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APARTHEID ERA  
VICTIMS'  
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## Short introduction to roots of transitional justice in USA and South Africa

What is common to Black-lives-matter in the USA and its counterpart in South Africa is that they are a common expression of the struggle for transitional justice. The Black-White contradictions are conceived in pain and suffering rooted in the historical exploitation of Black labour and land. What sharpens the experience in South Africa is that a Black democratic government does it. Under the Covid-19 lockdown in South Africa Black soldiers shot and killed eleven Black men. In the USA within seven days, White policemen and vigilantes shot and killed eleven Black persons with impunity.

In the USA, the struggle is embedded in 401 years (1619-2020) of oppression while in South Africa it is embedded in 342 years (1652-1994) of oppression. In the USA, it is the Black-White duality and in South Africa it is the apartheid-democracy duality.

In the USA, the White knee on the Black neck was an instantaneous memory recall of extra-judicial lynching like Blacks being hung from trees, cutting off black men's genitals, severance of fingers and toes, skinning and burning Blacks, slicing open the wombs of pregnant Black women and killing their babies too.

In South Africa, the deaths were also an instantaneous memory recall and the progeny of past victims of colonial violence embody the memory of that violence and transmit it to the future. For a period of 137 years, 1658-1795, the Whites meted out punishment to slaves and political prisoners in various forms such as crucifixion, imprisonment with hard labour, death by hanging, rubbing vinegar in wounds after lashing, shackling in leg-irons, and suspension by the feet.

Some of the forms of legal punishment were: hanging and strangling; breaking on the wheel or cross; chopping off limbs; decapitation and burning alive; stretched on rack; broken by eight blows of an iron club while crucified; being tied to a wheel; having flesh pinched; being nailed naked to a cross and ten pieces of flesh nipped by red-hot iron pincers at lengthy intervals; having right hand hacked and thrown to the face; body dragged through town; and head secured on a pole for birds of prey.

Judges ordered flogging and other forms of torture, as pre-trial procedure, to obtain confessions for the purpose of conviction. Punishable offences for Blacks included, using the street pavement unaccompanied by a master; smoking pipe in public to prevent arson; jostling colonists in the street; entering a church while service in progress; making noise during a church service; entering White cemeteries or public gardens unaccompanied by a master or White child; or raising a hand to a master.

Judge Albie Sachs in his Justice in South Africa records that there were ceremonial executions. The executioners worked for piecework wages. At 1970 calculations, they earned as follows: to kill for six British shillings; to torture for one shilling and six pence; and to flog, to brand with red-hot iron, to cut off an ear, to bore a hole through the tongue, to cut off hand, and to gouge out an eye for two shillings.

They continued in the 20th century to impose the death sentence, imprisonment with hard labour, rubbing iodine into wounds after lashing, and shackling in leg-irons until the political demise of apartheid. The colonial culture of barbarity lasted for 342 years in South Africa. The apartheid/democracy duality juxtaposed itself into a legitimate democracy. Black poverty is rooted in slave wages set by the Chamber of Mines at 2s 3d in 1902 and gold price and cost of stores set in London. There were 66,000-recorded deaths and 1 million injured for the 84-year period (1905-1989) in the mines. This genocide continued in the White commercial farms through unrecorded poverty-related diseases. The victims were mainly women, children, and infirm men who were denied the human right to legal identity.

The essence of the barbarity found many forms of expression and one of them was the 73-recorded death in detention in twenty-seven years. The families of the victims have now constituted themselves into the "Apartheid Era Victims' Families and Support Group" who are continuing the struggle for transitional justice. The families include those of Chief Albert Luthuli, Nicodemus Kgoathe, Solomon Modipane, Jacob Monagotla, Imam Abdullah Haron, Ahmed Timol, Mapetla Mohapi, Matthews Mabelane, Dr. Hoosen Haffejee, Steve Biko, Dr Neil Aggett, Nokuthula Simelane, Fort Calata, Mathew Goniwe, Sparrow Mkhonto and Sicelo Mhlauli (Cradock Four), Ashley Kriel, Mxolisi 'Dicky' Jacob, Caiphus Nyoka, Coline Williams, Robert Waterwitch, Anton Fransch, Mohsin Jeena, Ahmed Timol Unit, and Haroon Aziz.

On 23 June 2019, the Group had addressed a letter to State President Ramaphosa with a 'call for apology to victims and for appointment of a commission of inquiry to

investigate the suppression of the TRC cases'. The letter has been met with stoic silence.

On 5 February 2019, the former TRC Commissioners had also addressed a letter to the State President urging him to appoint a commission of inquiry "into the political interference that has stopped the investigation and prosecution of virtually all the (300) cases referred by the TRC to the National Prosecuting Authority (NPA). That letter, too, has met with stoic silence.

The ANC-in-government under President Mbeki initiated the political interference in 1999 by creating the Scorpions out of the political remnants of apartheid-era police with uncontrolled investigative and prosecutorial powers. The then ANC/SACP minister of police failed to exercise his legal oversight role on the Scorpions who continued to act with impunity against the rule of law. In 2007 the ANC corrected the gross error of the violation of human rights. But the remnants continue to occupy structural executive positions in NPA, which frustrates the Group.

The struggle for transitional justice is a struggle waged in countries that have transitioned from dictatorship, colonialism, and internal revolt. The world has witnessed this in countries such as Argentina, Brazil, Chile, Tunisia, Morocco, East Timor, Fiji, New Zealand, Nepal, South Korea, Poland, Canada, and USA. After the establishment of the South African TRC which was modelled on the Argentine TRC, there were about forty-six countries that have set up similar structures to bring about transformation.

The Blacks in USA have been struggling for transitional justice for 155 years since the abolition of slavery in 1865 and their struggle continues unabatedly to this day. In South Africa, the Blacks have been waging a similar struggle for 26 years since 1994.

The ANC leadership has so far, regrettably, been sending out confusing messages: some of those in government seem to encourage intransigence on the non-prosecution of apartheid-era perpetrators of the abuse of human rights and human dignity; and those working outside the government are NGOs and groups, who see themselves as part of national and international networks, are doing so since they view these activities as part of the broader and intense struggle for retributive, redistributive and social justice as a national and international challenge.