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Cultures of secrecy: Liberation movements, truth telling and accounting for the past

Presentation to Nordic Africa Institute, Uppsala, Sweden, 18 December 2003 at workshop on 'The South African democratic transition revisited: between pessimism and miracles'.

Abstract:

The Hefer Commission of Inquiry into whether South African director of public prosecutions Bulelani Ngcuka was an apartheid spy has generated considerable interest in the role of intelligence services during and after wars of national liberation. Long-established political practices and deep-seated cultures of loyalty, as well as institutional compromises, come into conflict with the society's desire for transparency and acknowledgement. In this paper I examine the debate around whether the identities of agents of the former regime should be exposed in the interests of public accountability and disclosure. The paper also evaluates the way in which some of these issues were dealt with by the South African Truth and Reconciliation Commission, and argues that some of the 'unfinished business' of the process is now surfacing in unresolved tensions around truth-telling and betrayal.

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Cultures of secrecy: Liberation movements, truth telling and accounting for the past

When a private talk over a bottle of wine is broadcast on the radio, what can it mean but that the world is turning into a concentration camp?

(Milan Kundera – The Unbearable Lightness of Being p 136)

Introduction

Let me begin with a few anecdotes.

Mo Shaik, former ANC intelligence commander, broke down in tears as he testified to the Hefer Commission of Inquiry. (24/11/03 - SABC) He had not been able to prove his allegation that the National Director of Public Prosecution, Bulelani Ngcuka, had been an apartheid spy. He had appeared on a television documentary two months earlier, alleging that Ngcuka was an apartheid spy linked to the Security Branch agent number 'RS 452'. Shaik is a man about my age; recruited into the ANC underground, he was sent for training in East Germany as an intelligence operative. He came back to South Africa in the late 1980s, and headed up an ANC intelligence unit (MJK) involved with 'Operation Bible', tasked with identifying some 888 apartheid spies/agents who had infiltrated various organizations in the broad liberation movement.

Vanessa Brereton, who was one of these apartheid agents, although never identified by the ANC intelligence unit as such, confessed publically to being agent RS 452 (30/10/03 – SABC 'Special Assignment'). She had been recruited by security policeman and former spy Karl Edwards in 1985, and tasked with spying on the 'white left' as part of 'Operation Crocus'. Under enormous pressure because of the Hefer Commission, she apologized and asked forgiveness of all those people she had betrayed. Including me, who considered her a friend as well as my trusted legal representative during the mid-1980s. She confessed to having given information to the security police which led directly to my third period in security detention.

The unbanning of the ANC in February 1990 and the beginning of the negotiated transition left many activists and intelligence agents on both sides of the conflict deeply uneasy. Having lived for a decade in fear and secrecy, bound by a strict code of absolute loyalty, and tasked with uncovering 'traitors' within their ranks, it was hard for ANC operatives such as Shaik to operate openly, and to learn to trust anyone other than their handler. As Mac Maharaj – ANC leader and former head of the 'internal underground' said to the Hefer Commission – there were only five people who he would trust with his life.

And who could blame such intelligence operatives, on either side, for their caution? The transition was extremely messy. Apartheid security force elements and far right groupings tried to sabotage the negotiation process, through instigating and feeding into escalating political violence, in which tens of thousands died – more in this four-year period than in four decades of armed struggle. Throughout the transition, despite negotiations which led to promises of amnesty and indemnity for security force and liberation movement members, many had little faith in the prospects of democracy. While the apartheid government's security forces engaged in the massive destruction of documents, liberation movement members tried to maintain control over weapons as well as documents as some form of 'insurance policy' should the transition fail and a return to armed struggle be considered necessary. It was only after 1994 that the state was restructured, military and intelligence institutions were amalgamated, and former enemies began to work together in the same offices. Even so, with the Truth and Reconciliation Commission still to begin its work in 1996, many military and intelligence operatives were unwilling to reveal what information they had; one security policeman whom I met by chance indicated that he would be willing to talk to me over a beer – but only once the TRC process was over and he could no longer implicate anyone or jeopardize their chances of getting amnesty.

Two weeks ago, *This Day* newspaper (1-4 December 2003) published a list of some seven thousand names of anti-apartheid activists whose files were held by the Department of

Justice. An agreement had been reached whereby these files would be made open to the public, free of charge to those whose names appeared on the list. Similar to the situation when the Berlin wall came down, and the Stasi files were open to the public, an important debate has now arisen: should those who were spied upon, those whose files were kept by various intelligence agencies, those who were considered 'enemies of the state', now have access to this information? While at one level the answer seems obviously to be 'yes', in the interests of transparency and the right to access information, at another level the debate is more complex. This is when it comes to the issue of 'spy revelations' – who betrayed whom, who was linked to which agencies, who was a double-agent....once we choose to enter the Le Carre-like world of spy vs spy, ethical dilemmas arise which are not immediately apparent.

The SA Truth and Reconciliation Commission was hailed as a unique model of transitional justice mechanism in its 'conditional amnesty' process: amnesty for perpetrators was conditional upon the perpetrator making a full disclosure about the human rights violations for which s/he was responsible. This meant – as is agreed upon by many analysts of transitional justice mechanisms – that more truth was revealed than would have been the case if there was a punitive mechanism, such as a war crimes tribunal or criminal court, bringing justice to perpetrators of such violations. The 'conditional amnesty' clause meant that perpetrators were obliged to account for their actions and prove that they had a political motive for these actions – unlike in many countries where security force members were granted 'blanket' amnesty, this encouraged truth-telling with pardon as the incentive. There were cases where amnesty was denied when the perpetrators were not considered to have made a 'full disclosure' (see the PEBCO 3 case in Cherry, 2000). But equally, there were cases where the amnesty applicants revealed only a partial truth, leaving the victims or their families dissatisfied (see the Mtinkulu case in Cherry, 1999). While I have argued elsewhere that a partial truth is better than none, there is one area where the TRC did not even attempt to reveal the truth: and that was on the issue of spying.

Now it must be remembered that the whole TRC process was the result of the negotiated settlement in South Africa, and was therefore essentially the result of a political compromise. This compromise included a promise that there would be an amnesty provision in the interim constitution, which benefited both sides: it meant in practice that members of the liberation movement could be released from prison or return from exile to participate in the transition process; it meant that members of the apartheid security forces were given an incentive not to undermine the transition process. In addition, a process was set up whereby the military and intelligence structures of the main protagonists – the apartheid state and its homeland allies, and the liberation movements – would be integrated. In terms of the agreement reached between the parties, all agents of the previous services would be protected. The TRC was thus restricted in its ability to find the truth where issues of betrayal arose. Security policemen who were 'running agents', like Karl Edwards who was the 'handler' of Agent RS 452, and ANC intelligence operatives were equally reluctant to 'break ranks' and offer information about their informants. This was in part because of old codes of loyalty and discipline; in part because of legal protection offered to such agents by the 'deal' that was struck.

Let me give a few examples of where this issue came up at the TRC:

- In the case of Phila Portia Ndwandwe, an MK member who was tortured and then executed in secret by the security police, the TRC amnesty process resulted in her loyalty to the ANC and her bravery being confirmed; yet her family raised unanswered questions about who betrayed her to the security police
- In the case of the PEBCO three, three community leaders were abducted and assassinated by the security police. In the amnesty hearings, one of the perpetrators alleged that one of the PEBCO leaders had pleaded under torture that he was an informer for the NIS (National Intelligence Service). The person making the allegations was 'askari' Joe Mamasela, whose evidence was discredited. The TRC was unable to ascertain whether there was any truth to his claim.
- In the case of the Motherwell Four, black security policemen blown up with a car bomb by their white colleagues, the perpetrators tried to justify their action by alleging that the black policemen had 'defected' to the ANC, and were in fact recruited to give information to the ANC via its underground structures in Lesotho. While most people

believe there were quite different motives for the killings, it was not possible to disprove the security police's version of events. Conveniently, the ANC man who could have corroborated this version of events, Skenjana Roji, had passed away.

Is this a 'necessary silence', in that the identities of informers or traitors are protected, in the interests both of their own safety and of reconciliation within their communities? Are there instances where it becomes important to prove the identity of a spy or collaborator?

To outsiders, the furore around the Hefer Commission in South Africa may seem to be simply a reflection of a vicious fight within the ruling ANC, or at best a conflict around corruption and who has been investigated in connection with corruption related to an arms deal. However, the Hefer Commission has raised important questions for South African and other societies about how post-conflict societies should deal with information and with those who supply such information - the informers within any society or organisation based on intolerance and oppression.

Legitimacy of the justice system and the police

Firstly, the allegation that Ngcuka was not only abusing his position, but had been a spy for the apartheid regime, posed a serious challenge to the government. For Ngcuka was in a highly important and delicate position, as national director of public prosecution, and head of the 'Scorpions' investigation unit. The whole legitimacy of the justice system was called into question. Ngcuka was – and is – meant to be an independent and impartial administrator of justice. He is not meant to be bound by political loyalties, and his willingness to investigate criminal charges against senior members of government, including Deputy President Jacob Zuma, is an indication that he takes this role seriously. If he were indeed to be proven to have been an agent of the former security forces, his integrity and his impartiality would be called into question. He could be construed as having a political motive in wanting to undermine those in the ANC leadership; in addition, he could be judged simply as someone fundamentally unprincipled and lacking in integrity, and so unsuited to such a position of authority.

The reasons for making the spy allegations are seen as either revealing a deep and extremely nasty power struggle within the ANC, or as a replacement of the 'old activists' by the 'new mandarins'. Political analyst Mark Gevisser thus writes that the 'old activists' are still bound by the culture of loyalty and secrecy, and judge and reward individuals on the basis of their 'struggle credentials'; while the 'new mandarins' are those like Ngcuka who have 'put the past behind them' and define themselves in terms of their professional roles rather than their past political actions. (Sunday Times, 7 December 2003).

The President's appointment of the Hefer Commission was accompanied by a letter in the ANC newsletter (ANC Today, Volume 3 No 39, 3-9 October 2003) in which he gave a strong warning to others who are tempted to label people as spies: the ANC was committed to the TRC process, and will not tolerate undisciplined 'naming' of people as former enemy agents:

In its response to the report of the TRC, our government made an irrevocable commitment to implement the recommendations of the TRC to which it agreed. It openly stated which these are.

Despite all this, now, there are some who are trying to undo what our movement sought to achieve when it proposed and supported the establishment of the TRC, and fully cooperated with it. Effectively, these are arguing that some list of members of the ANC, who were allegedly recruited by the apartheid intelligence services, should be published.

Quite why this should apply only to members of the ANC is not explained. The fact is that there are many people active in various walks of life in our country, including some who argue for the "outing" of suspected former agents of the apartheid system within our ranks, who worked to sustain the apartheid system, even as agents of its secret services.

When we took the decision to achieve reconciliation rather than retribution, and thus established the TRC, we decided to forgive all those who might have caused unjustified harm to anyone in our country and elsewhere, in pursuit of the objectives either to perpetuate apartheid, or to achieve the liberation of the oppressed. We created the possibility for all to explain their actions.

And yet, today, there are some in our country who are acting in a manner that seeks to destroy this effort at national reconciliation. They are fishing in muddy waters to allege, with no effort to prove their allegations, that various members of the ANC and the government worked as members of the apartheid intelligence services.

They do not seem to understand that members of the ANC and our government, are equally capable of asserting that various South Africans and foreigners, including journalists, intellectuals, other professionals, politicians,

business people, and others, served as agents of the intelligence services of the apartheid regime, and naming these.

We have avoided this route because it would undermine and subvert the objective of national reconciliation and stability. It would deny our country and people the possibility to advance beyond the conflicts of the past, to establish the conditions for a united response of all our people to our national challenges, in favour of a people's contract for a better life for all.

Everyday we work with people who were an integral part of the apartheid system. Some of these serve in our legislatures and other state institutions. From 1994 to 1996, we worked in the same government with the very captains of apartheid. Voluntarily, our movement and government have elected to work with people who belong to a political party that, historically, was the party of apartheid.

We have done this because we are determined to put the past behind us, by promoting the unity of our people to engage in a common struggle to address the legacy of colonialism and apartheid that is not of our making.

For this reason, we have also unequivocally opposed actions taken by some, to prefer charges against various South African and international companies in United States courts, ostensibly to get damages for whatever harm these corporations are alleged to have caused by failing to isolate apartheid South Africa.

We have the possibility everyday to denounce all those, at home and abroad, who, in one way or another, and at one time or another, stood against the movement of national liberation that freed all our people from the apartheid crime against humanity. This includes those who, at one time or another, attacked Nelson Mandela and the rest of our movement as terrorists. Despite the available information, we have not done this because we have been and are determined to ensure that the past should not define our future.

There are some who pretend that an authentic list exists of ANC members who served as agents of the apartheid intelligence services. No such list exists. Those who claim that such a list exists are telling an outright lie. They make this claim for the sole purpose of defeating our efforts aimed at the reconstruction and development of our country.

Apart from this, and interestingly, those who claim to have superior knowledge do not ask for a similar list of the many who belong to other political formations, who served as agents of the apartheid intelligence and other services.

We will not allow that our movement, government and country are torn apart by the agendas of those who have no interest in the success of our democratic and anti-racist revolution. We will not create the opportunity for the mischief-makers wilfully to label whomsoever they wish as secret agents of the apartheid system.

In time, all those who feel free to charge others in our ranks with having been agents of apartheid, will have to answer for the charges they have made. The masses of our people will not forgive them for what they are trying to do, to undermine our country's movement forward, towards the genuine and all-round emancipation of the ordinary working people of our country.

Those who are peddling false stories about enemy agents in our ranks will be defeated, in the same way that the African slaves of Haiti defeated the combined forces of European reaction, that fought to deny them their liberation.

Archiving and control of information

Secondly, the Hefer Commission and the events leading up to its formation raised very important questions around the control of information during processes of transition; in particular, the control of sensitive or secret information, usually held by the intelligence services of governments and liberation movements, relating to infiltration by spies or agents of the 'other side'.

The first, and most obvious lesson in this regard, is the importance of mechanisms dealing with sensitive information to be established early on in the transition process. Verne Harris, formerly a senior official in the National Archives, has recorded the extensive destruction of documents that took place during the transition period, from 1990 to 1994. In 1993 alone, 43 tons of public records were incinerated, including the whole archive of the Military Intelligence Directorate of Special Tasks – which was directly involved in the former SADF 'surrogate wars' in Southern Africa. (*Transformation* 42, 2000:5). The importance of preserving documentation in times of instability and transition cannot be underestimated; once the destruction has occurred, it is too late. Invaluable resources for historians, justice systems and individuals are lost for ever.

In addition to the process of ensuring the safety of documentation, there are two arguments that transitional societies have to engage with in this regard.

Transparency and access to information

The first is an argument around transparency and access to information. At one level this is a technical/legal/institutional argument relating to who should have access to sensitive information, and how such information should be kept. But at another level, such processes are always contested: between political groupings who do not trust one another; in the process of amalgamation of intelligence and police units; and in the relations between government and media, where the latter is always interested in maximum transparency and accessibility of information. These conflicts and dilemmas are beautifully illustrated by the Ngcuka spy allegations.

The allegation that Ngcuka was an apartheid spy was published in the City Press newspaper, on the basis of information supplied to a journalist by Mo Shaik. Shaik, who had been an ANC intelligence operative, had conducted an investigation into Ngcuka in 1989. He reached the conclusion that Ngcuka was probably an agent on the basis of reports which he received and analysed. These reports were classified documents from the Eastern Cape security branch, 'fed' to the ANC through their own agent within the security branch. They have not been willing to disclose the identity of this agent even now, on the basis that the person's life may still be in danger for having betrayed his former security branch masters. Shaik analysed the documents and came to the conclusion that Ngcuka may have been 'Agent RS 452', writing up his own report which was passed on to the ANC head of intelligence. The original report was not available, but Shaik 'reconstructed' the report this year on the basis of a microfilm he had made, and kept in his possession, of copies of the secret documents he had received. This was clearly a form of 'insurance policy' which it is believed many security or intelligence agents on both sides of the struggle kept, illegally, in their possession. The idea was that if the negotiation process failed, or if they were at some future stage compromised, they would have some information to use as 'leverage' or as the basis of taking action against 'the enemy'.

Documents were, of course, meant to be handed over to the relevant authorities after the transition: to the National Archive Authority in the case of government services, or to the political party in the case of the ANC, which would then ensure that the documents were kept by the relevant authority. The problem is, at what point do people develop sufficient confidence in the new state to hand in their 'insurance policies'? How can we have confidence in the new mechanisms for keeping information safe? Harris has argued that we should learn some crucial lessons from the 'purge' of information in these years, most importantly 'the necessity for transparency and accountability in government'. He argues that despite constitutional commitments to the public right of access to information, there is a 'strong counter-current' already evident, 'fed by state officials and structures who are finding themselves blinded by the light'. (*Transformation* 42, 2000:52)

Yet, despite the massive destruction, there were documents that survived. Harris notes that during the TRC investigation into the destruction of documents by government, he 'saw several files which could create severe difficulties for people now prominent in the public and other sectors.' He notes wryly that one of his TRC colleagues turned to him with the comment 'Perhaps it would have been better if all these files had been destroyed.' (Ibid 2000:51). How these are controlled and accessed is still obviously a sensitive issue, which has been brought to the fore by the Hefer Commission. For apart from the secret documents about agent RS 452 that Mo Shaik had in his possession, it soon came out that there were still in existence another set of documents about agent RS 452, and these were 'leaked' to the public media at the time that the allegations were made. Analysis of these documents gave a fuller picture of agent RS 452, and allowed those who were involved in the Eastern Cape at the time – myself included – to come to the conclusion that agent RS 452 was not Bulelani Ngcuka, but Vanessa Brereton. Included in these 'spy reports' – which still exist – is all sorts of information about other spies, as well as personal information which I personally would not like to have publicly exposed! This brings me on to the second issue.

Ethical dilemmas

The second is an ethical argument, relating to the process of reconciliation. Is it in the interests of a post-transitional society that information about who was a spy or a collaborator becomes open? Should all lists of suspected spies be revealed to the public? Should security files be made accessible to the public? What gains can be made by such revelations, and what harm can it cause to individuals?

There are precedents in this regard: one of the most interesting was the opening of the Stasi files to the public in the early 1990s, following the reunification of Germany. Timothy Garton Ash's 'The File' provided for me a fascinating glimpse into the dilemmas of reading one's own file, and finding out who had spied on one. Yet when I spoke to German historians and other academics about this, they were more equivocal about the benefits of such investigation, and

in some cases were openly critical about how Garton Ash had portrayed the process. As an 'outsider', the implications for him of researching those who had spied on him were not particularly serious. Yet for people who had lived for decades under such an authoritarian regime, the decision to find out who in one's neighbourhood had been a spy, were grave. Communities, neighbours, even families could be torn apart by such revelations.

Such is the situation in South Africa today: the TRC failed to – or rather, took a clear decision that it was unable to – deal with the issue of betrayal and informers. This was for the most part because of the 'deal' made between the government and its opponents in the negotiation process of the early 1990s. It was also because of the 'internal logic' and professional culture in terms of which intelligence agencies, security police and liberation movements all operated: a culture of absolute loyalty and secrecy, where the identities of intelligence agents and informers were closely guarded. Both sides respected this culture, and agreed that they would not disclose to each other the identities of their agents. Throughout the TRC process, they upheld this rule. Thus whenever security force members who were applying for amnesty were asked for the source of their information, where this came from an informer they simply refused to disclose the identities of their sources – which was respected by the TRC.

Where liberation movements were keen to illustrate the damaging effect of infiltration by the apartheid security forces, and to justify their own internal security processes which involved torture and detention without trial, they were prepared to disclose the identity of such agents. Thus the ANC gave a fairly full account (with some holes in it) of their security structures, illustrated with case studies of apartheid spies they had revealed. But in most cases these spies had already been exposed by the ANC's own security structures, had in many cases died, and in others had been exposed as *askaris* and taken back by their former masters or become open opponents of the ANC. The many thousands of other informers for the apartheid regime were never exposed, and continue to be protected by their former masters.

This protection is in many ways understandable, even to be respected. For it is well known that while it is one thing to be in conflict with an enemy you know and understand, it is another to be betrayed by someone who is on your own side. At the highest level in this regard were the 'double agents' – those who infiltrated the liberation movements as full agents of the security police. In the middle were those who were informers for the security police or the NIA. And at the bottom were the collaborators – those who gave away scraps of information within their community, often for paltry material gain. If such people were exposed during the years of struggle, they were dealt with with extreme brutality. In a harsh black-and-white conflict, where the lines are clearly drawn, it is intolerable to have people in the 'grey zone' of collaboration (as Primo Levi calls them). But what happens when the conflict is over? Communities have to be reconstituted as functional societies, and neighbours have to learn to live with one another again. It is surely not in the interests of reconciliation for every collaborator and informer to be exposed. When someone like Vanessa Brereton confesses, it sends shock waves throughout her former community, and the society as a whole; her confession was debated extensively in public and in private, and responses to it were very varied. And if someone like Bulelani Ngcuka, in one of the highest positions of authority, is accused of being a traitor, the implications are enormous.

In relation to how the whole affair was handled, I am convinced that the President's decision to appoint a judicial commission was the correct one; firstly because someone occupying such a high position had to be exonerated of such allegations by an impartial and authoritative body; secondly because the process of doing so had to be public and transparent, given the high profile of those involved. And the public response to the whole saga gave me great confidence in our new democracy: the level of public debate was remarkably high, and remarkably widespread: all sectors of society engage in such debate, which in itself is a very good sign: that the public are politically conscious 'watchdogs' of our democracy, and will not keep quiet about their opinions, even when very important politicians are 'on the line'.

Conclusion

Now, with the publication of the list of some 7 000 anti-apartheid activists whose files are held by the Justice Department and have been opened to the public, these questions are once again at the forefront of our minds. Far from putting the past behind us, a whole Pandora's box of allegations are being made, and rumours are flying about who was a spy in the 'bad old days'.

Some argue that maximum transparency in such matters is always in the best interests of society as a whole, even if individuals suffer as a result. Others argue that such individuals must also be held to account, and see it as an omission in the whole transitional justice process that such individuals have been 'let off the hook' and protected. In the case of Vanessa Brereton, there have been calls for her to be struck off the role of attorneys, on the basis that she has been shown through her own admission that she was an apartheid security police agent to be unfit to practice as an attorney. Yet Brereton has become a chance victim of a power-struggle within the ANC; she would not have confessed if the pressure around the allegations against Ngcuka had not forced her to do so. And for every Brereton, there were a thousand other agents and spies. The vast majority of them could not leave South Africa and start a new life elsewhere, as she did. They are still living within the communities upon which they spied, and it can be argued that their exposure could be highly damaging to them and their families. Where communities have made peace, sometimes with considerable difficulty, after protracted and vicious periods of conflict, it may be more damaging than healing to open up the wounds of the past in this way.

Thus we see how long-established political practices and deep-seated cultures of loyalty, as well as institutional compromises, come into conflict with the society's desire for transparency, acknowledgement and the holding of individuals to account for their actions. How transitional justice mechanisms deal with this issue, both ethically and practically, is an indication of the successful establishment of a true democracy.

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