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Community Peace

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COMMUNITY PEACE

Dullah Omar, Minister of Transportation*

South Africans, local, South Africans in other parts of the world and the many distinguished visitors to our country, allow me first of all to say, if I may, a warm welcome to you. I had a look at the Program from your conference and you are certainly gluttons for punishment. The program is a heavy one, a crowded one that does not give you very much time to see the real life out there—although I believe you were in Cape Town last night. I do wish that you enjoy your stay. I think it is a good thing that you are able to move around because if you have developed perceptions of South Africa based on the reports which are circulated by the South African media then the picture would be one of doom and gloom. South African media, the white media in particular, like many other institutions in our country are still in need of transformation.

Our media remains white dominated, generally reflecting white views. By that I do not want to create any misunderstandings. I am a member of the ANC. I've been an international executive since the unbanning of the organization. I share its values with all my heart, mainly that we must build a non-racial society, something, incidentally, which I don't hear being spoken of in the United States, for example.

We sincerely believe it is possible to build a non-racial society and our project is to build a single South Africa, a united South Africa with a single nation, a nation which consists of diverse people. People who have different religions, different ethnic backgrounds, speak different languages, enjoy different cultures. So you have all that diversity which you may find elsewhere. But I think we have the advantage in this nationbuilding project.

As any member of the Truth and Reconciliation Commission will tell you, having been one of the victims, that we've had the advantage. That apartheid divided our people. And because apartheid was a part of our lives for such a long time, our liberation movement, our liberation struggle, has been a reality of our life. It is the element which gave us all inspiration. It provided us with the excitement of being in South Africa, participating in a great movement to unite people. So apartheid divided people. Our liberation sought to unite people. And that is why the ethos of the new South Africa is not a new separation, is not keeping people apart, but finding

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a formula that will enable diverse people of the kind I have spoken of to live together as part of a single South Africa.

The philosophy of separateness, of division, has cost our country such a great deal. The cost has been so great that there are very few people in our country, indeed, who want to return to a world of separateness or a country of many nations. We never speak of many nations; we speak of a single nation. I, myself, I think I speak for many others, some of whom are here, who believe we are living through a revolution. We have gone a long way in the course of that revolution, but the revolution is an unfinished revolution; we still have a long way to go. We have a long way to go because we still live with the legacy of apartheid, the legacy of violence, the legacy of separateness, of suspicions around people, the legacy of tremendous disparities between white and black, the legacy between some living in opulence and some in dire poverty, the legacy of racism.

Race remains in South Africa one of the defining characteristics of our society. So we still have a very long way to go. But we are very excited because we believe that we are making progress. Our Truth and Reconciliation Commission is and was an initiative of our liberation movement. It was a political issue and it had and still has political objectives. It was basically an initiative of the African National Congress. You may or may not have looked into our history—you may not have had time. 1994 was the watershed year for South Africa, the year in which we had our first democratic election, the first ever in our country, the first time that Nelson Mandela has ever been able to cast a vote in his life. But the notion of a truth commission was born before 1994. You know, we did not have a situation where we achieved democracy and then as a democratic South African government or parliament, sitting down to say to ourselves, "Now what are we going to do about our past. How are we going to deal with our past?"

That is not the way we did it. It may be more romantic to you if I said to you, "This is what we did and we decided this is the way we should deal with this matter." But that is not the reality of our situation. Our problem before 1994 was to persuade the parties that generally represented the white section of the population, to persuade them to agree to subject the political processes to democratic election. In early 1990 our struggle had reached such a state that those who ruled our country at the time came to the realization that they could not continue in the old way. The momentum of mass struggle in our country, the underground struggle, the armed struggle and the tremendous support we enjoyed internationally through the anti-

apartheid movement; the combination of those factors made the rulers at the time realize that they could no longer continue in the old way.

But they remained in control of the army, the police, the civil servants, the courts. So they had all the leaders of power in their hands. On the other hand, the liberation movement, generally speaking the major movement at the time and still now, the African National Congress, also realized that there was going to be a stage beyond which we will not be able to make progress. That we may plunge ourselves into the kind of situation that the South American countries found themselves in, with the western powers not allowing the liberation movement to win in South Africa.

That was the reality of our situation. The apartheid regime enjoyed the support of powerful forces internationally. Important western governments supported the apartheid regime and were not prepared to see that regime being defeated militarily. It is, of course, not a new story, but it did mean that we had to find a way of going through that morass and achieving a democracy in a way which would save life, reduce the carnage in our country and to end the conflict in which we had been engulfed and which could have easily have gone out of control.

In other words, we had to persuade the leaders of the apartheid regime at the time, led by F. W. De Klerk to agree to a formula which subjected South Africa to democratic elections. Now, our constitutional experts will tell us that F. W. De Klerk was one of the negotiating partners of Mandela and the picture which that creates of a partnership is very much misleading because the parties entered negotiations with very different notions in mind. In other parts of Africa, negotiations have led to results which basically maintain the status quo of the time. We were very conscious of the fact that our negotiation process could have gone the same way. We were not prepared to do that. We were very determined that our negotiations should lead to the establishment of a democratic order in our country.

It is in that context that the issue of how to deal with the past came up—some time before the democratic elections. We could not very well say to De Klerk, "We want you to give up power, but once you have done it, we want to arrest you and charge you with crimes against humanity." It was just not an option for South Africa. De Klerk would have never agreed. The white population would never have given up power and we would have never had democratic elections. And that is why, cutting a long story short, our interim Constitution which came into force in 1994 with the advent of the democratic elections, contained a postscript which made provision for amnesty. I

remember very well our discussions, having been part of the negotiating team. Heinz Klug is here too, he was involved with other matters. I remember very well before our final agreement was reached with De Klerk, that he insisted we should come to an agreement on amnesty and that the last Tricameral Parliament at the time (I think many of you know the situation at the time) would then pass a law to make provision for general amnesty – which we resisted.

But we had to meet the leaders of the apartheid regime – somehow – so as to get them to sign on the dotted line to enable us to move forward to democratic elections. And therefore, in the postscript, we made a general provision for amnesty. That there shall be amnesty and that legislation shall provide for the procedures and mechanisms, our argument having been that the apartheid regime could not give amnesty to itself. No perpetrator can give amnesty to itself. And that only a democratic parliament would be able to do that. But we committed ourselves to amnesty. That is in the postscript of the interim constitution. And ultimately, leaving aside all the many others issues on which compromises have been made, it is an agreement to provide amnesty that made De Klerk sign on the dotted line to agree to democratic elections.

In other words, what happened after 1994 was determined very much by what happened before 1994. So, that is why I am saying that the TRC is very much a political engine and that it is very much a political object with political objectives in mind. But it so happened that those political objectives were and remain consistent with the best traditions of democracy and respect for human rights. We wanted a democracy in our country. We wanted everyone to enjoy the vote. We wanted freedom for all our people, freedom of association, freedom of speech, freedom from detention. We went further than that. Our Bill of Rights provide for the kind of rights which are not contained in many other Bills of Rights. The Namibian Constitution and the Indian Constitution went some way to take into account the need for social and economic change. And therefore, in their constitutions, you've got some provision for those rights, but they are not part of the Bill of Rights. They are part of the preamble to the constitution that these are rights which they must take into account. We, of course, included social and economic rights in our Bill of Rights. In the same way that we included environmental rights, children's rights, and religious and cultural rights. We have a very lengthy Bill of Rights.

What I'm saying is that the ethos of the liberation movement represented the best human rights values in the world. And maybe that was because

amongst our liberation movements the ANC was the dominant one, but not the only one. Our liberation movements depended for their sustenance on the support of the international community. We were able to take advantage of the best that the international community could offer: people who found themselves in anti-apartheid movements throughout the world, and who were also conducting struggles in their own country. And so, we drew sustenance from those movements. And it became part and parcel of the thinking of the ANC. They weren't saying that our objective was a political one. The political object was and is one that remains consistent with the best traditions of human rights around the world.

The TRC has handed over a report to the President and it has been debated in Parliament. Incidentally, as you know, one of the major differences between our TRC and other truth commissions has been the way in which it is formed. Our TRC is the creature of legislation by a democratic parliament. It is not created by a presidential edict or order. The TRC concept was debated in our country for a long time before it went to Parliament. And ultimately, it was Parliament that checked the TRC and created the form which it took later. Also, our TRC has been very transparent as the panel on others may have indicated to you. But the big thing is that the TRC had to report back, it had to submit a report, which it did. It still has to submit a final report. And it is Parliament which will ultimately decide what to do. So it has commenced with a democratic practice and it will end with a democratic practice.

I just want to add that one should see how the TRC, in the context of others initiatives, has developed. We did not wait for the TRC to report before we set up a Human Rights Commission. We created a Human Rights Commission. We did not wait for the TRC to report before putting into place the basis for an independent judiciary in our country. During the apartheid years, we did not have an independent judiciary. As you know, generally speaking, we had a white dominated judiciary. When I became a justice, there was no black judge on our higher bench. The only judge was Ismael Mahomed. The late Ismael Mahomed, who subsequently became the first black Chief Justice of our country in the past five years. But there were no black judges; no women on the bench.

We embarked on initiatives to create an independent judiciary. We put into place a Judicial Services Commission so that unlike many other countries, including the United States, the appointment process is not politicized. I will not deal with the composition of the Judicial Services Commission due to the pressures of time, but the Commission has been

working well. The Human Rights Commission has been working, developing its ideas, making recommendations, including that of promoting an independent judiciary – that particular initiative had already advanced well down the line.

Now our Judicial Services Commission and the judiciary often refer to the High Court where we have approximately 200 High Court judges, but more than 90% of our people come face-to-face with law in our lower courts, so-called Magistrate's Courts. And that is the level where the most transformation is needed. For that's where ordinary working people all over our country come face-to-face with the law. And in many parts of our country, there is no change insofar as that judiciary is concerned. I may add that the judiciary refused to appear before the Truth and Reconciliation Commission on the basis of a spurious argument that it would undermine independence of the judiciary. The judiciary had suddenly discovered independence, for which it was never famed. You know, the tremendous contradiction in South Africa is that the media never fought for media independence in our country. It was always subservient to the apartheid state and the dictates of the apartheid state. So were our judiciary. Always subservient to our state.

It was the liberation movement, ordinary black people on our street who fought for that independence: media independence, judicial independence, a Bill of Rights, equality for all. Those things which you associate with the Universal Declaration and other human rights instruments which today are universally accepted. Ordinary people who were denied the vote at the time on the ground that they were not civilized enough to understand what a vote means. But their judiciary refused to appear before the T.R.C. Today we have a situation where that judiciary itself is under transformation. Much has changed, but much more is needed to be done in order to transform the judiciary in our country in the same way that the media needs to be transformed.

We have established a Constitutional Court. We did not wait for the T.R.C. Report before doing it. We have one of the major elements of the constitutional state. Our Constitutional Court like, I believe, our Truth and Reconciliation Commission, has today a well-established reputation all over the world. We have established a Magistrates Commission, an Ombudsman, Office of the Public Protector, as we call it, a Gender Equality Commission, a Human Rights Commission, itself, (which has also been working well), an independent office of an Auditor General and a number of other institutions. In other words, over the past six years, we've put into place all the

institutions and structures necessary for South Africa's constitutional state to become a reality.

So, what I would ask for is that we see the TRC initiative within the context of the revolution which is taking place now. And I believe that we've done more to establish the rule of law in our country, to establish the principle of accountability, than has taken place in our country in the previous 100 years and more. One of the objectives of the TRC was to establish accountability and to establish the rule of law.

The contradiction is that we compromised on how to deal with human rights violations of the past. We have not insisted on prosecution. The way that TRC processes work has compelled persons to come forward as individuals and to make their statements, to bring their applications, and also for individual victims to come along. In other words, we've established the principle of individual accountability. The importance of ascertaining the truth is not only to know what happened in the past but to establish the principle of accountability. Maybe accountability with respect to the past has been dealt with somewhat differently. But what we have done is draw the line between the past and the future. We set up the Truth and Reconciliation Commission not so much to enable us to deal with the past, even though that was important, but the more important thing for us was to create a better future.

We were looking at the future South Africa. What is the ethos? What will be the values of the new South Africa? Are we going to build a respectful life, respect for dignity? Are we going to create a healthy democracy or is the cultural abyss which we have been living with for so many decades, is that going to continue? The lack of respect for people, for life, for dignity, the humiliation heaped upon people, is that going to continue? So we are actually looking at the future. In order to deal with the future we must know what happened in our past. And I think in that context, I would personally say that I am very relieved to have participated in the process.

If you recall when we started off, when we combined the truth telling process with the amnesty process, there were many experts who said to us, "It can't be done. It cannot be a success." I think today, we can say that those five volumes which the TRC submitted to the President represent a monument to the success of the process. It also represents a tremendous tribute to the generosity of those who have been exploited and oppressed over the years.

You know, one of the strange things about the TRC process has been that it has been black people who have come forward to say, "I am sorry." And they've been the victims. And black people who've said, "I forgive you." I am not being a racist when I say the generosity has not been reciprocated by the overwhelming majority of whites in our country. That does not mean that the process is a failure. What I'm saying is that we still have a big challenge. What the TRC process has done, among others, is to open the eyes of the former oppressors, those who benefited from apartheid, those who were privileged during the apartheid years. Then can no longer say, "We did not know. We did not know what happened." Today, because of the work of the TRC everyone accepts that terrible things happened in our country—things that should never happen again. Generally speaking, the white media projected the TRC at the time of its inception as a witch hunt against whites, especially against Afrikaans. It has never been that. It gave people the opportunity of coming forward, coming clean, and then obtaining amnesty. The work of the TRC is not complete but I believe that the work that it has done is helping to ensure that our democracy has become entrenched.

What we have done in the past six years is lay the foundation for a new order in our country. We do not have any illusions. We have not solved all problems. The legacy of apartheid remains. When you arrive in Cape Town, landed at Cape Town international airport, and drove into Cape Town, you saw those shacks along the road. That is South Africa. If you go into any major town in our country, you will find the same shacks. And there is not a single South African who will think in his head that there may be a white person living there. Every person knows that those are black, blacks live there. When you went to Kensington, one of the more depressed areas, nobody would think that it was a white area. It was meant for Coloureds, a little bit better than the shacks.

The disparities, the legacy of apartheid is very much still with us. What we have done: 1) is to create a new constitutional framework; 2) put into place all the elements of a political democracy. Only recently we had our first ever genuine democratic local government elections. I sat in one of the panels where John Cartwright was speaking about one of the areas in which the Peace Committee is doing work and the fact that the municipality is giving a degree of support. The local government dispensation, which we have just put into place, has reduced the number of local authority structures from just under 800 to just under 300. They are the first ever genuine democratically-elected local government structures. In terms of law, we have created a situation to make it possible for our local government

structures to establish board committees, representatives of communities, and that there should be constant interaction between local government and communities. In other words, the Peace Committees which has been established, now have an opportunity of interacting with genuine democratically-elected local government structures, so as to ensure that the Peace Committees are able to sustain themselves.

Lastly, I think, one of the big challenges, since we are basically a legal fraternity here is as follows: having created this beautiful Constitution, the Bill of Rights, the independent judiciary, having established accountability and beginning to address the terrible legacy of apartheid, is to ensure that our Constitution and Bill of Rights does not become the preserve of the rich. Already in our first few years, those who have been privileged in the past have invoked our Bill of Rights to sustain their privileges. That's one of the risks that we have taken. But we are very fortunate that we have a very vigorous civil society and I believe that if we are able to establish a good partnership between our democratically-elected structures and organs of civil society, we have the possibility of ensuring that that fear does not materialize. John, you spoke of the peace committees and the role that the Community Law Center played and you said that this operated at a microlevel.¹

Well that's how things must be. If things exist at a macrolevel and it does not come down to the microlevel where people can see the benefit and feel the benefit, then all our initiatives will have been a waste of time.

One of the central problems which we face is to ensure that all people have access to justice. What your Peace Committee in Zwelatemba is doing is in some measure to address that need—to ensure that people have access to justice. One of the greatest challenges before us, and the legal profession in our country, is to ensure that we take those initiatives which translate those beautiful things that we have done into reality for all of the people throughout our country.

Thank you.

¹ Editor's Note: The Minister is here addressing John Cartwright of the Community Peace Program.

