Book Review

CLIVIA NAMGALIES*

APARTHEID ON TRIAL

Reviewing:

Societies moving away from dictatorships need to deal with the supporters of the previous regime who engaged in criminal behaviour. The South African Truth and Reconciliation Commission (TRC) has often been referred to as a model worthy of emulation by other countries in similar situations. Established in December 1995, its purpose was to foster reconciliation by revealing the truth about human rights violations committed between March 1960 and May 1994. Since the TRC was the result of a negotiated compromise both the victims and the perpetrators concerns had to be given equal consideration. Thus victims were given the opportunity to leave their records of the past and – certainly the most remarkable and controversial aspect of the TRC’s work1 – perpetrators could be granted individual amnesty. According to section 20 of the Promotion of National Unity and Reconciliation Act, amnesty could be granted if the applicant’s act was associated with a political motive, if it was committed between March 1960 and May 1994 and if the applicant had made full disclosure of all relevant facts related to the act. Otherwise, the perpetrators could still be prosecuted. At the end of the term of the TRC, more than 21,000 victims’ statements had been

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* Research Assistant, Max Planck Institute for Foreign and International Criminal Law, Freiburg i.Br., Germany.

1 So far no other country that has set up a Truth Commission has empowered this Commission to grant individual amnesty to perpetrators. See P. Hayner, Same Species, Different Animal: How South Africa Compares to Truth Commissions Worldwide, in Looking Back, Reaching Forward – Reflections on the Truth and Reconciliation Commission of South Africa 36 (C. Villa-Vicencio and W. Verwoerd, eds., 2000).
collected (10,000 victims had the opportunity to testify in public hearings) and about 7127 amnesty applications filed.²

But what made perpetrators of gross human rights violations apply for amnesty? As Volker Nerlich makes abundantly clear in “Apartheidkriminalität vor Gericht”, it was the risk of criminal prosecution that made people apply for amnesty. Nerlich’s study, published in Germany in 2002, is based on detailed research into criminal investigations and procedures regarding “state supported crime” (“Staatskriminalität”) in South Africa. His book begins with a general presentation of the specific features of the South African judicial system. The study then focuses on criminal investigations and criminal procedures that took place up to and since 1994, the year of the first democratic elections in South Africa. It continues by illustrating the interaction of criminal investigations and procedures and the process of seeking truth and granting amnesty within the TRC.

The book ends with general reflections on whether the South African model can become an example for other countries undergoing similar processes.

Until the late eighties very few apartheid related crimes were brought to justice. If legal proceedings were initiated, those responsible for the torture and even death of opponents in prison frequently could not be found. According to Nerlich’s study, the government and subsequently the judiciary only began to deal with the secret operations of the South African Police Force after the confession of Almond Nofomela. In 1989, Nofomela had admitted to having carried out numerous murders on the orders of the South African Police Force. Examining the subsequent criminal proceedings on apartheid-related crimes, Nerlich distinguishes between criminal proceedings against members of the security forces and members of the military. The first trial was that of Captain Brian Mitchell, a police officer. In 1992, after 5 months of trial, he was sentenced to death on eleven accounts of murder arising from a massacre at Trust Feed (in the KwaZulu-Natal Midlands).³ His trial was followed by a handful of other trials against former members of the South African Police Force.⁴

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³ Brian Mitchell was the first to be granted amnesty by the TRC in December 1996.
⁴ Most of whose amnesty applications were rejected on the grounds that the acts committed were not been politically motivated.