both State institutions and non-government organizations, including freedom parks, museums, and the naming and renaming of public places.”

**Results/Metrics**

*Did the gov’t or any independent researchers publish statistics or data on the consequences/impact of the project?*

**Gibson**

* “The TRC received roughly 20,000 statements from victims and their families and approximately 7,000 applications for amnesty” (542)
* “As of November 2000, the TRC had granted 849 amnesties, but rejected 5,392 applications. The most common reason for denying an application is that no political motive was attached to the action for which amnesty was sought” (542)

**Borer**

* no group escaped without blame for actions (including ANC) (1093) -> prompting outrage from ANC

**USIP**

* “the TRC took the testimonies of approximately 21,000 victims; and 2,000 of them appeared at public hearings. The commission received 7,112 amnesty applications.”
* Records were systematically destroyed between 1990-94, detracting from potential accountability

**Lessons Learned**

*Did it work? How could we learn from such models?*

**Mamdani**

* TRC “individualized” the victims – rather than seeing apartheid as a an by the state against *communities*, saw it as an act by the state against *individuals* (33-34) – only individual victims acknowledged
* Failure to address the “customary” regime – focus only on the “civil” regime
* “in the absence of a full acknowledgment of victims of apartheid, their could not be complete identification of its perpetrators” (34)

**Gibson**

* Critiques over failures to compensate victims (542)

**Gibson 2**

* “most compelling implication to follow from this analysis, if true, is that were a truth and reconciliation process established in a country without the requisite supportive culture and institutuions, that process would likely fail since the root cause of reconciliation lies in the culture and institutions of the country, not in the truth and reconciliation process itself” (411)

**ICTJ**

* “Amendments to the National Prosecuting Authority’s Prosecution Policy provided for a “back-door amnesty” that effectively granted impunity for apartheid-era perpetrators who had not applied for the TRC’s amnesty.”

**Asmal**

* “Only those who feared criminal prosecution under the old apartheid laws needed to apply for amnesty, the ordinary daily consequences of apartheid, which were not criminal under the old laws, did not fall within the drama of the amnesty hearings, even if they did fall within the proper scope of the legislation” (18)

**Llewellyn**

* criticisms that the TRC focused too much on truth and not reconciliation

**Bibliography**

*Make sure to include the sources you researched as part of your report!*

* “Background: Facing Apartheid’s Legacy,” International Center for Transitional Justice, <https://www.ictj.org/our-work/regions-and-countries/south-africa>
* “South African Truth Commission,” Legal Information Institute, Cornell University, <https://www.law.cornell.edu/wex/south_african_truth_commission>
* “Truth Commission: South Africa,” United States Institute of Peace, <http://www.usip.org/publications/truth-commission-south-africa>
* Mahmood Mamdani, “Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC),” *Project Muse*
* James L. Gibson, “Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa,” *American Journal of Political Science*
* James L. Gibson, “The Contributions of Truth to Reconciliation: Lessons from South Africa,” *Journal of Conflict Resolution*
* Tristan Anne Borer, “A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa,” *Project Muse*
* Jennifer T. Llewellyn and Robert Howse, “ Institutions for Restorative Justice: The South African Truth and Reconciliation Commission,” *The University of Toronto Law Journal*

**Other**

* CODESA 1 & 2
* National Unity and Reconciliation Act

**South African Context:**

* “In South Africa, in contrast to other nations emerging from a tyrannical past (e.g. Argentina and Uganda), the *ancien regime* was not defeated,” (Gibson 541)