Repairing the Irreparable: Dealing with double-binds of making reparations for crimes of the past

by

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> Let me begin by noting that reparation is not just about money, it is not even mostly about money; in fact, money is not even one percent of what reparation is about. Reparation is mostly about making repairs; self-made repairs, on ourselves - mental repairs, psychological repairs, cultural repairs, organisational repairs, social repairs, institutional repairs, technological repairs, economic repairs, political repairs, educational repairs, repairs of every type …[1]

Although reparations for a survivor of violence or the family of victim may well be psychologically necessary, on an individual level, they are not sufficient because genuine resolution depends on how the individual personally *works through* the traumas of the past. Reparations, both material and the so-called symbolic, are useful markers in this process, but the lasting legacy of gross violations human rights does not simply vanish with time or when reparations are granted. Government strategies such as truth commissions can help to open the door for the possibility of the individual and the country to begin the process of working through a violent and conflicted history. Socio-economic development can help ease this process considerably - but it too is limited and intrinsically insufficient for addressing the plethora of personal injustice and psychological injury experienced after substantial loss.

This paper explores the interplay between these factors, and the contradictory and inherent difficulties of trying to make amends for past wrongs in post-apartheid South Africa. The competing and often diverging psychological needs of the individual and the society with regards to making reparations for gross violations of human rights are discussed. The paper begins by briefly outlining the South African Truth and Reconciliation Commission's mandate and policy recommendations with regards to reparations for survivors and families of victims of human rights abuses. Thereafter, some of the psychological benefits and double-binds of making reparations are outlined. Four suggestions are then made with regard to how the process of making reparations for essentially irreparable loss can be eased.

Reparations and Truth and Reconciliation Commission

The least well-publicised of the three Truth and Reconciliation Commission Committees is the Reparations and Rehabilitations Committee (R+R Committee). Unlike the Amnesty

Committee and the Human Rights Violations Committee it did not hold public hearings for either perpetrators or victims.[2] Based on the findings of the other two Committees, this Committee was mandated to design a policy of how best to assist those found to be victims, i.e. the direct survivors, family members and/or dependents of someone who has suffered a politically motivated gross violation of human rights associated with a killing, abduction, torture or severe ill-treatment. The R+R Committee was obligated to make recommendations to "reparate" these victims for the damages they had undergone in the conflicts of the past. To this end, and according to the Promotion of National Unity and Reconciliation Act (hereafter the TRC Act),[3] the TRC had to make recommendations to the President with regard to:

> The policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims.[4]

The R+R Committee made such recommendations in the final report of the TRC that was handed over to President Mandela on 29 October 1998. According to the TRC Act the policy could recommend any reparation measures in the form of compensation, *ex gratia* payment, restitution, rehabilitation or recognition. The TRC final report makes a number of suggestions that utilised most of these measures. The President and Parliament has to decide how, *or whether*, the policy will be implemented.

Undoubtedly for the R+R Committee, drafting the reparations policy was no small endeavour. A number of vexing questions existed from the outset. For example, who will qualify for reparations? Should reparation be monetary or symbolic, or both? Is the state obligated to pay compensation because an individual is denied access to a civil claim when amnesty is granted to the perpetrator? Should such reparations be granted specifically to individuals, or should the process be collective, or both? Does the government have the funds for any of these approaches? Should there be a means test to assess the degree to which survivors have been psychologically and physically damaged? Should the extent and type of reparation be based on this means test and a system of prioritisation relative to the degree of suffering?

The TRC has attempted to answer some of these questions in its final policy.[5] The TRC opted for an approach that did not utilise a means test for each victim. Seemingly, this is dismissed due to cost, and the resources necessary for grading the psychological and physical injuries of the approximately 20,000 victims. The policy states that relatively equitable urgent and individual financial grants for each person "found to be a victim" should be made available through the government.

A call for a range of other reparation strategies are also included in the policy. These include the need for symbolic reparations (e.g. erecting headstones, building memorials, renaming public facilities, a day of remembrance, etc.), legal and administrative interventions (e.g. expunging criminal records, issuing declarations of death, etc.) and the need for exhumations, reburials and ceremonies. A number of community rehabilitation programmes, which should form part of the general initiative to transform service provision in South Africa, are also recommended. These include, amongst others, the establishment of local treatment centres for survivors of gross violations of human rights, rehabilitation

systems for perpetrators and their families, the establishment of self-sustaining community-based survivor support groups, as well as more broadly-based recommendations such as the establishment of community colleges, the establishment of housing projects and the rebuilding of demolished schools. A range of institutional reform measures designed to prevent the recurrence of human rights abuses are made. These form part of the wider recommendations of the TRC.

In line with the demands of the TRC Act, the TRC also had to consider the granting of urgent interim reparations. To this end, the R+R Committee has proposed that the financial component of reparation be distributed in two phases.[6] First, those found to be victims will be given an urgent one-off payment ranging from a baseline of approximately R2,000 up to R6,000 in exceptional circumstances.[7] After this initial grant, a longer-term individual financial grant scheme is proposed by the TRC. If the government accepts this proposal, it would mean the government will be paying out approximately R2,864,400,000 over a six-year period to some 22,000 survivors. This would work out to roughly R17,000 to R24,000 per victim[8] for each year over a six year period, i.e. R477,400,000 million per year.

To date R600 million, to be spread over the next three years, has been allocated by the Department of Finance for reparations.[9] Urgent payments (sic) began in June 1998 some 18 months after the TRC began operating. The proposal for longer-term payments, and whether it is going to be accepted by the government or not, is still under discussion. At present, a similar situation exists with regard to the recommendations about symbolic acts of reparation.

The Purpose of Reparations

> Much of what we are about is saying as a nation "we are making acknowledgements to people". The *[reparation]* amount is going to be symbolic … the nation is saying sorry.[10]

In the TRC final report some of the benefits of granting reparation are briefly outlined. These include the ability of reparation awards to concretise the state's acknowledgement of wrong-doing, to restore the survivors dignity, and to raise public consciousness about their moral responsibility to participate in healing those hurt in the past. Furthermore, the TRC final report notes that the granting of reparations can add value to the "truth-seeking phase" of the TRC in so far as it can affirm that the values and interests, as well as the aspirations and rights, of those who suffered are being advanced.[11]

Psychologically speaking, however, the so-called symbolic acts of reparation (e.g. reburials) and material acts of reparation (e.g. payments) serve the same end. Both these forms of reparation can, although not necessarily, play an important role in any process of healing, bereavement and addressing trauma. They can symbolically acknowledge and recognise the individual's suffering. These symbolic representations of the trauma, particularly if the symbols are personalised and culturally relevant, can help concretise a traumatic event, aid an individual to come to terms with it and help label responsibility. The latter is important because labelling responsibility can appropriately redirect blame toward those truly responsible and relieve the guilt that survivors themselves often feel. On a macro level, extensive social processes such as the TRC (and culturally specific rituals) can

also represent a societal or community willingness to deal with and part from the past.

Reparations, symbolic or otherwise, can also serve as focal points in the grieving process. This can aid recovery by allowing individuals to focus exclusively on their grief. Symbols, and even money in some instances, can also symbolically mark the point of moving onto a new phase and symbolise an individual's mastery over the past.

Monuments and museums, plaques and other markers are some of the ways that governments, as well as social actors, can try to embody memories - these can serve as vehicles for the intergenerational transmission of historical memory.[12] This can result in lessons from the past being carried into the future. Spatial markers of memory are also attempts to make affirmations and statements, and are both facts and gestures which embody political, collective and public meaning.[13]

In the restorative justice sense, restitution paid by the perpetrator to the victim can also help symbolise the perpetrator's commitment to apologising, making amends and taking responsibility. The essence of this is captured by a survivor who commented:

> In my opinion, I think the best way to demonstrate a truthful commitment to peace and a truthful commitment to repentance is that perpetrators of acts of violence would make a contribution, a financial contribution to the families of victims and, in that way, they would then cleanse themselves of their own guilt, and they will then demonstrate with extreme confidence that in fact they are sorry about what they did.[14]

Unfortunately, however, with notable exception,[15] very few perpetrators have made direct restitution, or heartfelt and directed apologies to survivors and their families through the TRC process. Furthermore, in the TRC model, reparation (restitution) is made by the new state, the perpetrator is not obligated to make any direct action to the survivor or the families of their victims.

No matter how well meaning, all reparations strategies face the same, albeit obvious, intractable problem. Acknowledgement, apology, recognition and even substantial material assistance can never bring back the dead or be guaranteed to converge with, and ameliorate, all the levels of psychological pain suffered by a survivor. This is poignantly captured by Michael Wise when he reflects on the question of the Jewish claims against Germany for the Holocaust:

> Today, nearly half a century after the liberation of the Nazi concentration camps, the Federal Republic of Germany has paid out more than $50 billion in the form of reparations to the State of Israel and indemnification to Holocaust survivors. The German Finance Ministry estimates that it will pay out almost $20 billion more by the year 2030, when according to its current calculations the last survivor will have died. Yet what the German government calls *Wiedergutmachung*, literally meaning "making good again", can never truly be completed. Most Jews and some Germans avoid the term *Wiedergutmachung* altogether, considering it to be naïve.[16]

Michael Wise's comments capture the essence of the problems of making amends for past violations, i.e. the amount of distress, hurt, injustice and anger the survivor is personally struggling to come to terms with is immeasurable. In the South African context this is compounded by the survivor having to watch some of the perpetrators confess and then walk free.

Thus, the unfortunate reality is that reparation is a double-edged sword - symbolic acknowledgement and monetary compensation can be useful, but they can never wholly meet all the psychological needs of survivors. The result is that South Africa will have to continue to live with the reparations issue for a long time, and like the role of truth, reparations will remain a site of social and personal struggle.

Dealing with the Difficulties of Granting Reparations

Can anything be done about the seemingly intractable problems of making amends for past violations? Some suggestions are made below.

- **Reparation and truth recovery need to be linked**

On a purely psychological level, for a survivor to react in an overly forgiving way toward perpetrators, or to simply let bygones be bygones, is highly improbable in the short-term.[17] The TRC has been a catalyst for successful resolution of this kind in some cases.[18] However, for the most part, when reparations are granted, the survivors will not be ready to put the past behind them at that specific point. It is critical that victims not be expected, either implicitly or explicitly, to forgive the perpetrators or forget about the past because some form of reparation has been made. When reparations are granted before the survivor is psychologically ready, any form of reparation can be expected to leave the survivor feeling dissatisfied.

In this regard it is worth mentioning the mothers of the disappeared group in Argentina, *Madres de la Plaza de Mayo* (the Mothers of the Plaza de Mayo), who still refuse compensation.[19] Similarly, the Brazilian *Comissao de Familiares de Mortos e Desaparecidos Politicos* (Commission for the Family Members of the Persons Killed or Disappeared for Political Reasons), sees the 1995 attempts to compensate the families of the murdered and disappeared during the Brazilian dictatorship as the government's final attempt to buy their silence and close the book on the past without revealing the true facts of what happened.[20] Similarly, in Northern Ireland[21] some relatives of victims of state violence have accused the Northern Ireland Victims Commission that was established in October 1997 of being:

A cosmetic exercise, commissioned by a government whose human rights record is the worst in Western Europe. The only fitting monument that will serve to commemorate our loss and which will allow us to put the past behind us is truth and justice.[22]

In South Africa, despite the work of the TRC, some victims continue to accuse the TRC of undertaking a "false reconciliation" process in which they are forced to reconcile or forgive the perpetrators in the absence of the full truth.[23]

Clearly in these cases, and when some survivors or families of victims talk of reparations as a form of "blood money" (as some do in Chile, Brazil, Argentina and Northern Ireland), this is because the national process of "moving forward and making amends" is not coinciding with the individual process. This is particularly the case when survivors feel that reparations are being used to buy their silence in the absence of the truth. Reparations and truth recovery must be linked, because without this link any form of reparations runs the danger of been seen by the survivors as a governmental strategy to close the chapter on the past prematurely and leave the secrets of the past hidden. Given that the full truth for each individual has not been revealed by the South African TRC, anger and other emotional responses (e.g. refusing to accept reparation or protesting about what is granted) from victims can be anticipated.

- **Survivors' feelings must be legitimised and justice accomplished**

For any reparations programme to be successful, ongoing space has to be provided for survivors to express their feelings of sadness and rage as they struggle to come to terms with the psychological and emotional impact of their loss - a loss that reparations can only nominally acknowledge. Genuine reparations, and the process of healing, does not occur *through* the delivery of an object (e.g. a pension, a monument, etc.), but through the process that takes place *around* the object. It is how the individual processes the symbolic meaning of reparations that is critical. For this reason, making space for the complaints and opposition of survivors should be seen as an integral component of any reparations programme. These spaces can take the form of private spaces (e.g. counselling, traditional mechanisms for story-telling and sharing, etc.) and the ongoing use of public space (e.g. media, exhibitions, theatre, etc.).

In addition, as was noted earlier, it is problematic, even if substantial reparations have been granted, to expect someone to come to terms with an event if they do not know the full facts of the event. Thus, continuing investigations after the life of the TRC through the establishment of a permanent office of investigation into past crimes, and the prosecution of those who did not apply for amnesty, needs to be undertaken.

The TRC makes some recommendations in this regard. It recommends that prosecutions be *considered* where amnesty was not sought and an individual committed a gross violation of human rights. The TRC also suggests that consideration be given to a time limit on such prosecutions.[24] Although this may sound practical, such a limitation not only surrenders survivors' needs once again to the pragmatics of political reconciliation, but lessons from other countries teach us that many years after the violations the calls for justice do not disappear. The controversy over the extradition of Chile's General Pinochet in late 1998 is but one example of how the demands for justice do not fade with the passage of time. Furthermore, the call for justice is part of the healing process, and like reparations, formal justice can also be a ritual form of closure and be integral to the process of psychological reintegration for the survivor.

In the cases where the truth may never be known (and there will be many), the best that can be done is to set up sufficient support structures (e.g. community-based self-help groups, counselling, advice centres, traditional healing services, and so on) to help individuals personally come to terms with their uncomfortable reality. This is a highly personalised

process in which culturally relevant and appropriate rituals, symbolic acts and reparations have a place. However, it is unlikely that reparations alone, no matter how substantial, will completely appease the individual in the short term.

- **The limits of financial reparation need to be appreciated**

Over the last few years the TRC has shifted considerably in its thinking with regard to granting financial reparations to survivors. Initially the TRC was reluctant to suggest any form of financial reparation and spoke more of the need for collective and symbolic reparations. In fact, in the first year of the Commission, Commissioners often said that in the TRC Act the word "reparation" and not "compensation" had been used because the latter implied financial pay-outs which were going to be unlikely as reparations would probably be more collective and symbolic. These statements were made despite the fact that the TRC Act explicitly says that reparations can include compensation and/or *ex gratia* payments. The shift, in the latter part of the Commission's life, to a more monetary based reparation system is attributable to several main factors.

Firstly, despite the failure of the Azapo Constitutional Court challenge against the amnesty provisions,[25] the case did help highlight that survivors and the families of victims are denied civil claims when amnesty is granted. Secondly, once the granting of amnesties had begun, faced with its consequences head-on, a greater number of survivors began to express opposition to the process. This fuelled the objection that the perpetrators were getting more out of the TRC than the victims, thus creating a negative picture of the TRC and exposing its inherent moral dilemmas with regard to amnesty. As a result, the TRC had to be seen to be taking concrete steps in assisting survivors. It is arguable that adding a material component to the reparation proposal (although this may well be desirable) was the easiest option for the TRC in this regard. It is also the easiest approach to operationalise, certainly from the governmental perspective. The TRC acknowledges this, when it writes:

> A monetary package provides government with a set of predictable, limited expenses, it makes fiscal management more feasible. An appropriately organised package requires minimal bureaucratic oversight.[26]

The TRC final report adds other reasons why monetary reparations were considered a viable option. The final report states that financial grants give the recipient a freedom of choice to use the money in whatever way they feel will adequately redress the injustice they have experienced.[27] The final report also makes a convincing argument that the highest expectation of survivors of the reparation process was for monetary assistance:

> Thirty-eight per cent of the Commission's deponents *[those who gave statements]* requested financial assistance to improve the quality of their lives. In addition, 90 per cent of deponents asked for a range of services which can be purchased if money is made available - for example, education, medical care, housing and so on.[28]

But to what degree is a financial approach to reparations a more concrete step than the symbolic types of reparation?

Financial reparations are often mistakenly viewed as, and spoken about by policy-makers and survivors alike, as forms of concrete assistance that are different (and certainly more substantial) than symbolic acts, such as the erection of tombstones or the naming of streets after the dead. However, the reality is that seldom will the sums of money granted ever equal the actual amount of money lost over the years when a breadwinner is killed, and it is questionable whether the material reparations granted will dramatically change the life of the recipients. In essence, material reparations are merely another form of symbolic reparation, albeit particularly welcomed by the majority of destitute survivors who are living in conditions where any amount of money will be appreciated.

However, in South Africa, because the level of impoverishment is extreme, we need to be wary of reading too much into survivors' acceptance (or requests) of material reparations. This is not to say that monetary awards should not be made, but it is a certainty, given the level of impoverishment, that for many survivors the idea of receiving any money, no matter how minimal, will be seen as beneficial and the favoured strategy for reparations in the short-term. At the beginning of 1998 the *Centre for the Study of Violence and Reconciliation* ran three workshops focusing on reparations with a number of survivors from the Khulumani Victim Support Group. [29] In the workshops, those who had made statements to the TRC were asked what they thought of potentially receiving approximately R17,000 to R24,000 per year over the next six years. Those who participated in the workshops were very supportive of receiving such payments.[30]

This obviously provides some support for the TRC's current proposals for a financial grant scheme, but it is important to read the survivors' non-critical approach to the draft material assistance policy with caution. First, the workshops only represented a section of the survivor community. Second, most people in the workshops were extremely poor and felt that any amount of money would be useful in their current position. They had little knowledge of how to compare the amounts suggested with what they may have received through a civil claim. However, they were aware that the suggested reparation amounts would have an impact on their current lifestyle given that most of them were receiving very little, or no, income whatsoever.

Therefore, policy-makers and those in government responsible for implementing the reparations policy, need to be acutely aware that within the South African context, survivors are compelled to place the pragmatic need of short-term limited payment before any long-term or symbolic reparation. Survivors' desperate need for money can stifle their criticisms of the reparations proposal for fear that they may receive less money or no money if they are publicly vocal. In this context, survivors' silence about the reparations proposal should be more worrying than their opposition.

In reality this may mean that, initially, many survivors may appear to be satisfied with the financial reparations of the TRC (if government agrees to the proposal of course) despite the minimal amount paid out. However, without fail, some survivors will become increasingly dissatisfied as time passes. This will happen because, in some cases, the psychological impact of the survivors' suffering will remain unresolved due to the limited availability of services in South Africa and the complexity of the healing process,[31] and because the financial impact of the reparations will invariably dwindle over the years. Survivors' complaints may only surface belatedly. The result of this, especially when

criticisms emerge a few years later, will most predictably be a dismissive attitude from the government (and much of the population) who will feel, unlike the survivors, that the issue was adequately addressed by the monies granted in the past.

- **Reparations need to be visible, directed and individualised**

The TRC and its mandate have throughout the process been criticised for defining the concept of victims too narrowly,[32] i.e. restricting its focus to only the victims of the so-called gross violations of killing, abduction, torture or severe ill-treatment. The reality is that the majority of victims or survivors who appeared before the TRC were victimised not only because of their political affiliation and activities, but because of their structural circumstances including their gender, poverty, race and general social marginalisation.[33]

Nevertheless, the TRC stuck to its mandate focusing on gross violations. To compensate, and to get a full picture of the past, it held a limited number of hearings focusing on the sectors of the society (e.g. judiciary, business and health sectors) that were broadly complicit in the structural violations of apartheid. The TRC also painted the broader context and made mention of the systemic violations of apartheid in its final report.[34] However, in developing the reparations proposal, it was difficult for the TRC to escape the fact that the violations of the past in South Africa included both physical and psychological violence, as well as substantial structural material oppression.

The TRC has, to some degree, tried to deal with both these types of violations in its policy, but clearly, making reparations for extensive and widespread structural oppression is unrealisable regardless of the contents of the reparations policy. In an attempt to deal with the socio-economic violations of apartheid[35] it is often proposed (especially by the government) that the wider previously-oppressed community should also benefit from reparations and not only individuals. This is a similar view to what is expressed in the Constitutional Court judgement that upheld the granting of amnesty as constitutional.[36] The judgement makes it clear that because perpetrators will be granted amnesty those found to be victims are entitled to "individually nuanced" reparations. Nonetheless, the judgement makes an important rejoinder to this argument, i.e. the state can take into consideration the available resources, the claims of all the victims and the competing demands of the government when deciding what reparation policies to implement.

This makes pragmatic sense, but runs the danger of allowing the government to argue for broader reparations (e.g. community development, social upliftment, etc.) *in lieu* of individual reparations. These social reconstructive forms of reparations will have a limited psychological impact on individuals who suffered the brunt of the direct brutality of apartheid violence. At an individual level, it will not work to substitute social reconstruction for individual reparations.

First, for most people in South Africa, the upgrading of their communities is considered a right and is expected anyway. The majority cast their vote for the new government in April 1994 with the expectation of social reconstruction in mind. Second, for reparation to be psychologically restorative it has to be personalised. Although the broader system may have been responsible for creating a context conducive to human rights violations, and the system itself may have caused additional social violations, individuals primarily experience

violence through their own personal universe. Although socio-economic development (social reconstruction) is necessary, the physical and psychological impact of violence has to be addressed directly and individually if we are ever to deal with the traumas of the past and prevent cycles of revenge from emerging.

Social reconstruction as a form of reparation (e.g. providing better access to health care, job creation schemes, development) has its place, but this form of "reparations", should take place in addition to, and not to the exclusion of, individualised reparations or collective reparation strategies (e.g. monuments, memorials, commemoration services, etc.).[37] Furthermore, if social reconstruction as a form of reparations is undertaken, it needs to be clearly labelled as part of the reparations strategy to have any impact. Specific violations also need to be targeted if they are to have any efficacy. For example, as part of the reparations strategy, the government could publicly justify that on a government road-building project a community that has suffered a large-scale massacre in the past will be prioritised over another.

Conclusion

To deal effectively with the impact of large-scale political violence we need to comprehend fully its impact on individuals. We need to respect the feelings intrinsic to why individuals find the process of moving forward after suffering substantial loss and trauma so difficult. Michael Ignatieff captures the complexity of loss and the bereavement process when he writes:

> Revenge is commonly regarded as a low and unworthy emotion, and because it is regarded as such, its deep moral hold on people is rarely understood. But revenge - morally considered - is a desire to keep faith with the dead, to honour their memory by taking their cause where they left off. Revenge keeps faith between generations; the violence it engenders is a ritual form of respect for the community's dead - therein lies its legitimacy.[38]

At the time of significant loss most people enter into a number of invisible pacts with themselves very much in the way Michael Ignatieff talks about the need to keep faith with the dead. Sometimes these pacts can be a vow to avenge the death of a loved one, or to seek punishment of the perpetrator through the courts. In other cases, or concurrently, the individual will vow that nothing will ever replace what has been lost or their loved one. Therefore, passively accepting reparations can be experienced by the survivor as a disrespectful act that betrays the loss they have endured or the memory of those killed. In the case of the families of the disappeared for example, accepting reparations can, albeit unconsciously, make the survivor complicit in betraying the final memory of their missing relatives. Suarez-Orozco argues that the mothers of the disappeared in Argentina (the Madres of the Plaza de Mayo) do not accept reparations because it compels them to "psychologically kill and bury their children" and to finally become their own children's "executioners".[39] Accepting reparations would be too guilt inducing, and implies giving up hope and rendering the lives of their children as meaningless.

In essence, the rituals of respect and memory associated with death and trauma are difficult to break and, arguably, should only be severed by the survivors themselves when they are

personally ready. This process will be eased by accepting the feelings (and opposition and anger) of survivors as legitimate, and through making private and public space for survivors to work through their individual experiences of the conflicts of the past. This process would be bolstered through governments and the perpetrators (both direct and indirect) continually, and perhaps endlessly, trying to make substantial, personalised and culturally relevant symbolic, material and collective reparations. The ongoing needs of survivors for truth and justice can also not be removed from the equation - justice through the courts is an acceptable way that some survivors choose to deal with their grief. It is only the ongoing combination of truth, justice and survivor-support that may one day be sufficient to make some survivors feel at ease with the idea of accepting reparations as a symbolic replacement for what has been lost.

Notes:

[1] Professor Chinweizu, "Reparations and a New Global Order: A Comparative Overview", Paper presented at the First Pan-African Conference on Reparations, Abuja, Nogeria, 27 April 1993.

[2] The terms victim and survivor are both used in this paper. This is done not to undermine the fact that many of those victimised are indeed *resilient* survivors, but because the TRC Act uses the term victim. This is largely accepted discourse within the frame of the TRC.

[3] For more detail on the full mandate of the R+R Committee see the full text of the *Promotion of National Unity and Reconciliation Act, No. 34* of 1995. There were also several amendments to the Act that ensured the extension of the amnesty cut-off dates and the life of the TRC, as well as the ongoing work of the Amnesty Committee. For more detail on this see the
Promotion of National Unity and Reconciliation Amendment Act, No. 87 of 1995; and
Promotion of National Unity and Reconciliation Amendment Act, No. 18 of 1997; and
Promotion of National Unity and Reconciliation Second Amendment Act, No. 84 of 1997.

[4] *Promotion of National Unity and Reconciliation Act*, (Section 40-f).

[5] See the TRC Final Report, Volume 5, Chapter 5 for the full Reparation and Rehabilitation Policy. For information on earlier drafts and to analyse the Commission's developmental thinking in this regard see *A Summary of the Reparation and Rehabilitation Proposal* published by the South African Truth and Reconciliation Commission, 1998. Also see *Government Gazette No. 1654, Volume 394, Number 18822* which outlines provisions for Urgent Interim Reparation. Information on proposed reparations and compensations (although not accepted) were published by the TRC in their proposed Rehabilitation and Reparation Policies Document on the 9/9/1997. Early summaries of this were also reported in the newspaper, and could be found at Africa News Online.

[6] This paper does not give a detailed summary of the TRC Reparation and Rehabilitation Policy. It is suggested that this paper be read in conjunction with the policy recommendations in the TRC final report to understand the specific details of the formula used by the TRC to calculate the amounts that are proposed as payable to survivors and the

families of victims.

[7] The grants vary as the TRC has factored in variance related to the number of people living in the "victims" house or whether the survivor or family member of a victim lives in a rural or urban area. This was done because services in rural areas, for example, are more costly than in urban areas. No victim, however, will, if the government agrees to the policy, receive more than R23,023 per annum.

[8] This would, based on current exchange rates, be the rough equivalent of British 1700 - 2400 pounds per year. However, it should be noted that direct currency translations probably do not match to the spending power of Rands in South Africa. The average annual household income can provide some relative way of assessing the possible impact in South Africa of the suggested amounts for material reparation. In 1997 the average annual household income was R21,700. This was used as a benchmark by the TRC in the design of the monetary package. The Final Reparations Policy notes that, "The poverty line of R15,600 per annum was rejected as a benchmark, as this would be condemning victims to a life of near poverty, rather than one of minimum dignity" (TRC final Report, Volume 5, Chapter 5, 69). These amounts are not comparable to what a survivor might have received in a civil claim which would be substantially greater. A civil claim, however, would not be guaranteed in most cases.

[9] "Interview with Wendy Orr" and "For Apartheid Pain TRC Calls for Pay-outs to Victims of Abuses" which appeared at Africa News Online.

[10] Archbishop Tutu at the public announcement of the draft R+R policy recommendations in October 1997 cited in the TRC Final Report, Volume 5, Chapter 9, 98.

[11] TRC Final Report, Volume 5, Chapter 8, 22.

[12] Elizabeth Jelin, "The Minefields of Memory", *NACLA Report on the Americas*, Volume XXXII, Number 2, September/October 1998, pp. 23-29.

[13] Elizabeth Galen, "The Minefields of Memory", *NACLA Report on the Americas*, Volume XXXII, Number 2, September/October 1998, pp. 23-29.

[14] Cynthia Ngewu, mother of one of the so-called Guguletu Seven, at the forum on Reconciliation, Reconstruction and Economic Justice in Cape Town, 19 March 1997 cited in the TRC Final Report, Volume 5, Chapter 9, 99.

[15] There are some cases that are worth mentioning. For example, Colonel Eugene de Kock, the commander of the notorious Vlakplaas assassination squad, asked for forgiveness for his actions. He also donated the royalties of the book about his life to the reparations fund. Bhekisisa Khumalo, who gunned down Dumazile Xaba, asked the community for forgiveness, as did Brian Mitchell a policeman implicated in the Trust Feed killings. Johan and Ann-Marie Smit were reconciled with the parents of their son Cornio's killer. See the TRC Final Report, Volume 5, Chapter 9 for an expansion on these examples.

[16] Michael Wise, "Reparations", *The Atlantic Monthly*, October 1993.

[17] Brandon Hamber, "Remembering to Forget: Issues to Consider when Establishing Structures for Dealing with the Past", in B. Hamber (ed.) Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition (Derry/Londonderry: INCORE, 1998).

[18] For some examples of this successful resolution in South Africa see Brian Frost, *Struggling to Forgive: Nelson Mandela and South Africa's search for reconciliation* (Great Britain: Harper Collins Publishers, 1998) and the TRC Final Report "Reconciliation", Volume 5, Chapter 9.

[19] The group is split into two. The *Madres de la Plaza de Mayo-Linea Fundadora* do accept government reparation.

[20] Brandon Hamber, "Living with the Legacy of Impunity: Lessons for South Africa about truth, justice and crime in Brazil", *Unisa Latin American Report*, University of South Africa Centre for Latin American Studies: University of South Africa, 13(2), July-December, (1998), pp. 4-16.

[21] cf. Brandon Hamber (ed.), *Past Imperfect: Dealing with the Past in Northern Ireland and Societies in Transition* (Derry/Londonderry: INCORE, 1998).

[22] Press Statement, Relatives for Justice, 1 April 1998.

[23] Centre for the Study of Violence and Reconciliation & The Khulumani Support Group, "Survivors perceptions of the TRC and suggestions for the final report", Submission to the Truth and Reconciliation Commission (Johannesburg: Centre for the Study of Violence and Reconciliation and the Khulumani Support Group, 1998).

[24] TRC Final Report "Reconciliation", Volume 5, Chapter 8, 14.

[25] See the summary of the Constitutional Court Judgement of 25 July 1996 involving AZAPO Mrs Biko, Mr Mxenge and Mr Ribeiro and the TRC. And the full text of the Constitutional Court Judgement of 25 July 1996 involving AZAPO Mrs Biko, Mr Mxenge and Mr Ribeiro and the TRC.

[26] TRC Final Report "Reconciliation", Volume 5, Chapter 5, 43.

[27] TRC Final Report "Reconciliation", Volume 5, Chapter 5, 43.

[28] TRC Final Report "Reconciliation", Volume 5, Chapter 5, 68.

[29] The *Khulumani (Speak-Out) Support Group* is an informal self-help support structure. It consists of a loose network of groups in Gauteng and its neighbouring provinces in South Africa. They have offered survivors and families of victims some emotional and welfare support. This structure has in some cases introduced the truth commission to victims, found

indigenous ways to reconcile with the past and lobbied the TRC concerning the rights and concerns of survivors and families of victims.

[30] Centre for the Study of Violence and Reconciliation & The Khulumani Support Group, "Survivors perceptions of the TRC and suggestions for the final report", Submission to the Truth and Reconciliation Commission (Johannesburg: Centre for the Study of Violence and Reconciliation and the Khulumani Support Group, 1998).

[31] For example, in terms of "professional services", and despite the fact that survivors may use a range of useful traditional healer services, in the Northern Province where there are 5.3 million people, the State has one psychologist employed in its service and there are only three private practitioners in the largely rural province. For a discussion of this, and the TRC's psychological support services, see Brandon Hamber, "The Burdens of Truth: An evaluation of the psychological support services and initiatives undertaken by the South African Truth and Reconciliation Commission", *American Imago*, Volume 55, Number 1, pp. 9-28.

[32] See Jim Statman "Exorcising the Ghosts of Apartheid: Memory, Identity and Trauma in the New South Africa", Paper presented at the 18th Annual Meeting of International Society of Political Psychology (Washington D.C., 1995), who argues that constructing the "truth" solely from testimony of individual human rights victims and abusers obscures the larger truth of systematic oppression in South Africa. Also Beth Goldblatt & Sheila Meintjies "Gender and the Truth and Reconciliation Commission", Submission to the Truth and Reconciliation Commission (1997), who add a gender angle to the argument, stating that the narrow interpretation of "gross violations of human rights" can mean that women are not always identified as victims. Also see Mahmood Mamdani "Reconciliation without Justice", *Southern African Review of Books*, 46, pp. 3-5. who primarily argues that by defining victims narrowly the notions of perpetrators and victims are weighed too heavily. This ignores the unique structural issues related to victimisation in South Africa. The result is, in his opinion, that there has been insufficient focus on the so-called beneficiaries of the apartheid system, i.e. mainly the white population. Some of his points are also briefly elaborated on in "TRC Accused of Obscuring the Truth". For a more in-depth discussion on all of these issues see Brandon Hamber and Steve Kibble, *From Truth to Transformation: South Africa's Truth and Reconciliation Commission*, briefing paper (London: Catholic Institute for International Relations, 1999). As well as, Brandon Hamber, "Who Pays for Peace? Implications of the negotiated settlement for reconciliation, transformation and violence in a post-apartheid South Africa", Public lecture at the Annual General Meeting of the Catholic Institute for International Relations, London, 30 October 1998.

[33] Brandon Hamber, "Dr Jekyll and Mr Hyde: Problems of Violence Prevention and Reconciliation in South Africa's Transition to Democracy", in E. Bornman, R. van Eeden & M. Wentzel (eds), Violence in South Africa, (Pretoria: Human Sciences and Research Council: Pretoria), pp. 349-370.

[34] The broader context of apartheid is dealt with throughout the TRC Final Report. Volume Four reports on the hearings conducted with different sectors of society that created the context for gross violations to take place.

[35] For a discussion on the relationship between socio-economic transformation and the TRC, see Brandon Hamber and Steve Kibble, *From Truth to Transformation: South Africa's Truth and Reconciliation Commission*, briefing paper (London: Catholic Institute for International Relations, 1999).

[36] See the summary of the Constitutional Court Judgement of 25 July 1996 involving AZAPO Mrs Biko, Mr Mxenge and Mr Ribeiro and the TRC. And the full text of the Constitutional Court Judgement of 25 July 1996 involving AZAPO Mrs Biko, Mr Mxenge and Mr Ribeiro and the TRC.

[37] The discussion here only deals with social reconstruction as reparation. A distinction is being made here between collective strategies like remembering through monuments, commemoration, etc. and social reconstruction as a form of reparation. This is because the idea of social reconstruction as a form of reparation is part of some of the discourse and discussions in South Africa. Collective strategies such as community memorials serve similar functions to individual reparations, and in the opinion of the author are different to social reconstruction as reparation.

[38] Michael Ignatieff, M., *The Warrior's Honor: Ethnic War and the Modern Conscience* (London: Chatto & Windus, London, 1998), p. 188.

[39] M. Suarez-Orozco, "The heritage of enduring a dirty war: Psychosocial aspects of terror in Argentina, 1976-1988", *The Journal of Psychohistory*, 18 (4), Spring (1991), p.496.