



## Reparations in South Africa: What still needs to be done?

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### Introduction

The issue of reparations for wrongs that have happened in the past is contentious. Human rights violations leave an indelible mark on individuals, communities and countries. If not acknowledged, remembered and repaired, reconciliation and healing is difficult, if not impossible. Often reparations are reduced to the exchange of material resources, however, they go far beyond this. Reparations are necessary not just from a justice perspective, but also have an important psycho-social element, which cannot be ignored; or if ignored, may imperil the whole reconciliation project. Acknowledgement, accountability and redress are necessary, but not sufficient. If the trauma that resulted from the violations is not acknowledged, authentic reconciliation and lasting peace are imperiled.

Reparation is:

1. The action of making amends for a wrong one has done, by providing payment or other assistance to those who have been wronged.
2. The compensation for war damage paid by a defeated state[1].

[1]Oxford Languages [https://www.google.co.za/search?q=reparations+definition&rls=jg&sxsrf=APwXEdmVCAvBQQZtSnHmndOYzJyxQajkA%3A1680692011153&source=hp&ei=K1MtZKSTB5SPgQaXiJqIDA&iflsig=AOEireoAAAAZC1h075dNvZwFOya6FStyFxB1tkGliO\\_&oq=reparations&gs\\_lcp=Cgdnnd3Mtd2l6EAEYAzIICAAQigUQkQIyCAgAEI\\_AEELEDmgIABCBBCxAzIFCAAQgAQyBQgAEIAEMgUIABCBABDIFCAAQgAQyBQgAEIAEMgUIABCBABDIFCAAQgAQ6BAgiECc6BAguECc6CwguEIA\\_EELEDEIMBQgsILhCKBRCxAxCDAToLCAAQgAQQsQMgWf6EQguEIAEELEDEIMBEMcBENEDQgsIABCKBRCxAxCDAToLCC4QgAQQxwEQOQM6CgGAEIAEEBQqhwI6CwgAEIAEELEDEIsDUABYoxlgoD1oAHAAeACAAZ8CiAGmFpIBBDItMTGYAQcAgAQG4AQI&scient=gws-wiz](https://www.google.co.za/search?q=reparations+definition&rls=jg&sxsrf=APwXEdmVCAvBQQZtSnHmndOYzJyxQajkA%3A1680692011153&source=hp&ei=K1MtZKSTB5SPgQaXiJqIDA&iflsig=AOEireoAAAAZC1h075dNvZwFOya6FStyFxB1tkGliO_&oq=reparations&gs_lcp=Cgdnnd3Mtd2l6EAEYAzIICAAQigUQkQIyCAgAEI_AEELEDmgIABCBBCxAzIFCAAQgAQyBQgAEIAEMgUIABCBABDIFCAAQgAQyBQgAEIAEMgUIABCBABDIFCAAQgAQ6BAgiECc6BAguECc6CwguEIA_EELEDEIMBQgsILhCKBRCxAxCDAToLCAAQgAQQsQMgWf6EQguEIAEELEDEIMBEMcBENEDQgsIABCKBRCxAxCDAToLCC4QgAQQxwEQOQM6CgGAEIAEEBQqhwI6CwgAEIAEELEDEIsDUABYoxlgoD1oAHAAeACAAZ8CiAGmFpIBBDItMTGYAQcAgAQG4AQI&scient=gws-wiz)

### Why are reparations necessary?

South Africa chose to pursue the route to reconciliation through Transitional Justice (TJ). TJ emphasises the centrality of victims. “It focuses on their rights and dignity as citizens and human beings and it seeks accountability, acknowledgment, and redress for the harms they suffered”[2]. This is important because the focus and intent is on reconciliation, which is human-centred and not a “tick-box” exercise to meet legal or political requirements, although some may argue this is a trap that we have fallen into.

Often in cases where there has been conflict and gross human rights violations, such actions are conducted in secrecy. Reparations require there to be truth-seeking, truth telling, an acknowledgement of the harm done and accountability for illicit actions; and are a recognition of the harm that has been caused and the need for redress. This is the case in the South African experience.

### Process of Reparations

It is important to see reparations in totality: the process is greater than a transactional exchange of money. Reparations need to address the relational issues caused by the human rights violations. There needs to be *redress* (just compensation), *restitution* (the right to be reinstated to the situation that existed before the violation), *rehabilitation* (the right to medical

[2]International Centre for Transitional Justice, <https://www.ictj.org/what-transitional-justice>.

and psychological support), **restoration of dignity** (this can include symbolic reparation) and **reassurance of non-repetition** (legislative and administrative reforms)[3].

### Asking the right question

People often ask how far back in history we need to go, in order to determine who receives reparations. This question sees reparations as transactional and is reductionist in nature: who did what to whom and when? The critical problem with this question then, is that it sees reparations as a mechanical process, usually involving resources (land or money). The important element missing here is trauma and redress.

Reparations must, by definition, seek to address, amongst other things, the issue of trauma and be an attempt to break intergenerational, historical trauma that results from human rights violations. The question of material redress is necessary, but not sufficient, when dealing with individual and collective transgressions. The question that needs to be asked is: “What traumas from the past still exist?” From this will flow the type and nature of the reparations that need to be adopted.

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### Categories for Reparations

In the context of South Africa, we need to look at reparations in two categories: international reparations for colonialism and reparations in South Africa. Much of the conversation has focused on South Africa to the detriment of considering the other category. Colonial reparations are seldom spoken of and are fraught with controversy. This should not, however, stifle the much-needed conversations which are necessary.

[3]Fernandez, L. “Reparations policy in South Africa for the victims of apartheid” <http://www.saflii.org/za/journals/LDD/1999/13.pdf>

Since the death of Queen Elizabeth II, colonial reparations are once again on the international agenda. We need to have a discussion not just about reparations, but acknowledgement and accountability. Reparations are necessary but not sufficient for healing and reconciliation. Until the truth has been told, until the trauma has been recognised and until compensation has been paid, the path to a just world order will be thwarted.

As mentioned above, some have asked how far back we go, and argued that the colonial powers will not be able to pay the reparations being asked of them. Once again it is important to point out that this is about the victims not the perpetrators. Where trauma exists, some form of compensation is necessary – what that form is may differ, depending on the context.

There is also precedent in the slave trade. Both in the United States and in Britain, slave owners were compensated for their “loss.” In the case of Britain, parliament passed the Slave Compensation Act 1837. The loan taken out constituted 5% GDP at the time and was so large that it was only finally paid off it off in 2015[4]. In the United States, “President Lincoln signed the District of Columbia Compensated Emancipation Act. This law prohibited slavery in the District, forcing its 900-odd slaveholders to free their slaves, with the federal government paying owners an average of about \$300 (equivalent to \$8,000 in 2021) for each.[5]

### Reparations as part of reconciliation in South Africa

In South Africa we chose to make reparations an essential part of the reconciliation process. At the time of determining the path to be taken, the democratic government “accepted that it is morally obliged to make reparations to the victims of the various apartheid governments. The fact of the matter is that, without providing for some measure of reparation to victims, healing and reconciliation would not take place”[6]. The extent to which this would happen was determined by the Promotion of National Unity and Reconciliation Act (34 of 1995) (hereafter referred to as the TRC Act).

[4]<https://taxjustice.net/2020/06/09/slavery-compensation-uk-questions/>

[5][https://en.wikipedia.org/wiki/Compensated\\_emancipation#:~:text=On%20April%2016%2C%201862%2C%20President,%248%2C000%20in%202021\)%20for%20each.](https://en.wikipedia.org/wiki/Compensated_emancipation#:~:text=On%20April%2016%2C%201862%2C%20President,%248%2C000%20in%202021)%20for%20each.)

[6]Fernandez, L. Op cit.

It is important to note that the TRC Act itself was limited in its scope to political human rights violations between 1960 and 1994. Violations before and after that date were excluded from the purview of the TRC.

The TRC Act defined reparation as: including “any form of compensation, ex gratia payment, restitution, rehabilitation or recognition” and was dealt with in Sections 23 – 27[7]. The limitation to political violations meant that many acts that were committed fell outside the ambit of the TRC, and therefore those victims were not eligible for reparations. It is important that we understand the limitations of the TRC and that future processes involve the whole society and not just a narrow section of it.

## **Categories of recommendations identified by the TRC**

The TRC engaged in extensive research and held workshops around the country. Emerging from this consultation was that victims wanted financial reparations, but that there were also a host of other forms of reparations as well. These related primarily to remedying the lasting effects that apartheid has had on their lives.

The TRC thus proposed the following:

- 1) Urgent interim reparations;
- 2) Individual reparation grants;
- 3) Symbolic reparation and community reparation;
- 4) Community rehabilitation programmes;
- 5) Institutional reform.

## **TRC recommendations and the response**

### ***Urgent Interim Reparations***

These were designated for those with urgent needs for those whom waiting for the final grant would jeopardise “their means of existence”[8]. This process was completed in 2001 with only 14,000 payments having been made. Given the havoc wreaked on society by apartheid, this is a mere fraction of those who needed support[9].

[7]Reparation and Rehabilitation of Victims (sections 23-27) <https://www.justice.gov.za/legislation/acts/1995-034.pdf>

[8]Fenandez, L. Op cit.

[9]Goozee, H. ‘The struggle continues: Khulumani Support Group and reparations in South Africa’

<https://www.strifeblog.org/2021/02/05/the-struggle-continues-khulumani-support-group-and-reparations-in-south-africa/>

### ***Individual reparations***

The TRC recommended between R17,029 over – R23,023 over a six-year period[10]. This recommendation amounted to R102,174 – R138,138 per person. In the end the government decided not to go with the recommendations and, instead, paid a once-off sum of R30,000 to only those who appeared at the TRC. This decision has been the source of much debate and controversy. Not only is the sum far below what was recommended, but it was also limiting victims to only those who testified before the TRC. In the end, only about 17,000 people received reparations. This has, therefore, excluded whole swathes of people who for legitimate reasons were not able to appear at the TRC as well as those who fell outside of the time period. The controversy is further heightened by the fact that the President’s Fund, established to pay reparations, sits over R1,8 billion[11]. The Khulumani Galia Group, a victims’ organisation, had led numerous protests, including camping outside the Constitutional Court, to highlight these issues.

### ***Symbolic reparations and community reparations***

These included individual interventions around victims (exhumations, death certificates, expunging criminal records). In this there has been a measure of success. The process of identifying victims and exhuming remains has been slow, but progress has been made in 180 cases[12].

The renaming of places, streets and facilities has not been without controversy, but significant changes have been seen across the country. There are some outliers which exist, but government has introduced these changes, as well as creating national days for remembrance (21 March, 16 June and 16 December amongst them). Provincial and local governments have also embraced changes, as evidenced in making Freedom Square in Bonteheuwel a provincial heritage site[13].

[10]TRC Report paragraph 69, as cited in Makhalemele, O. “Still Not Talking: Government’s Exclusive Reparations Policy and the Impact of the R30,000 Financial Reparations on Survivors” (CSV, 2004) <http://www.csvr.org.za/docs/reconciliation/stillnottalking.pdf>

[11]Steyn, D. “Nearly R2 billion for apartheid reparations is unspent: The President’s Fund is growing as apartheid’s victims wait”. GroundUp 12 December 2022 <https://www.groundup.org.za/article/unspent-money-the-r19-billion-fund-meant-for-apartheid-reparations/>

[12]Mokushane, T. Address to meeting on Transitional Justice in Africa held at the Embassy of Sweden, 7 December 2022.

[13]Charles M. “Freedom Square in Bonteheuwel officially a Western Cape heritage site Accreditation” News 24, 8 March 2021

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### **Community Rehabilitation**

The TRC recommended that communities would be the focus of a special type of reparation. This recognised the way in which apartheid attacked not just individuals, but whole communities and peoples.

To this end, the TRC recommended:

- Demilitarisation;
- Resettlement of displaced persons and communities;
- Construction of appropriate local treatment centres for psycho-social support;
- Rehabilitation of perpetrators and their families;
- Support for community-based victim support groups;
- Skills training;
- Trauma counselling services
- Family-based therapy
- Educational reform and improvement of schools
- Study bursaries
- Special educational support services
- Provision for housing [14].

Survivors within the Khulumani Galia Group have identified the lack of progress in these areas as one of the key failures which has led them to continue to protest and demand change from government. While government has identified certain communities as recipients of rehabilitation programmes, the process has come under criticism from civil society organisations, such as the South African Coalition for Transitional Justice.

The vision of the TRC has fallen well short in implementation, meaning that many communities and individuals who are victims of apartheid are still waiting for rehabilitation and reconciliation. This is evidenced by the South African Reconciliation finding in 2023 that only 54% of South Africans said their friends and family have experienced reconciliation since 1994[15].

[14]Makhalemele, O. Op cit.

[15][https://www.ijr.org.za/home/wp-content/uploads/2021/12/IJR\\_SA-Reconciliation-Barometer-2021.pdf](https://www.ijr.org.za/home/wp-content/uploads/2021/12/IJR_SA-Reconciliation-Barometer-2021.pdf)

### **Institutional reform**

This is arguably where the most amount of success has been attained, and simultaneously where much more needs to be done. The transformation from an apartheid state to a democratic one has been successful in terms of transforming the institutional architecture. The implementation of laws and policies has, however, left much to be desired. Reforms within policing and the justice system, for example, have been slow and traces of colonial and apartheid mentalities can be found within their institutions and systems.

### **What do non-monetary reparations look like?**

Survivors identified their own needs as the following:

- Acknowledgement of wrong done
- Revelation of the truth
- Exhumation of bodies of victims
- Pension rights
- Medical and educational services
- Social security
- Housing
- Restoration of reputation [16].

It is difficult to separate out the different strands of Transitional Justice and it can be seen from the list above how they intersect. Distinct, but related to reparations, are the first two points mentioned above. In the area of prosecutions and truth-telling, South Africa has stalled. Inquests into the deaths of anti-apartheid activists have taken up to 50 years in the case of Imam Haroon. Evidence has been lost and suspects have died. Any discussion on reparations needs to also take into account truth-telling, truth-seeking and accountability.

In addition, public education is required. According to the 2023 SARB, 7% of people disagree/strongly disagree that the apartheid government committed terrible crimes against those struggling against apartheid; while 9% disagree / strongly disagree that Apartheid was a crime against humanity. Such denial so soon after the end of apartheid does not bode well for the future. It is conceivable that such denialism, combined with racism and the growth of Replacement Theory and criticism of Critical Race Theory (as we have seen in other parts of the world) would lead to catastrophic results in South Africa.

[16]Makhalemele, O. Op cit.

## Conclusion

According to the 2023 South African Reconciliation Barometer, just over half of South Africans (54%) believe the people close to them have experienced reconciliation since the end of apartheid, while (62%) agree that South Africans have made progress in reconciling. When asked to evaluate the efficacy of the TRC in 2021, 58% agreed that it provided a good foundation for national reconciliation. Finally, although a minority of South Africans say they have not experienced reconciliation, it also shows that a substantial majority of respondents (76% in 2023) agree that South Africans still need reconciliation”[17].

Before proceeding with what needs to be done, we need to identify what has been achieved, as well as being honest about the shortcomings and the limitations of the TRC.

The TRC was not the end point and panacea of all that was wrong with apartheid. In the end it dealt with 34 years of a 350 years of oppression and discrimination. In its design and scope, it could never deal with all the challenges that we face. Pre-1960 and post-1994 victims (such as those who were murdered in KZN in the mid-1990's) have been excluded from the formal processes, but their victims, survivors and legacies remain. We have to have a national dialogue which looks at rehabilitation in the broader sense than has hitherto been discussed.

The TRC was limited to making recommendations on reparations (Section 25 (b) (1) of the TR Act), but it was left to parliament and the president to make the final decisions, which, as we have seen, have had adverse consequences for victims, survivors and their families. In addition, there were serious shortcomings when it came to the way in which gender was dealt with, meaning that the full story of women has yet to be told.

It is important that we remember that this is not solely the responsibility of government. Civil society has a vital role to play: whether that is to advocate for change, or to act in collaboration with government.

[17][https://www.ijr.org.za/home/wp-content/uploads/2021/12/IJR\\_SA-Reconciliation-Barometer-2021.pdf](https://www.ijr.org.za/home/wp-content/uploads/2021/12/IJR_SA-Reconciliation-Barometer-2021.pdf)

For South Africa to be able to deal with the wounds of its past, and move towards a healthier society in future, every person and every community, will need to be a part of the process.

*As part of a decolonial peacebuilding agenda, it is necessary to apply a transitional justice prism to critique the undemocratic nature of the*

## Recommendations

1. Colonial reparations: as a society we need to have a discussion on what we understand by ‘colonial reparations’ and what is needed for healing in our society. It will then be necessary to lobby our government and those of previous colonisers for the demands to be met. We should be under no illusion that this will take a long time and be difficult, but these should not deter us from our task.
2. Education on apartheid, its legacies and memorialisation: it will be necessary to embark on a concerted campaign in all sectors of society to ensure that memory is preserved, that we never forget and that the truth is known. This includes looking at the experience of women and gender minorities, how the violence and silence meted against them continues today.
3. National conversations: we need to reinvigorate national conversations to discuss the hard issues: what was the role of business and what role do they need to play now? We need to also look at the issues of prosecutions and potentially different mechanisms to hold perpetrators to account.
4. Advocacy: we need to advocate for victims and survivors, that they may receive just compensation for the suffering endured. We need government to listen to them, hear their stories, acknowledge their wounds and restore their dignity. It must be an inclusive process reaching the broadest possible number of people and communities.

## About the author

Felicity Harrison has been volunteering in the NGO sector for 30 years and involved professionally for 25. During that time, she has worked in advocacy, democracy building and process facilitation. Her areas of areas of interest are: community dialogue methodologies, accountability, truth-telling, trauma, memorialisation, reparations from states for victims, international reparations in South Africa, reconciliation, restorative justice, reparative justice, decolonisation, anti-racism and social cohesion.



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