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When is the conflict over? Truth, acknowledgement and transitional justice in South Africa and Northern Ireland.

Paper for presentation at research workshop 'Senses of right and wrong: Judicial settlements, truth commissions, international tribunals and the politics of popular justice in the aftermath of collective violence' – Danish Institute for International Studies, Copenhagen, 15-16 December 2003.

Abstract

In this paper, I explore the concept of transitional justice through a comparison between South Africa and Northern Ireland. Empirically, the focus is on the period of transition in each country, after the suspension of armed struggle in each case, in terms of the Pretoria Minute of August 1990 and the Good Friday Agreement of April 1998 respectively. Each period is examined and compared with relation to the following themes: Self-defence/community defence; policing, community policing and social order; territorial control and local power; weapons control, military discipline and demilitarization. Conceptually, the focus is on accountability for violations committed during such transition periods; and in the post-transition period, how transitional justice mechanisms deal with such violations; the legitimacy of the justice system during and after the transition; and community policing initiatives during the transition.

The difficulty of establishing a consensual truth about violations committed during transition periods does not detract from two important processes which transitional justice mechanisms attempt to address: the acknowledgement of responsibility for such violations by those who perpetrated them; and the holding to account of the perpetrators. The process of acknowledgement is integrally linked to the unveiling and establishment of the truth about the past; while the process of accountability can take a variety of forms, from conditional amnesty and full public disclosure, to community-based processes of reconciliation and restorative justice, to legal prosecution and punitive justice. It is concluded that whatever the nature of these processes, their importance in enabling societies which have been torn apart by violent conflict, to come to terms with their past, cannot be underestimated.

Introduction

Let me begin by painting a scenario for you. A violent civil conflict has been going on for three or four decades. A significant proportion of the population do not view the state as legitimate. Another section of the population feel extremely threatened by the prospect of radical change. Armed groups engage in bombings and attacks on security forces, which respond by using draconian measures to contain resistance. There are periodic outbreaks of rioting, sectarian violence and civil unrest. At last, the state and the paramilitaries agree to a ceasefire. Ordinary people breathe a sigh of relief; society begins to return to normal. Political prisoners are released and come home to their families. There are no more bombs in public places. There are

political institutions created which involve power-sharing between the old adversaries. There is talk of reconciliation, there is talk of a new human-rights based culture.

And then... violence begins to escalate. And this is strange, because the paramilitaries are claiming to be standing by their ceasefire. They are not ready yet to give up their guns, to give up the possibility of a return to armed struggle, as the political settlement is not yet complete. Yet, they are not engaging in military operations. Two, three years into the negotiation process, the ceasefire is still in place, and yet sectarian violence escalates, communities become increasingly polarised, and human rights are violated daily. While at international level there is a feeling of hope, the reality for most citizens is different. Conflict becomes localised, territorial, with barriers being raised rather than lowered. There is no freedom. In this context of a rising tide of violence and fear, communities demand that the paramilitaries protect them. When the paramilitaries claim they are on ceasefire, the communities demand weapons to defend themselves against 'the enemy'. The security forces are perceived as either partisan, or deliberately helpless, and are generally still not considered legitimate by many people.

I am writing here not about Northern Ireland, but about South Africa, in the period 1990 to 1994. Yet, it could easily have been written about the post-1998 situation in Belfast. During the three months I spent in Belfast, from September to December 2001, the political mood swung wildly from hope to despair and back again. Violence escalated and abated, then escalated again; communities became increasingly polarised, commitments to decommissioning of arms were been made and withdrawn, and the political settlement fell apart and had to be pieced back together a number of times.

The questions that I was trying to answer both in Northern Ireland and in South Africa in the transition period were as follows:

What is (or was) the relationship between community self-defence and the perceived need for weapons, and decommissioning of weapons, by armed groups?

How can armed groups/non-state actors be held to account for human rights violations, particularly for acts committed in periods of transition/periods of ceasefire?

I went to Northern Ireland with a certain hypothesis about the importance of the control of firearms during the transition. My assumptions about decommissioning were not related to the 'high-level' negotiations about the monitoring and sealing of weapons dumps, how technically one ascertains whether arms are 'beyond use', or whether the IRA and other groups were abiding by their agreements or not. Instead, I was interested in how 'ordinary people' in highly polarised, partisan communities relate to the presence of guns, or to their withdrawal; how do activists 'on the ground' implement a ceasefire, or respond to demands for protection or defence, from 'their

people'? For this is how the issue is articulated, in Belfast as well as in Thokoza.

In one important respect my hypothesis was proven false for the NI situation. In other respects, there are valid points of comparison and possible ways in which people in working-class communities in NI can learn from the mistakes of working-class communities in SA. In addition, I was drawn to explore a number of other issues around which there are interesting comparisons to be made – in particular relating to questions of transitional justice, policing and accountability. These are issues of relevance to all societies in the process of moving away from violent conflict, and to post-conflict societies dealing with the trauma of the recent past.

Holding armed groups to account

In relation to the thorny question of how armed groups, or non-state actors, can be held accountable for human rights violations, comparative studies have shown that there are certain factors which make it easier to do so. The ICHRP project, 'Ends and Means: Holding armed groups to account' found that when armed groups are controlled by political parties, have a clear command structure, a high level of discipline, and good control over their weapons, it is easier to hold them to account. On the other hand, armed groups which are disparate, territorially based and controlled by local warlords are much more difficult to hold to account.

It can be argued that both Umkhonto we Sizwe (referred to as MK), and the Provisional IRA, fell for the most part into the former category of armed groups. There are some important differences between the two: the ANC, as the primary liberation movement in South Africa, was essentially a political organisation which controlled a military wing for a certain part of its history - thirty years of a ninety-year history to date. The IRA was first and foremost a military organisation, with Sinn Fein as the political expression of the republican movement only recently becoming more significant. Secondly, the ANC and MK enjoyed - and continue to enjoy - the support of the overwhelming majority of the population in South Africa; this cannot be said for the IRA or Sinn Fein. But despite these differences, the similarities in how the paramilitaries - or armed wings - operated and in particular how they saw themselves; their culture, their methods of operation and training, their ideology - makes this an interesting comparison. Generally, both armed groups have been relatively disciplined, centralised, highly secretive, highly motivated, and driven by political commitment. But more relevant to this study, and what will be explored below, is how both paramilitaries operated within local urban communities within the framework of 'self-defence'.

In South Africa, the situation of MK changed dramatically after 1990, after three decades of armed struggle, in an early point in the negotiation process. In terms of the Pretoria Minute of August 1990, the ANC agreed to a suspension of all armed operations - in fact, a ceasefire. In this situation, the cessation of military actions which were commanded from the 'top' went hand in hand with a dispersal of weapons to local groups which were not under

clear military discipline, and who then engaged in local sectarian violence. It is the nature of these acts, committed during a period of ceasefire, and how the perpetrators of such acts can be held to account, that I am examining now.

Adrian Guelke and others have rightly criticised the South African Truth and Reconciliation Commission (TRC) for failing to deal adequately with the violence that ravaged South African townships in the early 1990s. It is one of the great tragedies of the South African liberation struggle that more people died in political violence during the transition period – after the ANC had suspended armed struggle – than in the whole three decades of armed conflict. While the threat of race war was averted by the talented negotiators of the National Party and the ANC, the suffering of the 'second phase' of the liberation war was greater than that of the previous decades. Greater not only in the numbers who died, but in the confusion of that conflict: almost all of the 20 000 who died were black people, killed in their own communities by 'the other side.'

Thousands of those who applied for amnesty to the South African TRC were perpetrators of crimes in this period - often members of self-defence units (ANC) or self-protection units (IFP), engaged in localised, territorial, bitter violent conflict within or between communities. Thus while the ceasefire 'held' for the most part, in the sense that there were few attacks on state security forces (or few which were acknowledged by MK command structures as being under their command), there was a dramatic escalation of violence 'on the ground'. There were revenge attacks by one community on another; killing of suspected informers or dissidents; killing or brutalising of those considered to be 'anti-social elements' within communities. Anyone familiar with the 'conflict zones' of Northern Ireland will understand the similar dynamics at play in that context.

The rhetoric of communities and political players, including liberation movements, in this conflict was remarkably similar to that being used in NI at present. The state is not considered legitimate by many; the police are either seen as openly partisan, or as deliberately ineffectual, in acting against those who are perpetrating violence. In this context, 'the people' demand that 'the people's army' protect them, calling on the historic right to self-defence. The paramilitaries argue that their 'guns are silent' and that they are not engaging in acts of warfare, military attacks on the state. Yet they are using weapons both in sectarian conflict between communities, and in internal disputes, feuds or policing of their own communities.

In South Africa, during the period of ceasefire (August 1990 – April 1994), the following types of human rights violations took place:

- the killing of civilians of other race groups by APLA, the armed wing of the PAC, and by various white right-wing extremist groups. The number of people who died in such racially-motivated violence was remarkably small, however.
- The killing of dissidents or those considered 'traitors' or 'informers' by MK members or other liberation movement structures

- The killing of homeland security force members, local warlords of IFP, or Ciskei headmen
- The killing of the 'enemy' in sectarian, territorial violence by SDUs of ANC and SPUs of IFP
- The killing of members of other parties in feuding between liberation movements, eg ANC and PAC
- The killing of criminal gang members by SDUs and the brutal punishment of anti-social offenders by Anti-Crime Committees in ANC controlled townships

Many perpetrators of such acts subsequently applied to the TRC for amnesty, in cases where they had been apprehended or imprisoned for crimes. They claimed they were political acts, perpetrated in the name of the 'struggle', even if outside the military strategy or policy of their organisations at the time.

The parallels with Northern Ireland are clear. It may be helpful to explore some of the issues raised in a little more depth.

Self-defence and community defence

We cannot just sit and fold our arms while they continue to kill us.

The people must now defend themselves.

Those who were in the armed wing of the political movement,

Who came back when amnesty was declared and the armed struggle was suspended,

Must help our communities to form defence units.

Our people shall not die in vain.

Every death shall be avenged!

Zakes Mda, *Ways of Dying*. South Africa, 1995.

This was the rhetoric of self-defence, used by the ANC to justify its establishment of SDUs. In a pamphlet entitled 'For the Sake of Our Lives', the ANC responded to the initial wave of attacks on urban communities in late 1990 by arming and training local self-defence groups:

1.5 Self-defence structures need, by definition, to be para-military. They differ from all the other forms of organisations referred to, including street committees.

They must be tightly structured to repulse aggression and ensure law and order, they need a specific command and control system; their members must be trained and have a high degree of discipline.

1.6 At present, in the light of the Groote Schuur and Pretoria Minutes, Umkhonto we Sizwe (MK) alone cannot undertake the task of our people's defence, although this is a right we need to forcefully demand and struggle for.

The August 6 cease-fire does not neutralise MK. It has an important role to play. MK cadres, particularly ex-prisoners and those due to return from exile, must play a leading and active role in the establishment of the defence.

1.7 As we proceed to establish defence units so we must raise the demand for the right of self-protection.

The ANC argued later to the TRC that as they had ceased military operations under the terms of the Pretoria minute, any acts perpetrated by these SDUs were not under their control. This posed a challenge to the amnesty

committee of the TRC, which had to assess each case on its merits, in order to ascertain whether the perpetrators could be considered to have had a political motive for their actions.

It has been argued that one of the reasons for the Provisional IRA's re-emergence as a significant force in the 1970s was its response to the then-existing situation as 'necessary defenders' of the people. Like MK, the IRA was (and is) seen by republican communities as a symbol of defiance against an oppressive regime, engendering self-respect, hope and pride. As in South Africa, the actions of the security forces - in using excessive force in riot control, in torturing activists, in employing covert units to assassinate opponents - were the 'best recruiting agent' for the oppositional paramilitaries.¹ MK's ranks swelled after 1976, when protesting and rioting school children were shot dead by the hundred, just as the Provos gained many recruits after the Bloody Sunday massacre of 1972. Yet, as English has argued, the PIRA was not really very effective in defending its people; between 1969 and 1972, 171 Catholic civilians were killed by loyalists in Northern Ireland. Similarly, in South Africa, the rate of attrition of MK members who managed to get into the country was extremely high;² and far from protecting civilian populations, it can be argued that where armed Self-Defence Units were formed, instead of preventing violence, violence escalated.

The nature of such 'defensive violence' of communities by locally-based paramilitary groups is quite different from the carefully-planned military actions of covert units which operate under a relatively tight command structure. The ANC argued convincingly to the TRC that it had exercised considerably restraint in the conduct of its armed struggle, and that relatively few civilians had been killed. One can argue that even so, more civilians than security force members were killed by MK; one can also argue whether or not the PIRA was similarly restrained and disciplined. It is clear that under the ceasefire, the PIRA has managed to limit certain types of military actions, and to hold back its members from reacting to what is sometimes clearly provocative violence. It is also unlikely that weapons will be distributed by PIRA in the same way that they were distributed by MK to local structures. Yet there is also a problem of the 'new generation' of volunteers needing to be kept active, and this is done through involving them in local 'policing' activities. In South Africa, the returning MK soldiers went back to their communities of poverty and unemployment, to be confronted by thousands of frustrated youth demanding action, wanting to prove themselves against the enemy, waiting for a decisive victory. As in republican communities of Belfast, the relationship between the MK 'comrades' and 'the community' was an 'organic' one; it became difficult to trace precisely where decisions were made, who gave mandates to whom, and on whose behalf actions were taken. Later, these issues became crucial when perpetrators of violence applied for amnesty, claiming that they were acting in the name of the SDUs or the ANC, within the context of the political struggle in South Africa.

¹ I am drawing here on Richard English's research on the PIRA, expressed in his inaugural lecture 'The IRA and Irish History' at Queens University, Belfast, 18 October 2001.

² See Howard Barrell's PhD thesis on MK for statistics on MK casualties.

Weapons control and military discipline In times of ceasefire

One of the problems I am trying to explore is the relationship between decommissioning of weapons, and acts of violence committed by paramilitaries. I am arguing tentatively that the free availability of weapons in South Africa, and the failure of the main protagonists to reach agreement on, and then implement, a clear process of decommissioning of weapons, made this phase of conflict that much more deadly. It meant that weapons - mainly semi-automatic rifles, the ubiquitous AK47, as well as some grenades and other explosives - left the relatively disciplined control of MK and various homeland and auxiliary security forces, and were distributed to locally controlled self-defence units, vigilante groups and quasi-criminal gangs, who were accountable to nobody but themselves. It also left a legacy of a society awash with illegal weapons, many of which fell into enemy hands and ended up being used in the current crime wave sweeping South Africa.

This is how then Deputy President Mbeki explained the community demand for weapons to the TRC:

As that violence from 1990 onwards was mounting, one of the strongest demands that came from within the constituency of the ANC was arm the masses. Many of us sitting here had to do very stormy and rowdy and heated meetings contesting that, saying that there are no masses that are going to be armed. But it was a demand to say here we are, you people in the midst of all of this violence you decide to suspend armed action and therefore you demobilise or deactivate MK, and then here we are being killed, and where are the weapons, arm the masses so that the masses can defend themselves. (TRC party recall hearings)

What I am trying to develop is the argument that decommissioning is not a technical process, determined at 'the top' by senior politicians. While such decommissioning is necessary, it is overdetermined by politics 'at the bottom'. In relation to Northern Ireland, my understanding from the research conducted is that the same dynamic does not exist as in South Africa, as weapons have been much more carefully controlled during the transition period, and the PIRA has not succumbed to community demands for 'self-defence' in the same way. Even so, it is as well to be aware of the dangers of such demands, and vigilant against the possibility of the 'remilitarisation' of the society in ways which are very difficult to control.

Territorial control and local power - 'warlordism'

This is especially the case where conflict takes the form of territorial control at local or community level. This is sometimes manifested in the form of 'warlordism' - a phenomenon not confined to the many recent conflicts in Southern, Central, East and West Africa, but found as well in the warfare in Eastern and Central Europe (Chechnya, Bosnia) and South America (Colombia) just to give a few recent or current examples. In Northern Ireland, this was manifested in a more limited way in a vicious power-struggle between loyalist paramilitaries in Belfast, resulting in a number of deaths; and in the creation of what Pete Shirlow has called 'chill zones' where there is no freedom of movement for 'outsiders' or members of the community of the

'other side'. Such zones are characterised by an absence of basic human rights and freedoms: they are zones of fear, where warlords or paramilitary leaders and their followers control movement and administer their form of justice in order to maintain control through violence. In South Africa, territorially-based conflict took the form of extremely violent conflict between ANC and IFP aligned paramilitaries who took control of particular rural villages and urban townships, 'purging' the areas of supporters of the 'enemy'. After the liberation movements were unbanned in 1990 and began to establish their presence, this sometimes took the form of feuding between paramilitaries ostensibly on the 'same side' of the liberation struggle – such as the tragic conflict between the ANC and the PAC in Fort Beaufort in 1992-3.

Informal justice and policing

The other aspect of territorial control during such periods is that of policing and the administration of justice. In contexts where the police are perceived as unsympathetic and illegitimate at best, and are mistrusted, feared and seen as 'the enemy' at worst (as in Catholic communities in Northern Ireland and black communities in South Africa) – the establishment of a legitimised police and justice system takes some time. In the interim period, those paramilitaries or liberation movements who control these communities are entrusted – or take it upon themselves – to administer justice. Thus the 'anti-crime committees' in South African townships which were involved in brutal punishments and sometimes killings of those suspected of criminal offences against their communities. Local power politics and a strong element of territoriality and the desire for local control again played a part, and was interwoven with a discourse of community defence and action against criminal or 'anti-social' elements.

Let me illustrate this with just one of the many examples to come before the SA TRC. One of the more tragic such cases in South Africa was that of the Katlehong Moleleki massacre. In this case, thirteen applicants applied to the TRC for amnesty for the killing of nine people on 7 December 1993. All eleven people who died in this incident, as well as all the perpetrators, were members or supporters of the ANC. The killers were members of the local SDU; those murdered were members of the ANC Youth League; all were young men residing in the same community. The youth were taken forcibly into the open bush (veld), immobilized with wire, and systematically killed, one by one, by residents of their own community. One of the perpetrators explained their actions to the TRC amnesty committee as follows:

MR MOTLOKWA: Ntjebe issued out an order that they must be killed. We took them out of the shack, we took them to the open veld.

CHAIRPERSON: What reason was given for their killing?

MR MOTLOKWA: The SDU was to defend the community and they were harassing the community, that was the reason. An order is an order, it was difficult even on my side to kill them. I did not have any option, I was just ordered and I know that their families are bereaved but there was nothing I could do really.³

³ TRC Amnesty hearing transcript, 2 March 1998.

Thus he uses the military language of hierarchy and orders to justify his actions. Yet the Amnesty Committee of the TRC did not consider the decision made in his SDU as having the status of an order of a constituted military formation. Such a case highlights the problem of holding people to account for such acts of paramilitary sectarian violence, which is explored in more detail below. For it must be noted that such acts were not random 'mob killings' or spontaneous acts of vigilantism: they were committed after deliberate decision making by some type of structure, and were committed in the name of a broader political project. Many other such examples can be given here: the burning of women accused of 'witchcraft' against the 'comrades' in remote rural areas under 'homeland' administration; the petrol-bombing of the house of a community worker, in which she and her children were killed, for their 'collaboration' in handing out food parcels. These are in addition to the thousands killed in more overtly sectarian violence between those perceived as the surrogates of the state, such as the IFP.

The youth involved in committing such acts were not trained soldiers, and yet neither were they simply members of a mob driven by an uncontrolled frenzy. Perceived threats to the closeness of the community in which they lived, and the level of poverty and deprivation experienced there, often combined with experience of brutalization by security forces, gave them the personal motivation to undertake such acts. But this motivation was always situated within a broader political framework, wherein those identified for attack were labeled as 'enemies of the liberation struggle'.

Such territorial control by particular paramilitaries or liberation movements means that those who are 'insiders', living in the heartland of such an area, are offered a high degree of security in return for their allegiance to the movement. However, those on the borders of such areas are most vulnerable to attack, and live in the conflict zone where they are more likely to call on the paramilitaries for protection. As in North Belfast, there are areas where residents from certain townships cannot go freely. There is no freedom of movement within and between such zones - the 'Chill zones' as they are called by Pete Shirlow. The discourse of human rights has made little impact in areas where communities are homogeneous, united and insular; to be an 'insider' is more important than to have individual rights.

This is paralleled by the phenomenon of paramilitary punishment of 'anti-social offenders' in Northern Ireland. For every bombing, as in South Africa, there were many more acts of war - called 'incidents of violence' or 'sectarian violence' or 'vigilantism' - which were not acknowledged as acts of war. These were the inter- or intra-community acts of violence perpetrated sometimes by members of paramilitary squads, sometimes by groups of youth with strong political allegiances, in the name of their particular cause. Such violence was (and unfortunately still is, in many cases) directed at various targets: some are dissident or breakaway factions within the particular movement, whether republican or loyalist - in which case the violence is justified as acts of 'community self-defence'. In other circumstances, the targets of violence are individuals who are considered to be collaborators or dissidents within tight-knit communities; others are 'anti-social elements',

typically delinquent youth engaged in joy-riding or acts of petty theft, arson or thuggery. In the context of a policing system which is still considered 'the enemy' – where there is not only no legitimacy for the policy, but active hostility towards it – the paramilitaries take on the role of 'anti-crime committees' as in South Africa, meting out discipline to offenders. Such violence is inherently political, with the perpetrators assuming the role of the state in policing, justice and punishment of those who are considered 'offenders'.

Groups such as Base 2, which offers support to people on both sides who are threatened by paramilitary violence, INCORE and the Violence Research Project, all monitor and research such acts of violence in Northern Ireland. They have all noted that since the ceasefire following the Good Friday agreement of 1998, such acts of violence have actually increased – similar to the situation in South Africa, where following the MK suspension of armed struggle in 1990, acts of sectarian and intra-community violence increased dramatically. McEvoy notes that since 1973 there have been over two thousand victims of paramilitary punishment shootings, usually in the knees ('kneecapping'), thighs, elbows or ankles or a combination of these) and since 1983, around one and a half thousand victims of punishment beatings; these beatings involve 'hurley sticks' studded with nails, iron bars or other such heavy implements. While these may seem to be low figures, McEvoy notes that the small population of Northern Ireland means that the number of victims of the conflict is comparable – as a percentage of the population – with casualties in Cyprus, Lebanon or Sri-Lanka. (ICHRP 1999:2-3)

Similar to South Africa, there is ambivalence within such communities towards those who perpetrate such violence. In Republican communities in Northern Ireland, there is undoubtedly significant community support for such acts, which are combined with a deep distrust of the police and a 'clear lack of consensual state policing'. At the same time it can be argued that such acts are used as a deliberate politica-military strategy to 'manufacture community support' against the state; some even argue that the objective is territorial control by paramilitary forces through the use of terror. (McEvoy 1999:6). In addition, there is an important component of 'self-defence' present in both contexts; it is argued that responsibility for defence of 'their' community is 'a key tenet in modern Republican ideology'. (quoted in McEvoy 1999:7).

While those who are considered to be traitors to their own cause or spies are executed, many more are victims of punishment for milder forms of collaboration or anti-social offences. Torture methods such as forced posture and 'hooding' are combined with physical 'punishment' which includes beating with hammers, iron bars, hurley sticks or baseball bats spiked with nails so as to inflict puncture wounds. 'Crucifixion' for 'repeat offenders' involves the victim being tied upside down to a railing and brutally beaten. (bbc online, 2001). Just a couple of examples suffice to illustrate the nature of such violence. One thirteen-year-old boy was the victim of repeated punishment beatings by paramilitaries. In the first of such 'punishment attacks', he recalled:

First time they wanted me to leave the country, I was only thirteen. They took me away for six hours and burnt me with fags. They struck me with a soldering iron bar and made me kneel down for six hours and battered the back of me with a bat, while I had a hood over my head. They were threatening to take me and shoot me dead and bury me, and all that there. They said, 'You've three things to pick from: leave the country; kneecapped; or drilled and then shot'. (Smyth and Fay, 2000, 123-4).

In another case, a woman in the Republican area of Ballymurphy in West Belfast became a victim of three of the kinds of violence committed in warfare of this nature. Firstly, from the death of her brother-in-law in a Republican feud in 1975; secondly, the murder of her own husband by the IRA, accused of being an informer; and lastly, the killing of her daughter's partner in a sectarian attack. The first such attack is described here as an example of intra-community violence similar to that which occurred in Thokoza in South Africa:

In 1975, my brother-in-law was killed in a feud between the 'stickies' (the Official IRA) and the Provos (Provisional IRA). That was really awful, when he was killed, because it was his own people, and people he knew really well that walked into the house and shot him. My sister was there when they came in and shot him. She opened the door, and they just came in and killed him, sitting in the living room....

She lived in the area. She knew who killed her husband, but she couldn't say who killed him, because my brothers all lived there and my father lived in the area, so they would have had to leave the country. They wouldn't have been able to stay. So she couldn't really say anything about who killed them. She saw his killers every day and they used to scare her to make sure she kept her mouth closed. (Smyth and Fay, 2000, 23).

Where firearms are carefully controlled during a ceasefire, paramilitaries, warlords or local anti-crime committees use other weapons to administer justice: thus in South Africa, where guns were available – as in Katlehong – offenders were shot; where guns were not available, people were beaten or burnt. In Belfast, the practice of kneecapping – shooting offenders in the kneecaps – was replaced after the ceasefire with other forms of punishment through beatings and other forms of torture.

Accounting for acts perpetrated during a ceasefire

Many perpetrators of such acts subsequently applied to the TRC for amnesty, often in cases where they had been apprehended or imprisoned for crimes. It may be surprising to observers of the South African TRC process that the majority of those granted amnesty were ANC members, and the majority of acts for which they applied for amnesty were committed in the 1990s. They claimed that these were political acts, perpetrated in the name of the 'struggle', even if outside the military strategy or policy of their organisations at the time. Whether or not they were granted amnesty depended on whether they were judged to have met the criteria laid down in the TRC Act. Unlike in the pre-ceasefire period, when most acts were committed under a clear military command structure and the perpetrators were more easily held to account, the very nature of the transition meant that the means to hold members of armed groups to account were no longer in place. In the case of

acts committed by SDUs, the ANC argued to the TRC that as they had ceased military operations under the terms of the Pretoria minute, any acts perpetrated by these SDUs were not under their control; rather, they were under the control of the local communities in which they were based. In some cases, the particular ANC structure could be contacted by the TRC for corroboration of the political motive of the amnesty applicants. Yet unlike in the pre-transition era, there were many 'grey areas' and disputes over whether the liberation movement could be held to account for the actions of its supporters or members. These included trained combatants who were committed to 'continuing the struggle', as well as militant youth who wanted to make an impact on the liberation struggle in its final hour. In many cases it was not the ex-combatants and the ex-prisoners who had experienced the pain of being a soldier who were involved in violence. Rather, in the transition period, in the period of ceasefire, it was the youth, the returning exiles, and all those who did not 'see action', who were reluctant to give up the armed struggle. They had yet to make their mark on history; they stood to lose their chance to be a hero of the people, and to thereby invest meaning into all those years of suffering.

How those responsible for such acts were held to account in South Africa raises many difficult questions for the Northern Ireland context and for other transitional societies. The nature of such 'defensive violence' of communities by locally-based paramilitary groups is quite different from the carefully-planned military actions of covert units which operate under a relatively tight command structure. The ANC argued convincingly to the TRC that it had exercised considerably restraint in the conduct of its armed struggle, and that relatively few civilians had been killed. One can argue that even so, more civilians than security force members were killed by MK; one can also argue whether or not the PIRA was similarly restrained and disciplined. It is clear that under the ceasefire, the PIRA has managed to limit certain types of military actions, and to hold back its members from reacting to what is sometimes clearly provocative violence. It is also unlikely that weapons will be distributed by PIRA in the same way that they were distributed by MK to local structures. Yet there is also a problem of the 'new generation' of volunteers needing to be kept active, and this is done through involving them in local 'policing' activities. In South Africa, the returning MK soldiers went back to their communities of poverty and unemployment, to be confronted by thousands of frustrated youth demanding action, wanting to prove themselves against the enemy, waiting for a decisive victory. As in republican communities of Belfast, the relationship between the MK 'comrades' and 'the community' was an 'organic' one; it became difficult to trace precisely where decisions were made, who gave mandates to whom, and on whose behalf actions were taken. Later, these issues became crucial when perpetrators of violence applied for amnesty, claiming that they were acting in the name of the SDUs or the ANC, within the context of the political struggle in South Africa.

While it is clear that the PIRA is currently 'holding the line' and preventing a resurgence of armed violence, they are under considerable pressure from their constituency to respond to loyalist provocation with violence in the name

of community self-defence. Being an army, the PIRA has tight control over its members, and former republican prisoners are at the forefront of transitional justice projects which aim to replace violent punishment attacks with peaceful accommodation based on the concept of restorative justice. As in South Africa, however, there are both dissident republican groups that do not accept the ceasefire, and a new generation of militant youth whose aspirations need to be accommodated.

What emerges as significant is the critical necessity of armed groups retaining some means of holding their own members to account during the transition process. It is worthwhile remembering that they may be held to account for such actions when the transition is over.

It is also important that at a societal level, there is a concerted effort made during the transition to change the culture of militarism. Demilitarisation involves not only the removal of firearms and other weapons of warfare, but a change in ways of operating for those who have been bound by cultures of loyalty, secrecy, military discipline and machismo. Crucial to this process is that a human rights culture is created and respected at all levels of society, that the 'rule of law' is legitimised and replaces the faith that people have in their paramilitaries, and that non-military solutions are sought to local conflicts.

While this is of course easier said than done, as Marie Smyth has noted in Northern Ireland – she noted that 'they know no other language' but violence' – the point here is that such attempts need to take place during the transition, rather than waiting for some decisive point of transfer of power while holding on to the 'old ways' in the fear that the transition will not 'turn out right'.

In the next section of the paper I will look at how the South African TRC process tried to deal with such acts once the transition was over.

Accountability for human rights violations committed during the transition

The South African Truth and Reconciliation Commission Report, of October 1998, acknowledged the constraints and failings of the Commission:

"In particular, the Commission failed to make significant breakthroughs in relation to violence in the 1990s. The events in question were extremely recent and few leads emerged from groups operating at the time. Thus few entry points for investigation were opened up and a great deal of further investigation is required." (Volume 5, p 206).

- The key finding on the 1990s was that the state had perpetrated gross violations of human rights through "the covert training, arming and funding of offensive paramilitary units or hit squads for deployment internally against opponents of the government." (Volume 5 Chapter 6 p 223, paragraph 101). Detailed findings on the South African state's unlawful activities in the 1990s include evidence presented to the Commission of

covert assistance given by the SADF to the IFP to establish, train, arm and pay an offensive para-military unit or hit squad to be deployed against mutual enemies of the state and the IFP. In addition, the TRC found that the ANC was responsible for killing political opponents in the post-1990 period, which constituted gross violations of human rights; and for 'contributing to a spiral of violence' through the creation of SDUs ('self-defence units') in this period. The local structures of the ANC, UDF and MK are held responsible for systematic killing of IFP office-bearers. The killing of informers or state witnesses constituted gross violations of human rights.

I have written elsewhere (see Transformation article, seminar given to University of Wisconsin, Madison) on the broader question of the TRC's findings on the ANC's military activities: whether the deaths of civilians in bombings or landmines constitutes 'acceptable collateral damage' or a gross human rights violation. Here I am concerned only with acts committed after the ceasefire: in other words, which are not considered by the paramilitary to be 'military operations' carried out under a clear command structure.

Although the ceasefire in Northern Ireland has been in place for some years, there has been a steady increase in acts of violence, falling into all the categories mentioned above. How will members of paramilitaries or partisan communities account for such acts in the future? For, in the longer term, someone will have to account for such acts of violence - not only for such acts of claimed self-defence, but for all those acts committed against member of their own community. The killing of drugdealers or informers, the beating of 'anti-social elements' - are these to be seen as political acts, committed by disciplined organisations with a political strategy, in the absence of a legitimate state and effective justice and policing systems? Are they to be judged as human rights violations, committed in a political context, rather than just criminal brutality? Will political and paramilitary organisations claim the perpetrators of such acts as their own? And how will they account for such acts in the future?

Will there be a new amnesty provision which will include such offences, or will they be either 'swept under the carpet' or criminalised? And what of the first wave of paramilitary or political prisoners who were released but still have their criminal records - could they benefit from an amnesty process in the same way that thousands of ANC and PAC members benefitted - by motivating to the TRC amnesty committee that their acts were essentially political, they had their criminal records expunged. Perhaps even more importantly, for those communities affected by the 'transitional violence', the perpetrators of such violence had to publicly account for their actions. They, too, were given a platform on which they could explain and justify such acts.

Amnesty, accountability and acknowledgement after the transition

Last year, on the thirtieth anniversary of its 'Black Friday' bombing operation in Belfast on 21 July 1972, the IRA issued an apology to its victims:

While it was not our intention to injure or kill non-combatants, the reality is that on this and on a number of other occasions, that was the consequence of our actions.

It is, therefore, appropriate on the anniversary of this tragic event, that we address all of the deaths and injuries of non-combatants caused by us. We offer our sincere apologies and condolences to their families.

There have been fatalities amongst combatants on all sides. We also acknowledge the grief and pain of their relatives.

The future will not be found in denying collective failures and mistakes or closing minds and hearts to the plight of those who have been hurt. That includes all of the victims of the conflict, combatants and non-combatants.

It will not be achieved by creating a hierarchy of victims in which some are deemed more or less worthy than others.

The process of conflict resolution requires the equal acknowledgement of the grief and loss of others. On this anniversary, we are endeavouring to fulfil this responsibility to those we have hurt. (RM Distribution, 16 July 2002)

It will be remembered that the ANC made a similar apology to all its unintended civilian casualties, at a hearing of the South African Truth and Reconciliation Commission. Such apologies, although qualified in some respects, are a very significant part of the process of acknowledgement by armed groups. While opponents of the armed groups may express scepticism of such apologies – Unionist leader David Trimble dismissed the IRA apology as a tactical and 'calculated' response⁽¹⁾ – they are indicators of the acceptance by armed groups of the importance – in principle, at least - of acknowledging responsibility for their actions.

Victims of armed groups may respond in various ways: as seen during the South African TRC process, some victims were able to reconcile with the perpetrators, (for example the Church Street bomb), while others contested the amnesty process and refused to accept the explanations and justifications given by the perpetrators (see my paper on the ANC landmine campaign to University of Wisconsin, Madison). There is a similar range of responses in Northern Ireland: groups such as the HURT victims support group and the Terrorist Victims Human Rights Committee demand accountability and justice; others are willing to forgive if the truth is – at some point, through some process – disclosed, allowing 'closure'. This variation in individual response and ability to forgive on the part of the victims is to be expected. Yet while one can also expect a certain amount of variation in how former liberation movement members feel about their actions – whether they feel remorse or whether they feel vindicated as soldiers – there is an important societal obligation imposed on them to take responsibility for their actions. This is the most significant part of the amnesty process, and perhaps the 'most' that can be hoped for.

Now while the amnesty process in South Africa certainly had weaknesses and inconsistencies, it was based on sound principles: that perpetrators would

only qualify for amnesty if they had a clear political motive, if they were acting under orders or on behalf of an organisation and consistent with its policies, and if they made a full disclosure about the circumstances under which they committed the act for which they applied for amnesty. Most of those who applied for amnesty, including liberation movement members, had already been tried and convicted in criminal courts. Thus if they were genuinely politically motivated, they stood to gain by the TRC process. Moreover, and perhaps more importantly, the 'full disclosure' clause meant that they were required to provide far more information about their actions than they would have done in court, and to explain their motives in front of their victims or their victims' families. The significance of this process of public acknowledgement, and the personal challenge that it posed to such perpetrators, should not be underestimated. Unlike a criminal court, where the defendant will of necessity admit to as little as possible, the amnesty committee invites a full disclosure, and welcomes efforts by the applicant to be open about his/her motives.

For many families of victims, this is a fundamentally meaningful process – to look at and listen to the perpetrator, sometimes to engage directly with the perpetrator, to hear him or her describe exactly what happened, and to try and understand his/her motives. Of course, the process can be deeply flawed, and can obscure rather than reveal the truth. This depends on many things, one factor being whether the victim was easily labelled as an 'enemy' or an 'outsider', in which case perpetrators seemed to find it easier to justify or explain their actions. Far more difficult to deal with are those cases of the extra-judicial killing of those accused of being informers, traitors, dissidents or collaborators by paramilitaries within their own communities. In most such cases, the local community is involved in identifying and accusing the victim, and so after the paramilitaries have taken action, they will not speak about it. The insider becomes an outsider; but the shame of being identified as a traitor or collaborator means that the family of the victim will usually not approach the police or take any further action. Holding to account those who did the killing, and bringing about any sort of 'closure' or reconciliation, is just about impossible because of the culture of secrecy and the shame surrounding such acts.

While the amnesty process also sometimes involved an element of 'shaming', where perpetrators felt humiliated and belittled by having to explain their actions in public; and at other times involved passionate displays of remorse by perpetrators, and of forgiveness by victims, these were the exception rather than the rule. But neither were they the main intention of the process, which was of course a legal or political one: to ensure the stability of the political transition by granted conditional amnesty to perpetrators of violations committed during the conflict. Beyond that political necessity, however, I would like to argue that the amnesty process played an equally important role in promoting what can be termed 'societal acknowledgement' – a public taking of responsibility, of being held to account, which is an essential prerequisite to reconciliation.

What does this mean for armed groups as organisations – especially those that go on to become governments in the post-transitional period? Firstly, it

does not mean that the armed group or liberation movement should be obliged to admit to the wrongness of its cause – an unconditional apology, or an admission that the turn to use of arms was in itself morally wrong. Apart from being politically unacceptable to the majority of former members or supporters of such armed groups, and thus extremely unlikely to happen, it is also undermining of individuals whose very *raison d'être* is threatened by such an admission. So both the ANC and the PIRA have retained their conviction of their right to take up arms, while being prepared to apologise for certain categories of acts – namely, those in which civilians were killed or injured. Secondly, it does not mean individual perpetrators or the leaders of such armed groups denying responsibility for their actions or the actions of their members, or dismissing them as 'mistakes' or as 'acceptable collateral damage'.

The degree to which armed groups are prepared to take responsibility for their actions varies, of course; those like SWAPO of Namibia, or ZANU of Zimbabwe, who have consolidated power and are intolerant of opposition and criticism, are unlikely to do so. Those armed groups who operate in countries where civil war has raged for decades, such as in Angola, do not feel the same need to account for each violation – though it is to be hoped that now that the war in that country is finally over, there will be at least some process of public acknowledgement of the suffering caused by those groups. Where there is no such process, and where the armed group holds significant power in the society, there are very real dangers of members of the armed group retaining access to weapons, forming militia, and abusing their power in one way or another – as has been seen in Angola and Zimbabwe.

This is why the presidential pardons, which call into question the decision of the TRC not to grant amnesty to certain former liberation movement members, represents a serious undermining of the amnesty process and of the legitimacy of the SA TRC as a whole. This comes together with a feeling by the majority of victims and the public (the 'black public') that they have gained little from the TRC: while 'their' liberation movements had to apologise for fighting a just war, there was no justice for the victims of state atrocities; nor has there been any move on reparations for such victims.

Some tentative conclusions from South Africa and Northern Ireland:

Accountability, acknowledgement and restorative justice. The process of public acknowledgement and accounting for actions is closely linked to the concept of restorative justice. It thus falls between the two extremes of blanket amnesty/denial of justice/complete impunity for perpetrators, and prosecution of perpetrators as criminals/retributive justice/the 'Nuremberg option'. While not satisfactory to all parties and individuals concerned, it is argued that it is the most satisfactory means of ensuring both the stability of the post-transitional society, and the basis for societal reconciliation.

In South Africa, having put such a process in place through the TRC, it is disturbing that the government – formerly an 'armed group' such as I have been discussing - is in some respects undermining this process as it

consolidates its power. This process began with the ANC's rejection of the TRC's findings about its commission of human rights violations in the course of its armed struggle, and includes the presidential pardoning of perpetrators who were denied amnesty by the TRC. In the case of Northern Ireland, the transition is not yet complete: thus the armed groups concerned are not yet ready to engage in such a process of public accounting. However, the PIRA's apology is an important first step in this regard; a fuller process of 'truth telling' which involves all parties to the conflict (including the British security forces) accounting for their actions, will hopefully become possible at some future date.

Truth: I still feel that in SA, the truth would not have come out through formal legal prosecutions. Even though imperfect, what truth did come out was valuable enough to enable some sort of consensus to be reached about what happened. In Northern Ireland, at present, there is no such consensus; none of the parties to violent conflict, including the State, are willing at this stage to be open. The Bloody Sunday enquiry, and the reluctance of the British soldiers to testify in Derry, is one indication of this. Attending the Saville Enquiry sitting in Derry, I felt that it was just like the Langa massacre. However, the legal nature of the process meant that unlike the TRC hearings in Uitenhage, the victims were not able to just 'tell their story', but instead were cross-examined in an adversarial process which was unproductive.

Politicians, footsoldiers and society: There is considerable resistance to 'truth seeking' processes in Northern Ireland, as there is a reluctance on all sides (including the state) to 'rock the boat' by encouraging people to publicly account for acts. However, in response to the idea that paramilitaries are responsible for 'bringing the cold in' to the transition process, and reflecting on the experience of the SA amnesty process, I am inclined to take the part of the footsoldiers on both sides of any conflict, and ask some essential questions:

In whose name did these 'footsoldiers' act? Did the political leadership fail to get their hands dirty, and then symbolically wash their hands of such 'bad apples' once the conflict was over? This sense of accountability for the actions of members and supporters is especially important in transitional situations where there are 'grey areas' as outlined above.

Lastly, we should not forget about societal accountability. Did you give your consent to such acts by your silence or failure to act in other ways? Did you rely on them (state or paramilitaries on either side) for your own sense of security? If so, then a broader process of public acknowledgement and acceptance of responsibility may be necessary before a truly societal reconciliation is possible.

Conclusion

Two events in recent weeks illustrate the above argument about the importance of acknowledgement and accountability during transition periods,

and bring me back to the question posed in the title of this paper: 'When is the conflict over?'. In South Africa, the society has been rocked by allegations that our National Director of Public Prosecution, Bulelani Ngcuka, was a spy during the apartheid era. A judicial commission of inquiry has just completed its hearings into this question. The President has come out strongly admonishing people who make reckless allegations about who was a spy, and has appealed once again for the spirit of reconciliation to prevail. This saga has raised the head of one of the ghosts of the past that the TRC was unable to lay to rest: the issue of how to deal with spies, agents, traitors, intelligence operatives. I will be speaking about this in more depth in Uppsala in a few days' time – but just raise it here to indicate how such issues do not go away; if the TRC or other transitional justice mechanism fails to deal with it, it is bound to resurface at a later stage – another of those unresolved wounds that will not heal. I am not arguing that there must be a process whereby all spies and collaborators must be revealed; rather, that processes to end the conflict and subsequent transitional justice mechanisms cannot afford to ignore such issues.

Secondly, in Northern Ireland, elections have been held for the NI Assembly. Last year, the NI Assembly – a power-sharing agreement established by the Good Friday Agreement of 1998 – collapsed. While it is unlikely that the transition process will break down completely, in the sense that there is a return to armed struggle by the IRA, it is clear that the transition is not yet complete. And in this context, protagonists in the conflict are not yet willing to engage in the processes of disclosure, truth-seeking, acknowledgement and accountability that are so crucial to the healing of post-conflict societies.

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ⁱ *Mail and Guardian* July 26-August 1 2002

ⁱⁱ See 'Just war and just means: was the TRC wrong about the ANC?' in *Transformation* 42, 2000 for further discussion of these issues in relation to the ANC).