**TRANSFORMATIVE CONSTITUTIONALISM AND RECONCILIATION – BALANCING THE INTERESTS OF VICTIMS AND BENEFICIARIES**

On 27 April 1994 South Africa had its first democratic election. On that same day the interim Constitution[[1]](#footnote-1) came into effect. The first Epilogue of the Constitution read as follows:

“This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.”

Former Chief Justice Pius Langa saw this as a clear mandate from radical transformation of our society. Both the interim and the final Constitution[[2]](#footnote-2) are transformative in nature.

The Epilogue of the interim Constitution provided that in order to facilitate reconciliation and reconstruction, amnesty had to be granted in respect of “acts, omissions and offences”. In order to facilitate this process, Parliament “under the Constitution” had to enact legislation. Parliament enacted the Promotion of National Unity and Reconciliation Act.[[3]](#footnote-3) Pursuant to the Act the Truth and Reconcilation Commission was born.

Some years after the conclusion of the Commission’s work it already became clear that the remit of the legislation was defined to narrowly. The Commission dealt only with the perpetrators and victims of gross human rights violations. It did not make provision for the large multitude of people who were treated as subhuman and had suffered forced removals, curfews, poverty and general injustice. The question of those who benefited from the system, and who continue to benefit, was also neglected.

Two decades after the fall of apartheid our society remains uone of the most unequal in the world and the “better life for all” has not materialised. During the student uprisings of 2015 it became clear that the rainbow nation was regarded by many, especially the youth, as a myth. The movement represented a resurgence of the Black Consciousness philosophy of Steve Biko and others. The notions of continued white privilege and white supremacy were challenged by the student movement.

Judge Langa saw reconciliation and the responsibility therefore as a major challenge to transformation. A serious impediment to both reconciliation and transformation is indifference on the part of various role players, particularly the beneficiaries of the Apartheid system. If this indifference is not addressed, reconciliation will never be achieved.

1. Constitution of the Republic of South Africa, Act 200 of 1993. [↑](#footnote-ref-1)
2. Constitution of the Republic of South Africa, 1996 [↑](#footnote-ref-2)
3. Act 34 of 1995. [↑](#footnote-ref-3)