

Social justice lecture explores TRC process

Yasmin Sooka, a South African human rights lawyer who served as a commissioner on the country's Truth and Reconciliation Commission (TRC), delivered Stellenbosch University's third annual social justice lecture on Friday 18 February 2022.

The lecture is hosted by the Law Trust Chair in Social Justice in the Faculty of Law in commemoration of World Social Justice Day, which is observed on 20 February each year. Aiming to raise awareness, while also advancing scholarship and deepening jurisprudence on social justice, this year's event was themed "Restorative justice and restitution: unfinished business from the TRC".

TRC had successes and weaknesses

The TRC, Sooka said, achieved a number of successes. These include identifying institutional weaknesses in state bodies such as the country's police and armed forces, and developing a holistic and comprehensive policy on reparations and institutional reform. Yet there were also weaknesses. Part of it, Sooka explained, was that while the commission had developed a reparations policy, government had to implement it. "The democratic government also argued that every black South African, as a victim, would benefit from government programmes of development, which unfortunately did not happen." The process of reparations to victims was delayed and the commission's recommendations around prosecutions and institutional reform were not carried out, she said.

Sooka also identified the distinction between truth recovery and full disclosure as well as the TRC's narrow interpretation of its mandate as further weaknesses in the commission's approach. "There's a big difference between telling the truth about everything you've been involved in, and the question of full disclosure. And while it is true that the TRC's mandate focused primarily on civil and political violations, there is no doubt that the laws and structural policies of apartheid went far beyond those. So, the failure to examine the impact of that allowed the beneficiaries to escape responsibility."

According to her, the commission should have placed greater focus on the racial dispossession of land, black South Africans' exclusion from the economy, and inferior education. This meant that opportunities were missed for the restitution of land, the prosecution of those who had not applied for amnesty, the proper implementation of reparations, and ensuring that black South Africans were able to access the economy. As a result, Sooka said, many today experience feelings of betrayal, and a sense that full transformative justice was not delivered.

Sooka currently chairs the South Sudanese human rights commission, which the United Nations (UN) Human Rights Council in Geneva established to investigate serious crimes in South Sudan, and collect evidence for future accountability efforts. She also served as one of three international commissioners on Sierra Leone's truth and reconciliation commission appointed by then UN High Commissioner for Human Rights Mary Robinson. Moreover, in 2011, Sooka formed part of the panel of experts advising then UN secretary-general Ban Ki Moon on accountability for war crimes in Sri Lanka.

Restorative justice everyone's business

Prof Nicola Smit, dean of the Faculty of Law at Stellenbosch University (SU), said the topic of restorative justice and restitution remains very important worldwide, and especially in South Africa. "In fact, our university in a restitution statement acknowledged its inextricable connection with generations past, present and future, as well as its contribution to the injustices of the past," she said. "This we deeply regret, and we apologise unreservedly to the communities and individuals who suffered from the historical privileges that SU enjoyed. And we honour the critical Matie voices of

the time who would not be silenced. SU is unconditionally committed to the ideal of an inclusive world-class university in and for Africa.”

In closing the day’s proceedings, Prof Thuli Madonsela, incumbent of the Law Trust Chair in Social Justice, remarked: “What we can take from what Yasmin said is that our boat is going through perilous waters. It doesn’t matter whose mistake it was. But if we want it to reach its destination – a South Africa with democratic values, social justice and fundamental human rights, and where everyone’s life is improved and potential is freed – we all have to work for it. We all have to invest in saving South Africa.”