

Report of The National Strategy Workshop on Reparations

Compiled by

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Introduction

Simon Kimani

To coincide with the third anniversary of the Truth Commission's final report, the Transition and Reconciliation Programme of CSVR hosted a national strategy workshop on reparations, which among others aimed at:

- Establishing the status, nature and time-frames set by government for implementation of the final reparations,
- Investigating how the rights of victims¹ should be balanced with the amnesties enjoyed by perpetrators, and lastly,
- Creating a forum for information sharing and strategic planning by civil society on ways of implementing a broad reparations programme in South Africa.

In planning this workshop, the themes for discussion were structured in such a way that sufficient space would be created for critical engagement with the problem of reparations, while at the same time acknowledging civil society's limitations in terms of capacity and ability to initiate and sustain a fully fledged campaign. For the last part of the workshop, participants were divided into four break away commissions which discussed strategies on ways of mobilising civil society, engaging business and committing government to a reparations framework in South Africa. A wide range of sectors including the TRC, victims, victim support groups, activists, human rights NGOs, academic institutions and diplomatic missions were represented at this workshop.

We were quite disappointed however when the Minister of Justice Dr. Penuell Maduna cancelled his availability at the eleventh hour without offering an alternative substitute. The department of justice did not even make effort to offer a formal apology. It was somewhat ironic that the minister opted to prioritise negotiations with the New National Party (NNP), yet during its days in power as the National Party for almost five decades, it was the perpetrator of some of the worst crimes against humanity. Its white supremacist policy of apartheid left in its wake hundreds of thousands of victims who are today dying from poor living conditions and lack of access to basic health services.

Since the TRC handed its recommendations to the government, a lot of debate has occurred around the issue of reparations especially the nature and form that final individual grants will take. At the heart of this controversy is the apparent backtracking by leading ANC members who have been variously quoted in the press saying that the 'struggle was not for money', or that every one was a victim under the apartheid system and therefore no one should be individually compensated. Instead there have been calls for community rehabilitation and symbolic reparations with former president Nelson Mandela setting the pace during the opening of Parliament in 1999 by saying that reparations should be provided "not so much to individuals, but to communities and the nation as a whole."

This form of rhetoric coupled with the absence of policy and regulations to implement the final reparations have been seen by many people as a dramatic shift in policy and a move to

deny survivors individual financial grants. In the much celebrated **Azapo Case** (*Azapo and Others v. President of the Republic of South Africa and Others* (1996(8) BCLR 1015 (CC)), which a number of speakers refer to in this report, the Constitutional Court held that amnesty for perpetrators could only be justified if reparations were made in return to the victims. Once granted amnesty, perpetrators could no longer be sued for civil and criminal damages and Parliament has a mandate to provide for individualised and nuanced reparations taking into account the claims of all the victims. Parliament and government are yet to fulfill this obligation.

Part one of the report deals with the problems and challenges likely to face the country in planning and implementing a broad reparations programme. Graeme Simpson, executive director of CSVr says in his opening remarks that civil society must pool its efforts together if it hopes to move government towards the implementation of reparations. He further points out that government's indifference to reparations is reflected in the failure by the Minister of Justice to attend the workshop, where he opts instead to go to coalition talks with the NNP.

Addressing the same challenges, Yasmin Sooka, who was formerly with the TRC calls on government to stop dragging its feet with regard to implementing the final reparations policy. She says the argument sometimes made by ruling party politicians that the final framework will only be implemented once the entire TRC process has come to an end is a "narrow and questionable interpretation of the [TRC Act](#)", because there is no legal requirement that stops the government from doing so if it has the political will.

Part two of this report is divided into two sections; the first one deals with ways of balancing amnesties against the rights of victims, while the second one looks at the challenges facing civil society in its quest for reparations. Geordie Ractliffe of the [Home for All](#) Campaign argues eloquently that white South Africans have a responsibility to use the material and social advantages gained during apartheid to improve the lives of black people who continue to be disadvantaged. Lorna Levy, a long time anti-apartheid activist and currently member of the Black Sash in Cape Town says Government should stop sending out mixed signals about whether or not it intends to implement individual reparation grants.

She observes that the new democratic state has a legal and moral duty to acknowledge the pain and suffering of the victims and take adequate measures to remedy their lives. Part of her proposals include having the Human Rights Commission to take over the implementation of reparations, and the establishment of a data base for victims so that NGOs, religious organizations and charitable institutions can provide the necessary material and moral assistance.

Lastly, Tseliso Thipanyane from the Human Rights Commission examines some international and domestic law perspectives on reparations. He argues that since the United Nations condemned apartheid as a crime against humanity in the early 70s, victims of apartheid are entitled to remedial mechanisms by the new democratic state in lieu of court action against individuals for compensation. He criticizes certain aspects of the [TRC Act](#) such as its separation between gross violations of human rights and "ordinary" human rights violations and only recognizing victims of the former. He also says there are no clear provisions with regard to liability for juristic persons such as industries and banks which

made enormous profits under apartheid.

In the second section, civil society engages with the challenges facing NGOs, CBOs, churches and other players in developing strategies that can articulate a feasible reparations programme. Polly Dewhirst of CSVR's Disappearances Project suggests that NGOs should scrutinize the TRC recommendations and come up with ideas about how they can be narrowed down for purposes of implementation. Where possible, she says, civil society should push different sectors to start putting them into practice. Duma Khumalo of Khulumani Support Group expresses the anger felt by victims at the way government has completely failed to respond to their calls for reparations. He says Khulumani is strongly opposed to the idea of a blanket amnesty in Kwa Zulu Natal, while prosecutions against perpetrators who failed to appear before the commission should be speeded up. Outstanding matters such as negative findings against victims, exhumations, death certificates and disappearances need to be addressed as a matter of urgency.

To complete this part, George Dor of Jubilee South Africa explores reparations from the much broader context of apartheid atrocities not only in South Africa but also in neighboring states. He argues that apartheid's destabilization policies affected frontline states extensively and these countries were forced to spend massive amounts of money on defense at the expense of social and economic development. He points out that the Jubilee movement is targeting institutions like European banks and local businesses which profited from apartheid to pay reparations. For the campaign to be effective, he says that civil society has no alternative but to forge a common front around reparations.

Part three of this report highlights a number of strategies discussed by four break-away commissions on ways of engaging government and mobilizing civil society. It is proposed for instance that NGOs use the freedom of information legislation to compel government to release its final policy on reparations and possibilities be explored of instituting a class action against the state if it continues to renege on its obligations under international and domestic law with regard to reparations.

To a certain extent, this workshop has laid a platform from which civil society can start to reflect on the efficacy of its advocacy strategy, and also to explore mechanisms on how it should mobilize and engage government and business in a much more substantive way. Copies of the full report, individual papers or additional information regarding the workshop can be obtained directly from CSVR.

Part 1

Opening Remarks and Welcome

Graeme Simpson, Executive Director, CSVR

- To deal with the issue of reparations, South Africa must be ready to grapple with the difficulties of implementing an all inclusive policy. There must be a framework that serves the broadest possible spectrum of survivors in the society.
- Government must take the question of reparations seriously. It is unfortunate for instance, that at the last minute, the Minister of Justice-under whose portfolio the

reparations docket falls, cancels his invitation to this workshop and chooses to attend negotiations with the New National Party (NNP) for a possible coalition government. The NNP represents only a small privileged white minority and not the entire white community in South Africa.

- The minister's choice is all the more surprising because many white people, including those in the NNP have refused to acknowledge the crimes they committed during their four decades of power in the country, and have consistently refused to sign and endorse the Home for All Campaign.
- Amnesty for perpetrators can only be defensible if a reparations mechanism is put in place. In other words amnesty was not unconditional; it was hinged upon an acknowledgement of the crimes committed against the victims and the implementation of an effective remedial strategy. This is the position that was adopted by the Constitutional Court in the **Azapo Case** (*Azanian Peoples Organisation and Others vs. the President of the Republic of South Africa and Others*). The non-delivery of reparations has certainly compromised both the integrity of this judgment as well as the pain and suffering of the victims.
- Delivery of social welfare has been plagued by problems and essential basic services are still out of reach for the majority of South Africans. Government should be particularly concerned with the plight of all the victims of apartheid and act with expediency to have the final reparations programme put in place.
- Survivors and support organizations remain internally divided and therefore fail to represent victims' needs in the most powerful way. They must form a strong alliance with established structures of civil society such as SANGOCO and the trade union movement.

Implementing a Broad Reparations Framework: Problems and perspectives

Yasmin Sooka, Foundation for Human Rights in South Africa

- By setting up the TRC, South Africa embarked on a process of grappling with the twin problems of truth and forgiveness on the one hand, and justice and accountability on the other. The commission has now completed its work and the final report² will be ready by April 2002.
- Reparations constitute one of the key issues of major concern to South Africans particularly those who are victims of the country's violent past. It is quite a difficult thing to deal with. In the report that was handed over to President Mandela in October 1998, the TRC made recommendations about how a reparations policy should be handled. However, government has often expressed the view that its intention is to deal with victims only when the final report has been completed.
- Johnny de Lange (chairperson of the parliamentary portfolio committee on justice) argues that if you consider the provisions of the [Promotion of National Unity and Reconciliation Act](#) (No 34 of 1995, "TRC Act"), then it is clear that the question of reparations can only be addressed once the whole process has been completed. This

is a very narrow and questionable interpretation of legislation because government can put the necessary framework in place if it has the political will to do so.

- Government has an obligation to formulate policy on the recommendations made to it by the TRC. So far, its performance has been extremely disappointing and many ruling party leaders express sentiments which indicate that they regard reparations as a donation rather than a right to the victims.
- Justice Mohamed spoke quite powerfully in the Azapo Case about the impact of human rights abuses on individuals and families, the key question of their fundamental human rights being invaded and so on. In his view, the [TRC Act](#) focuses on people's individualized reparations rather than collective community measures and symbolic forms. Many victims and their families are poor and indigent and will need bursaries, medical assistance and other forms of financial or material help.
- As the Constitutional Court held in the Azapo Case, reparation is usually paid by states. The new democratic government as a successor to the previous regime took upon itself the mantle of rehabilitating those who were victims of human rights violations in the past. There is also the issue of land and how long it will take to restitute people who were forcibly removed from their property. Some of the questions that people should be asking themselves in this case are how the land redistribution process will be financed. Should it be funded from the outside? In what ways should the wider society be involved in this process now that the Commission has come to a close?
- Reparations are recognized and entrenched in international law, which is today much more developed than it was when the TRC handed over its report. The UN special Rapporteur on the investigation into the discrimination and the protection of minorities and the UN Special Rapporteur on reparations have submitted their reports to the UN High Commissioner for Human Rights on the principles and guidelines on the rights, remedies and reparations for victims of violations of international human rights and humanitarian law. These reports are clear that victims of state repression have to be redressed through specific mechanisms such as compensation, restitution, reparations and satisfaction and guarantees of non-repetition.
- Finally, civil society must remember that the TRC still has a lot of unfinished business. Victims have complained that they did not know when the hearings were held in their areas or that they were not aware that the date for the hearings had passed. Others have stated that the TRC did not visit their particular areas, which creates problems because such people have been denied a chance to tell their stories to the nation and to be included in the final programme for reparations.

Questions/Comments

Question: In case the final report is delayed, is there a procedure afterward that victims can follow to enforce their right to reparations? There is a long process involved before the report is finally approved by Parliament and if this is so, there is every possibility that the

reparations policy may not be implemented soon.

Question: Is there any legal action that the commissioners can initiate against the government if it fails to implement the reparations policy on time?

Comment: Government should release its policy on reparations to the public. As an interim measure, civil society can start setting up victims' centers across the country, but of great importance is how it will respond the final programme for reparations once it is put in place.

Yasmin: To the question regarding what commissioners can do after the TRC is gone, there is no ready answer. Many commissioners are angry at the way government has responded on the question of reparations. This is where civil society comes in and has to use pressure to make government respond.

Part 2

Victims vs. Perpetrators, Rights vs. Amnesties: How do we strike a balance?

a. Geordie Ractliffe, Home for All Campaign³

- The Home for All Campaign is an initiative by white South Africans to contribute to repairing the material and psychological wounds that are a legacy of the country's past.
- In the reparations debate, one important area which has not been addressed is that which views all South Africans as integral to the process of repairing the wounds of society. The Home for All Campaign was a response in part to the fact that the TRC did not address the experiences of 'ordinary' South Africans from both sides of the racial oppression.
- After 1994, there has been an attitude of "business as usual" particularly amongst those who wish to close the book on South Africa's past; those who prefer to "forgive and forget". There was a need to challenge these people to recognize that the unfinished business of the past amounts to a terrible bequest on future generations in this country. South Africa is not yet a home for all its sons and daughters.
- In this sense then, the Home for All Campaign has a broader canvass, aimed at developing in all people the material and spiritual capacity to engage as full and equal citizens of this country.
- Specifically, the campaign engages with the role of white South Africans in repairing the country's wounds. The Declaration of Commitment by white South Africans which is a corner stone of the campaign, is a statement of recognition and acknowledgement of how systematic racial discrimination inflicted massive social, economic and psychological damage on black South Africans, while simultaneously channeling the wealth and resources of the country to the benefit of its white inhabitants. It undermined the people's common humanity.

- White South Africans whether they liked it or not or whether they opposed it or not, were the beneficiaries of a malevolent system that undermined the potential of its black citizens. Because of this historical privilege, white South Africans have a special responsibility to contribute to a reconstruction process that redresses the ravages of the country's past. Without embracing this responsibility fully, white people will remain incarcerated by fear and guilt or by denial, unable to fulfill their potential as true citizens in a transformed society
- Those who have signed the Declaration have in doing so pledged to use their resources and energy in practical expression of this commitment. When the Home for All Campaign was launched, its declaration elicited enormous debate and was dismissed as a "white protocol." It touched a raw nerve, more so the question of accountability for apartheid. This includes collective responsibility as beneficiaries of the system, and individual responsibility to those who actively and passively supported the system.
- The Home for All Campaign appeals to whites to respect the willingness of black South Africans to seek reconciliation by committing themselves to:
 - Helping bridge the divisions that characterize this society;
 - Building respectful relationships between individuals and groups that were divided by apartheid;
 - Becoming actively involved in the reconstruction and development of this country; and,
 - Contributing to the eradication of poverty and economic inequality.
- This approach is quite different from that of financial or symbolic reparations, and possibly fulfils a somewhat different purpose. There are two central strategies involved:
 - To develop a service register that could channel the skills and material into projects aimed at development within the poorest communities in the country; and,
 - To establish a Development and Reconciliation Fund to channel financial contributions to the same ends.
- In a way the Home for All Campaign seeks to provide a space for whites to say "we are coming to the party offering our skills and resources. But we do so with humility, as a consequence of both our moral responsibility as acceptors of privilege and of our need to restore our own humanity and citizenship." This implies the commitment to build partnerships that mutually enrich participants and contribute to the construction of a common future.

Question: How can the Campaign become viable at the national level so that it reaches out to the entire black society? Secondly, what does the Campaign hope to achieve? Will it integrate all South Africans especially those who have suffered and are still suffering?

Geordie: The Home for All Campaign has done two things;

- Firstly, it has invited white South Africans as beneficiaries of apartheid to acknowledge their benefits and to accept the moral responsibility that goes with that and secondly, it has drawn them inside the process of healing the wounds of this country both collectively and individually.
- This works through building partnerships with black individuals, organizations and communities in such a way that those walls that divided different people in the past will be removed. It points to a process that transfers resources and which reinforces a common humanity and a common sense of what it means to be citizens in this country.

b. Lorna Levy, Black Sash, Reparations Activist

- The NGO working group on reparations was formed in April 1999 by interested NGO's to deal with the question of payment of final reparations to victims. Its activities have included writing letters to all MPs, Cabinet Ministers and ANC branches but to date no replies whatsoever have been received.
- A meeting was called in July 2000 by Hlengiwe Mkhize (head of the reparations committee of the TRC) where discussions were held about the contribution that business can make to the reparations process. This was however inconclusive and there is a long list of activities organized by civil society which unfortunately have produced very few results.
- Over the last couple of years government has sent mixed signals about its policy on final reparations. Some of its messages have a strong commitment to payment while others appear opposed to it entirely. Sometimes one wonders whether MPs who talk on the subject have properly informed themselves of the recommendations in the TRC report.
- Government says it is waiting for the final report before it can decide on a reparations policy. But those in the know maintain that it is only some minor issues that have been outstanding and recommendations for the victims/survivors could have been finalized long ago, only it lacks the political will to do so.
- In one of the Cape Times edition of May this year, the Justice Department Spokesperson Paul Setsetse said a draft document on reparations is being considered at Cabinet committee level and the bill could be expected to reach Parliament only in 2002. When this Bill is ready, it will have to join the long queue at Parliament and the common understanding is that after Parliament has debated the report and its recommendations, a decision will be reached as to what Government is prepared to do. The President will then have to make regulations to enable the implementation of Parliament's decision.
- Reparation is not a gift from the government, but a legal and moral duty on the part of the State. There must be transparency on this process and civil society should support Khulumani's application to the Justice Minister through the Freedom of Access to Information Act to release the final policy on reparations.

- When one contrasts the rights of victims' against the amnesty granted to perpetrators', there is a strong perception and resentment by victims that the TRC was biased towards perpetrators. Perpetrators got off lightly, notwithstanding the shame they may have had to bear in public for their actions.
- Amnesty was granted in what seems an unfair way. As at November 2000, fewer than nine hundred amnesties had been granted and many thousands were rejected. It is difficult to swallow the fact that someone like Craig Williamson can be granted amnesty on the grounds that his evil actions were politically motivated. Many South Africans were left shocked and surprised by these decisions. Victims are being asked to accept that there is no punishment attached to such evil crimes.
- Because amnesty denies victims the right to sue perpetrators, civil society should be asking those who got amnesty to contribute voluntarily towards reparations.
- Those perpetrators who were refused amnesty or those who did not go to the Amnesty Committee should be prosecuted as victims would like to see prosecutions for some of the leading criminals who gave the orders and not just the foot soldiers.
- Victims are beginning to die and yet nobody knows when the final reparations will be implemented. These are people who sustained abuse, are poor, in bad health and have not recovered from torture or the violent death of a loved one.
- Many of the survivors require long term assistance, some will need health care in the future and they may need to be given counseling in managing the money they receive as reparations.
- The Human Rights Commission should take up the issue of reparations, and a group of people or academics should perhaps produce a map based on the final TRC Report. This should detail the places of residence of victims which will enable religious and charitable organisations to establish contact with them and provide what moral and practical assistance they may wish to extend.

c. Tseliso Tshipanyane, South African Human Rights Commission (Reparation as a human right)

- In the dictionary, reparation is defined as a means or the 'act or process of making amends,' that is, correcting or repairing the effects of wrong doing. In the context of human rights violations, reparations would thus entail a process of addressing the effects of such violations by appropriate, practical and effective means.
- The main forms of reparation are; restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

International and Regional Human Rights Law Perspectives

- International law has long recognized that any breach of a provision contained in a treaty between states, or the breach of a provision of customary international law by a state requires the offending state to make reparations to the affected state. For a long time, reparation was viewed as a matter between states and not individuals.

- With the rapid development of international human rights law since the end of the Second World War, a number of international and regional instruments now recognize reparations as central to remedying human rights violations. These include;
 - The Universal Declaration of Human Rights (Article 8);
 - UN Convention on the Elimination of All Forms of Racial Discrimination (Article 6);
 - International Covenant on Civil and Political Rights (Article 2[3]);
 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14[1]); and,
 - Resolutions of the South African Millennium Statement on Racism and Programme of Action of 2 September 2000.

South African Perspective

- Both the 1993 and 1996 Constitutions recognize an individual's right to reparations. Though this is not explicit in the 1996 constitution, section 38 allows anyone to approach a competent court to seek relief for a violation of a human right.
- However, the right to seek reparations for past human rights violations especially against individuals was limited, in the interest of national unity and reconciliation, by the post-amble of the 1993 Constitution and the [Promotion of National Unity and Reconciliation Act 34 of 1995](#)(TRC Act). This position was further reinforced by the Constitutional Court in the case of *AZAPO v President of the Republic of South Africa* 1996 (4) SA 671(CC).
- Contrary to the requirements of international law, the provisions of the [TRC Act](#) confine reparations to victims of gross human rights violations and not to those who suffered "ordinary" human rights violations.
- There is also no clear provision on the role of juristic persons such as industries and financial institutions that contributed to the violation of human rights under apartheid or those that benefited financially from the laws and policies of the apartheid regime.
- Finally, whatever relief can be found will be that provided in terms of the recommendations made by the Reparations and Rehabilitation Committee of the Truth and Reconciliation Commission. Other measures may also be instituted by the state in addressing the poverty and inequalities brought about by past racist policies.

Challenges Ahead

- As a result of political compromises, South Africa has taken a non-litigious approach to the realisation of the right to reparations as a human right and as a means of addressing past human rights violations.
- Existing measures must be effectively and successfully implemented, especially for the benefit of deserving victims of gross and systemic human rights violations.

- The issue of the role and involvement of juristic persons such as corporations (both national and foreign) which financially benefited from the apartheid regime is not clear and need to be addressed.
- There is a need to have a clear reparations policy based on international human rights norms and standards that will address past violations of human rights under the apartheid regime while at the same time taking into account the financial and other constraints and practical realities facing South Africa.

Question: Does the 1996 Constitution make the same provision for reparations as the 1993 interim one?

Tseliso: There are provisions in the 1996 Constitution under the section titled "transitional arrangements", which allows the interim Constitution of 1993 to continue. For example the [TRC Act](#) finds its grounding in the 1993 constitution.

Making Reparations a Reality: Challenges for civil society

a. Polly Dewhirst, Disappearances Project, Centre for the Study of Violence and Reconciliation

- The TRC Report groups reparations into five categories:
 - Urgent Interim Reparations;
 - Individual Reparation Grants;
 - Symbolic Reparations/ legal and administrative measures;
 - Community rehabilitation programmes; and,
 - Institutional reform.
- The last three constitute reparations that don't take an individual form. These can be called "other reparations" which means they take the form of things besides individual payments or financial compensation. "Other reparations" is sometimes wrongly grouped together under the title "symbolic" reparations.
- Equating "other reparations" with symbolic reparations is incorrect because some interventions like the clearing of a person's criminal record can have much more than a "symbolic" impact for individual victims and communities. NGOs and CBOs have a greater opportunity of actually being able to deliver these forms of reparation.
- To date the TRC recommendations have largely been un-scrutinized and only engaged with in a very superficial way. NGOs must critically analyze those recommendations and, where possible, push for different sectors of society to start implementing them. They also need to come up with practical ideas about how these can be made much more specific for purposes of implementation.
- In the areas of community rehabilitation, The Reparations and Rehabilitation Committee begins to make its own specific recommendations, but these too range from the specific (establishment of community-based survivor support groups, provision of specialized trauma services and training and resettlement of internally

"displaced" people) to the very broad (national demilitarization, transformation of the education system and provision of housing to battle-scarred communities) (Vol. 5 of the Final Report).

- Civil society has already taken the lead in some of these areas, often without funding or acknowledgement from government. These would include the continued expansion of Khulumani Support Group, the ongoing trauma training, the services provided by the Trauma Center of CSV, the Kwazulu-Natal Program, and many local based projects like the Displacees Committee in Thokoza. Civil society must continue their work and highlight what it is doing to government. Measures must be taken to make these endeavors sustainable and government should be lobbied to allocate money so that implementation is not entirely dependent on foreign funding.
- Other areas that need administrative and legal intervention include the issuing of death certificates, exhumations, burial ceremonies, erection of tombstones, expurgation of criminal records, acceleration of outstanding legal matters related to human rights violations, renaming of streets, and a day of remembrance. The idea of a "victim's desk" can work, but it needs to be located within a specific governmental unit.
- CSV has a Disappearances Project which is already looking at about 200 possible cases of disappearance. It seems like one of the things that civil society should actually start doing is investigations. Many people who disappeared have not even been declared victims because the circumstances in their cases were vague.
- It has happened that in many cases the truth commission has decided not to declare certain people victims because it has not been able to make a proper investigation to determine the legal position of such a disappearance. The Disappearances Unit should also work with the exhumation team and be linked to the historical project. A Documentation Centre should also be considered.

b. Duma Khumalo, Khulumani Support Group

- Since the release of the TRC report in 1998, Khulumani Support Group has been lobbying strongly for the final reparations to be implemented. A meeting was held with the previous Minister of Justice, marches and public protests have been organized and petitions and memorandums submitted to both the previous and present Ministers of Justice as well as the President. Whilst a meeting was held with the previous Minister of Justice, the present Minister and the President have not responded to Khulumani's appeals.
- Victims have been unjustly treated by the TRC process and this still continues with the government seemingly looking for ways to avoid making final reparations. In fact, the government is now regularly expressing the view that victims are making unreasonable demands in calling for reparations. The government talks through the media and not directly to survivors.
- Many Khulumani members had specific requests to the TRC for instance tombstones and exhumations as well as financial and emotional rehabilitation. In

addition to financial reparations, Khulumani wanted victims and their dependents to be accorded preferential access to educational bursaries, advice, counseling services and medical services by the state.

- In addition, many victims felt that what they needed was an injection of capital that will put them into a position where they could start up some small business and become self-sustaining. At this time, victims did not express feelings of entitlement to restitution or the handout of large sums of money. The process itself has changed victims' attitudes to, and expectations of reparations. In particular, victims are angered by the "preferential" treatment accorded to perpetrators and the attitude of many perpetrators that it is "business as usual".
- Perpetrators have been given amnesty in a way that is difficult to understand and to accept. In the eyes of victims, the Amnesty Committee ignored the notion of "proportionality" put forward in the [TRC Act](#) as a condition for amnesty and victims also feel that in many cases, it has accepted a distorted version of the truth.
- Perpetrators have received expensive legal assistance from the state. On the other hand, victims have had to make do with legal aid, but even their access to legal assistance was not facilitated and most victims had no legal advice whatsoever. Most victims had no resources or assistance when making their statements to the TRC, no assistance with challenging the resultant findings, no assistance with opposing amnesty applications and no assistance with challenging the granting of amnesty.

Khulumani's Demands

- Government must release the timeframes detailing when the final reparations will be implemented.
- TRC recommendations do not go far enough and the amount of money proposed far is too little. These issues must be addressed before the final implementation. Khulumani should be recognized as a stakeholder in the decision making process.
- Many people did not make statements to the TRC and are now excluded from reparations; they must be allowed to do so.
- Khulumani strongly opposes the proposed blanket amnesty in Kwa Zulu-Natal as victims will never get a chance of learning the truth about past and present violence. It will also deny them a possibility of suing the perpetrators for civil damages.
- Prosecutions must be speeded up against perpetrators who did not apply for amnesty or those whose applications were denied by the TRC. Victims need proper legal advice from the government about their particular cases.
- Victims must be allowed to appeal against negative findings made by the TRC on their statements. Khulumani wants a list of cases in which the TRC did not make a positive finding so that it can contact those people and try to help them get the information they need to make an appeal.

- Active involvement of civil society, the TRC and government is needed in exhumations and reburials as well as the issuing of death certificates.
- Most cases of disappearance require further investigation and victims should be assisted by the police or the Department of Justice
- Finally, victims are still waiting for a fair deal from the TRC process. They would like to see the speedy implementation of final reparations in the forms recommended by the TRC with a review of who is entitled to them. They would like to see social, medical and educational services made preferentially available to victims. It has been a long time since promises were made by the TRC and victims' needs are now more urgent than ever.

c. George Dor, Jubilee South Africa

- Reparations should be expanded to all victims who suffered under the apartheid system both internally and externally. This should also be teased out more broadly to include not just the idea of financial compensation.
- Jubilee South Africa focuses on reparations to cover all victims who suffered at the hands of apartheid. At the broader level, this includes reparations for the development of a decent health system so that victims and all the people in South Africa have access to affordable health care or social welfare; to decent water services for basic health and hygiene, to decent living conditions, to jobs and so on.
- One aspect of this debate which is all too often forgotten in South Africa is that apartheid's role extended well beyond the borders of this country. Apartheid caused massive damage throughout Southern Africa in countries such as Angola, Zambia and Mozambique.
- The role of international and domestic institutions which benefited from apartheid must also be taken into account. One of the tasks that civil society has to do is to identify that broader range of people and institutions that will be made responsible for reparations.
- Looking at the political and financial aspects of apartheid, it is very interesting that Swiss newspapers have exposed the close connection which existed between the Swiss military and their South African counterparts during the days of apartheid. Jubilee South Africa has been working together with its partners in Switzerland to research the role of Swiss banks and others in Europe in supporting apartheid. It has found that these banks increased their lending to the apartheid regime when the UN imposed sanctions were at their peak.
- Yet after the country's transition to democracy, that lending has actually dried off. The very financiers of apartheid at the period when every body was saying it is morally incorrect to finance the system have now taken an about turn. These banks are therefore one of the legitimate targets for reparations and Jubilee's aim is to initiate action against them in Germany, USA, Britain and France.

- Internally, the role which local business played in supporting and benefiting from apartheid has to be investigated. Since 1994, there has been a policy of relaxation of exchange controls and the very business that made massive profits from apartheid now takes its money and runs to the London stock exchange. Hundreds of billions of Rand have been taken out of the country, yet the Finance Minister argues that this amount is very negligible. However if it is compared with the TRC's recommendation of a mere 3 billion rand for reparations, then one sees an element of double standards because government claims that the 3 billion Rand will put too much pressure on the fiscus.
- Jubilee South Africa is in the process of discussing how it can transform some of its actions into concrete campaigns. It has initiated the process on the Swiss Banks and held talks with the Swiss Parliament, Government leaders and the church sector. Presently Jubilee is exploring a legal strategy against these institutions strengthened by the fact that German banks and industries are now paying reparations for holocaust victims.
- The proposed strategy looks at reparations not in terms of individual compensation but rather as a broad programme to repair South and Southern African countries. A Reparations Fund needs to be put in place for all of Southern Africa with input from civil society, government and other role players.
- Lastly, civil society has to ask itself why government ignores its calls for reparations. Minister Penuell Maduna got invited to this reparations workshop but bailed out at the eleventh hour without as much as an apology. Organizations need to consolidate their actions and forge a common front if it hopes to realize its demands.

General Comments by Participants

- Reparation is incomplete without land restitution and so far the process has been taking place very slowly.
- Due to the failure of the TRC process, families are breaking down, divorces are on the increase, and husbands and wives are fighting and blaming each other for their dead or disappeared children. There are no support structures for counseling or assisting victims and it appears that the various political parties just used the TRC as a conduit towards peaceful power sharing.
- Khulumani is facing a big problem because whole communities were affected by apartheid but it was just a few members who got access to the truth commission. For instance in Petersburg, only four people were able to go to the TRC out of an entire community. These four people are now being isolated in that community, divisions have cropped up in that community.
- Many children belonging to victims are out of school; there are no bursaries to support their education yet the TRC had recommended that government should provide bursaries to such children and others from affected communities.

- The TRC sent people to communities to take statements yet they were not able to communicate in local languages. For instance they sent Zulu speakers to take statements in Free State where people are predominantly Tswana or Sotho speakers. Since most of these statements were not clear or understandable they were eventually rejected by the commission.
- Regarding Special Pensions,⁴ it was reported during the Cape Town Indaba (organized by Khulumani) in April that 27000 applications had been received but out of this total, only 14000 of them have been processed. It is just a mere 5000 applicants who have received their special pensions while 8500 applications have been rejected.
- The major problem with the Special Pensions Act is that it is interpreted by different commissioners in different ways because it is very vague. Some of its clauses are confusing and the majority of people that should benefit have not even applied.

Part 3

Report Back on Strategies

a. Government

- Victims must be recognized as stakeholders and involved in the decision making process leading towards the final reparations policy. This policy and the time-frames for implementation should be released without further delay;
- The proposed blanket amnesty in KwaZulu-Natal must be strongly opposed because enough compromises have already been made and victims stand to lose the last chance they have to sue the perpetrators both civilly and criminally;
- Government must make known the progress it has made in terms of prosecutions against perpetrators who did not apply for amnesty or those whose applications were turned down by the TRC;
- Victims and their families should be assisted with exhumations. The Department of Justice and the Police should assist with tracing those who disappeared both inside and outside the country;
- Government should hasten the process of issuing death certificates as well as clearing criminal records for people who were falsely charged and jailed under apartheid laws;
- Victims who did not get a chance to make statements to the TRC should be allowed to do so;
- The time for appeal should be reopened for those victims whose applications were turned down by the TRC.

b. Civil Society

- Civil society support is required for Khulumani's application to have government release its reparations policy under the Freedom of Access to Information Act.
- Any lobbying strategy should be victim/survivor driven and there is a need to support and strengthen groups such as Khulumani and other community organizations playing a similar role in the field. At the same time civil society needs to engage and mobilize victims especially the 22000 people who were identified by the TRC. Educating the broader survivor community about their legal rights should be taken into account;
- Past strategies have been very broad and non-specific. There is a need to determine and identify priority areas for action and mobilization;
- It is important for civil society to have a media strategy. It is proposed that mainstream media as well as community radio be engaged so that they can publicize the campaign for reparations. This can be done through programmes on TV, regular slots on radio and articles in newspapers. Artistic and cultural activities which can attract media attention should be planned;
- Victim support groups like Khulumani should interact with SANGOCO, TAC and other civic organizations in order to learn from them about the success of their single-issue campaigns;
- There is a need to identify and develop working relationships with government officials, parliamentarians, church leaders and other prominent individuals who are supportive of the cause for reparations. TRC commissioners are an important resource and should be involved in this process;
- Civil society must explore the possibility of instituting a class action against the government if it continues to renege on its obligations to provide reparations as required by the Constitution and the Administrative Justice Act;
- Issues of housing, health, and education must also be addressed alongside individual reparation grants. Civil society should use existing channels such as the Department of Welfare's Victims Empowerment Forum to articulate its demands;
- Contingency plans are important just in case the strategies adopted don't bear much fruit. For example the legal option can be used to follow up on other processes such as petitions, parliamentary submissions and demonstrations;
- Business should be targeted in the campaign too and presented with a clear plan of what the needs of civil society are and what it is expected to do. The kind of contribution that business can make should be highlighted particularly with respect to broader community development initiatives.

Notes:

¹ The words 'victim' and 'survivor' have been used interchangeably in this report. It should be noted however that the word 'survivor' was much preferred by both the TRC and support groups because it has a positive connotation even though the commission used victim as the operational term.

² Note that there is the 'First Report' composed of five volumes that was handed over to the then State President Nelson Mandela on 29 October 1998. Many people refer to it as the "Final Report" which is a misnomer. At the time when this report was completed, the three committees of the TRC had not finished their work and they continued to function until mid 2001. By 'Final' the speaker is here referring to the report that is still awaited to be handed over to the government probably in April 2002.

³ More information regarding the Home for All Campaign can be obtained from their webpage: <http://www.homeforall.org.za>

⁴ Provided for under the Special Pensions Act (No 69 of 1996). It allows for special pensions to be paid to members of the former liberation movement.