

**Still not talking:  
Government's exclusive reparations policy and the impact of the 30  
000 financial reparations on survivors**

by

**Oupa Makhalemele**



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[Oupa Makhalemele](#) is a Researcher in the [Transition and Reconciliation Programme](#) at the Centre for the Study of Violence and Reconciliation.

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The unfinished process is a festering sore in our collective life – one which may bear consequences for us for a long time into the future and may leave us with major regrets that we failed ourselves and our country and its people. This failure represents a break in trust between a leadership and its people – a trust that can only be earned when promises made are promises kept. (Jobson, M., Khulumani statement, 2002)

## **Introduction**

This report highlights survivors' views about the R30 000 reparations granted by the South African government. This money was granted to those identified as survivors<sup>1</sup> of gross human rights violations by the Truth and Reconciliation Commission (TRC). The views expressed by twenty survivors of gross human rights violations living in the Vaal townships,<sup>2</sup> south of Johannesburg, shows the frustrations experienced by survivors in persuading government to effect a comprehensive reparations policy. This is the first systematic impact assessment reflecting on the detailed needs of the survivors since the grants started being paid out in 2003. The report argues that by failing to consult with survivor groups before deciding on the final amount for reparations, government wasted an opportunity to learn about the different survivor needs, which would have helped in designing a more comprehensive reparation policy with potential to optimise its effectiveness. The report also characterises that failure as a lost opportunity for government to mend a difficult relationship between itself and survivor groups, including NGOs and other stakeholders lobbying for reparations.

By pointing out these shortcomings, this report hopes to highlight some of the gaps the current reparations policy leaves gaping. We argue that this renders the goal of reconciliation through reparations amongst other measures yet unreachable, especially among the survivors who feel an increasing marginalisation in this period of transition.

## **Background**

In April 2003 the President of the Republic of South Africa announced the once-off payments of government grants of R30 000 to each of the approximately 18 000 survivors named by the TRC ([Mbeki, 2002](#)). Many, including survivors, civil society organisations and some commissioners who presided over the TRC, met this announcement with disappointment. The main complaint was the lack of proper consultation with relevant stakeholders before deciding on the amount. The Centre for the Study of Violence and

Reconciliation (CSVR), an NGO which has done extensive research on the TRC, wrote in a press statement that by failing to involve survivors, parliament had embarked on a process that was "neither participatory nor inclusive." (CSVR press statement, 2003) The CSVR noted in its submission to the Ad Hoc Committee on Reparations that government had over the previous four years refused to submit a policy on reparations for public debate (CSVR press statement, 2003). This has robbed government of the opportunity to draw useful information to inform a comprehensive reparations policy.

There is evidence that reparations may not have ranked high in government's priorities during transitional negotiations. This can be linked to the context within which the [Promotion of National Unity and Reconciliation Act of 1995](#)<sup>3</sup> was promulgated. The negotiations that culminated in the Multi-Party Negotiating Process began in an environment of high political instability and state-sponsored violence. It became important to appease the incumbents as the protagonists wished to secure a stable transition. Dullah Omar later said this about the strategy:

Now [granting amnesties] was very important because we were in effect asking the apartheid government to give up power, and we could not say to it at the same time that once you've given up power we're going to arrest you and charge you with crimes against humanity. There would have been no settlement in our country, the bloodbath would have continued. So the issue of amnesty was part of the political settlement. (Omar, 2002)

Such was the primacy of amnesties that the series of transitional negotiations that led up to the settlement reached between the key proponents (the ANC leadership and government's representatives) were help up at the final hurdle by the issue of amnesties. Apart from the Interim Constitution, reparations were not mentioned in any of the documents from these negotiations (Colvin, 2003).

The wording discussing amnesties and reparations in the Interim Constitution emphasises amnesties vis-à-vis reparations, proclaiming that amnesties "'shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past'" (Interim Constitution, 1993, Postamble, emphasis added). The "Postamble" continues that Parliament must design the "mechanism, criteria and procedures" for granting amnesty to individuals.

Where reparations are mentioned in the Interim Constitution, they are presented in broad terms that do not spell out any clear legal responsibility. When the TRC Act came into being it established the Reparations and Rehabilitation Committee (RRC), tasked with the issue of reparations. Whereas the committee dealing with amnesty was empowered to grant amnesties, the RRC could only make recommendations, to be implemented via legislation.

It was only later during the process of debates amongst political parties, civil society, non-governmental organisations, churches, survivors and academic institutions who were meeting with experts from other countries who had experienced similar processes of transition that the issue of reparations gained a more prominent mention (Colvin, 2003). It was therefore only until civil society, interventions that the issue of reparations assumed a more central role in the drafting of the TRC Act.

This context within which the issue of reparations was dealt with during transition, the debates around the meaning of reparations as well as the process within which reparations were disbursed, highlights the low ranking of reparations on the scale of priorities of the transitional process in South Africa.

### **The disbursement of reparations**

To fulfil its mandate, the RRC identified survivors, sought input from civil-society on the forms reparations should take and designed recommendations for a government-administered final reparations programme. From June 1998 the RRC began paying about 12 000 survivors Urgent Interim Reparation (UIR) sums of between R2 000 and R3 500 per victim. In exceptional cases up to R6000 was paid. By the end of 1999, the President's Fund had paid out R16 754 921 of UIR to 15 078 survivors (Leseka, undated). These payments were made in cases where survivors had urgent need for intervention.

However, many survivors felt that government was reluctant to implement a clear reparations policy. In the public debate on the issue of reparations survivors and civil society on the one hand and government on the other assumed increasingly adversarial positions. Government started construing demands for reparations as opportunistic and as debasing the noble nature of the anti-apartheid struggle by demanding financial recompense for it ([Mbeki, 2002](#)) Arguing that whole communities suffered, government favoured community development programs as opposed to paying out individual reparations. The survivors on the other hand deemed government's stalling unfair as perpetrators had been granted amnesty. Survivors complained that the TRC was not as friendly to them because it denied them the right to seek legal recourse through the amnesty process, without offering reparations. This variance of views concerning the meaning of reparations precipitated an often-acrimonious relationship between government and survivors.

The slow pace of government disbursing reparations led to some civil society organisations starting their own initiatives in order to provide some of the urgently needed services to survivors. In October 1999 Khulumani, together with The Evangelical Association of South Africa (TEASA) distributed over 30 donated wheelchairs to survivors who needed them (Mokabane, 2002). Following this ceremony Khulumani marched to the Ministry of Justice demanding to know what the government's plans were around reparations.

Beginning early 2000 a number of campaigns and debates over the issue of reparations ensued. In April 2000, during the Freedom Day celebrations in Pretoria, Khulumani<sup>4</sup> staged a highly visible protest. Subsequently there was a broad coverage of the issue of reparations in the media and in May the most comprehensive debate on reparations continued in the media. An article in the Sunday Independent of May 7<sup>th</sup> 2000 came out based on interviews with survivors who related their stories saying that they had not received reparations. This article was later named in parliament when President Mbeki was asked a question about reparations. Mbeki argued that the struggle was never about money, saying that people that were asking for reparations were implying that the struggle was about money.

On 16 December 2000, the Day of Reconciliation, Khulumani issued a press release titled 'The Truth and Reconciliation Commission's unfinished business'. Khulumani urged government to engage with them in addressing many of the unresolved issues related to the

work of the TRC. The central issue focussed around the many survivors whose statements were either rejected or were not taken at all (by TRC commissioners?) for various reasons that were not a fault of the survivors.<sup>5</sup> Khulumani cited the survivors living in Kwa-Zulu Natal whose cases were never investigated as an example. Khulumani urged the government to:

- Commit to establishing a TRC desk at the South African Human Rights Commission through which the outstanding matters may be addressed, including the pursuit of prosecutions against identified perpetrators who failed to apply for amnesty; and the investigation of cases of disappearance including those who disappeared in exile;
- Provide statement-taking opportunities to all those denied such opportunities, especially survivors living in KwaZulu-Natal; those who made statements in good faith to statement-takers who failed to transfer the statements to the TRC; and those whose statements were rejected where language difficulties were encountered. (Khulumani Press Statement. 16 December 2000)

Khulumani stated its commitment to a year of organised mass protest action by survivors should there be no satisfactory response to the proposals it had tabled.

2001 marked the third anniversary of the TRC's 1998 report. Khulumani provided a list of the victim support work it has been engaged in. This work included:

- Community mobilization (setting up support groups),
- Reparations applications and appeals,
- Disappearances investigations,
- Victim empowerment programmes (psychological, referrals, theatre for healing),
- Direct assistance to victims and their families (medical, psychological educational), and;
- Commemoration services in honour of fallen victims. (Khulumani, 2001)

In April 2001 Khulumani sent a letter to the president voicing the organisation's anxiety sparked off by both the time lapse since the TRC's report (October 1998) and the confusion brought about by the speculations the delay had caused. The letter pointed out that the imminent closure of the TRC exacerbated the anxiety. The letter ended by making a request to the president to notify Khulumani when regulations pertaining to the RRC recommendations could be expected to be promulgated (Khulumani Support Group Newsletter, 2002).

The Cape Town branch of Khulumani held a "Reparations Indaba," where Medard Rwelamira, advisor to Justice Minister Maduna, informed Khulumani that the draft government's reparations policy would be completed in two weeks time. He promised that the policy would be made public by the end of May 2001 (Colvin, 2000). According to Colvin, the two-day Indaba was the most sustained, large-scale and coordinated effort Khulumani had organised. Colvin describes the indaba thus:

It sought to involve as many role players and stakeholders in the reparations issue as possible. Medard Rwelamira from the Justice Department attended as

well as representatives from the Departments of Arts, Culture, Science and Technology (DACST) and Finance. Former TRC commissioners attended (including the chair of the RRC) and the list of NGOs included the CSVR, the Institute for Justice and Reconciliation, the Trauma Centre, Jubilee South Africa, Black Sash, IDASA and the South African Council of Churches. Khumbula, the other victim support group in the Western Cape was also represented. (Colvin, 2000)

The core concern of this meeting was gaining access to the government's final reparations planning process. For Khulumani it was a major coup that government had been brought to the table with survivors and other NGOs around the issue of reparations. Many believed that at least the meeting had been the catalyst for getting the final reparations policy finalised ([Colvin, 2000](#)). The euphoria and optimism that was brought about by the verbal commitment from Rwelamira to present Khulumani with a government policy document on reparations soon disappeared when government failed to produce the promised document.

Khulumani, together with civil society organisations and NGOs, continued lobbying through media statements and forums involving academics, lawyers and experts in the field of reparations. The government started talking with those involved in advocacy work on reparations, soliciting advice as to how to go about addressing the issue of reparations. These consultations, however, were not broad as many concerned organisations were left out of the process. CSVR issued a press statement noting its concerns that consultations had been minimal and that government could have broadened the process (CSV, 2003). Nevertheless, in April 2003 the President of the Republic of South Africa announced the once-off R30 000 grants for the identified TRC survivors.

In the apparent absence of a clear policy on reparations and the sometimes acrimonious relationship with government, survivors have sought other forms of seeking reparations. Survivor groups and other lobbying groups have initiated a lawsuit in the United States courts against businesses that 'aided and abetted the apartheid regime.'<sup>6</sup> The lawsuit was based on common law principles of liability and the U.S. Alien Tort Claims Act. The lawsuit was predicated on the belief that since institutional corporations and banks refused to acknowledge their complicity in the apartheid regime and seek amnesty during the TRC process, they 'have opened themselves to litigation' ([Buford and van der Merwe, 2004](#)).

Government was swift to denounce this action, with President Mbeki asserting that the government finds it 'completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility of the well-being of our country.'<sup>7</sup> ([Buford and van der Merwe, 2004](#)). In supporting this statement, the Minister of Justice, Penuel Maduna, presented an affidavit to Judge Sprizzo in New York calling for the case to be dismissed (Dor, 2004)

Meanwhile, the Department of Justice recently started to co-ordinate an inter-departmental Joint Committee tasked with drafting the regulations relating to the following categories: symbols, monuments, rehabilitation of communities and medical benefits and 'other forms of social assistance' (Mabotja, 2004).

We believe that a research report like this one will help provide some insight into issues

relevant to reparations. It will also provide useful information regarding survivor needs. The research also gives voice to an otherwise largely marginalised constituency of survivors. The recommendations we make are based on the actual experiences and expectations of the very survivors government is trying to assist. It is thus a resource for government's efforts at meeting its moral and legal obligation to bring about restitution for the survivors.

## **Methodology**

A mainly qualitative methodology was adopted for this research project. An open-ended questionnaire was designed to elicit information from survivor interviewees. The twenty survivors interviewed were identified via CSVN-Khulumani symbolic reparations project which was already in place in the Vaal townships. It was envisaged that both these projects together could promote a more holistic approach towards reparations, similar to the recommendations suggested in the RRC report. To avoid duplication, a snowballing sampling method was used, with the initial interviewees being asked to suggest other individuals who fall into our set criteria. Criterion was set with the aim of eliciting as broad and diverse experiences as possible. We aimed to speak to ten males and ten females. Among the two genders, we aimed to speak to five youth (i.e. under 35 years of age); and older people (over 35 years of age). We also targeted survivors who had experienced different types of abuses.

Many attempts were made during this research to talk to government officials in the following departments about their policies or implementation of services to TRC survivors: Housing, Health, Welfare, and Education. These departments were mentioned in the Reparations and Rehabilitation Committee's (RRC) report as important implementing points of services to meet the various survivors' needs. With a few exceptions, these attempts failed, with some key staff in these departments showing no familiarity with the issue of reparations at all.

A purposive sampling strategy was used for interviews intended for those in government departments. Much of this report draws heavily on the extensive work CSVN has done on reparations. Other literature has been used to lend theoretical, empirical and international comparative analysis on the ongoing debates on the issue of reparations.

## **Limitations**

Our sample was very small (20 individuals based in an isolated geographic area), and thus we cannot claim it to be representative of the whole South Africa. However, this gap is filled by various newspaper articles, books, conference papers, and public demonstrations around reparations that echo the views expressed by the interviewees.

## **The plight of survivors**

Few people can deny the enormity of the task facing the South African government. Some of government's urgent priorities include poverty alleviation, HIV/AIDS, unemployment, and crime prevention. Even within this list of priorities, some of these focus areas attract more public and government response than others. In part because of this it has been

difficult for TRC survivors to bring their specific plight to the fore. Furthermore, as the TRC closed, the public's attention shifted to other 'flavours of the month'. To fully understand the positioning of survivors within South African society and the need for reparations to address their often-marginalised situations, it is important to get a sense of the survivor's plight.

### **Survivors' profile**

Our respondents live in the Vaal, a poor settlement approximately 50 kilometres south of Johannesburg. It is a sight of the infamous 21 March 1960 Sharpeville massacre, where police killed more than 69<sup>8</sup> defenceless demonstrators protesting against the pass laws. That incident marked the dawn of a period of heightened state repression that led to a brief era of a lull in open political protest. This lull was broken only in the 1970s with the rise of the Black Consciousness Movement. By the 1980s, as in many townships across South Africa, the Vaal townships were a sight of the many popular protest actions against the apartheid institutions. These attacks included violent attacks on people that were seen to be collaborating with the regime of the day. In the late 1980s and early 1990s a spate of raids by hostel based Inkatha<sup>9</sup> members terrorised the local community, leaving many dead as it sparked off a series of revenge attacks from either side.

The survivors we spoke to were affected in the many acts of violence perpetrated during these turbulent years. While not all of them appeared before the TRC they were all directly affected, either personally or through family members, to the extent that their current lot is at least in part attributable to the violations investigated by the TRC.

Ten of the eleven respondents of our sample that testified at the TRC received the R30 000 reparation grant. Nineteen of the 20 survivors are unemployed, while the twentieth is running a struggling public telephone business, established using part of the R30 000 grant. Many of the survivors present themselves as survivors, as opposed to victims (Workshop discussion, 16 July, 2004). They demonstrate resilience in the face of despair, keen to do whatever they can to better their lives. All survivors expressed a desire to acquire skills, either for themselves or their children, in order to have means of sustaining themselves. Fifteen of the respondents do not have formal education beyond matriculation, while eleven of these do not have more than ten years of formal schooling. Three reached matriculation but did not go beyond.

The majority of our respondents cited poverty as the reason for leaving school. Their parents had been employed in menial labour jobs, providing little, if any, security for their families. Many of the respondents left school in order to supplement family income, often necessitated by the death or loss of work by the family breadwinner.

Limitations in education and skills are not the only challenges facing these survivors. Post Traumatic Stress Syndrome is cited frequently as a problem that needs adequate treatment (Kekana, 2004). Brandon Hamber points out that this psychological condition can:

[I]nclude a range of immediate and sometimes delayed emotional responses, including self-blame, vivid re-experiencing of the event, fear, nightmares, feelings of helplessness, depression, relationship difficulties, anxiety and even

substance abuse related difficulties. Some or all of these can be experienced by direct victims at differing times after the exposure to a traumatic or violent event. Similar emotional reactions can also be experienced by indirect survivors or family members, and bereavement related issues can be assumed to be common for those who have lost relatives during the conflicts of the past. ([Hamber, 1995](#))

These responses were spoken about prominently in the Western Cape during focus group discussions with the survivors in 2002. Our Vaal respondents also mentioned some of these experiences as having affected them. Many cited the psychological counselling they received as having helped them a great deal. Also, belonging to a support group helps them by providing them a space to talk about their pains and suffering. Lack of understanding of their plight from the community is a major problem for them, as they feel they are denied the opportunity to bring their plight as survivors to the fore in public forums (Workshop discussion, 16 July, 2004). The tendency to view survivors suspiciously is not unique to South Africa. In Latin America a watchword, *por algo sera* ('they must have done something') was common among the silent and terrorised majority as they watched their neighbours and colleagues disappear. (Roht-Arriaza, 2004)

A sense of isolation and neglect by the formal political structures was also cited as a major problem. Eleven of our 20 respondents claimed that they were politically involved when they were victimised. Nine said they were not. However, less than a quarter of the respondents were still involved in politics at a substantial level, i.e. they were not part of the leadership structures of the political organisations. This has led many to perceive themselves as politically insignificant, and as being neglected by the new political players in local politics. One survivor, whose MK commander son was killed by police outside her house, said none of the comrades he fought alongside even bothered to find out how she and her family were doing (Nhlapho, 2004).

## **RRC recommendations**

Reparations were meant to provide more than financial and other material outputs. Essentially reparations were about restoring the dignity of the survivors and the victims' families. The process of disbursing reparations would therefore be as important as the reparations themselves. The RRC drew from the international literature their working definition of reparations. This was organised in terms of the so-called 5 Rs: redress, restitution, rehabilitation, restoration of dignity and reassurance of non-recurrence (Colvin, 2003). After broad consultations with civil society, churches and NGOs, the RRC drafted recommendations that can be broadly categorised as individual, community, and institutional reparations.

### **Individual reparation grants**

In its findings the committee reported in 1998 that there were major arguments for individual grants in the form of money (TRC Report, 1998, para. 45). An overwhelming majority indicated that money or services that could be purchased should money be provided, was a preferred form of reparations. Basing its decision on the median annual household income in 1997 for a family of five, the RRC report recommended a benchmark amount of R21 700 per victim for each year over a six-year period (TRC Report. para. 69).

This grant would be viewed as addressing three components of survivors' needs: the acknowledgement of suffering (50% of the grant total); access to services and the daily living costs (each 25%). Those in rural areas or with large numbers of dependants would receive more. ([Colvin, 2000](#)) The highest possible grant per year would be R23 023 and the smallest would be R17 029. These grants would be paid out in six-month instalments and would continue for six years.

### Symbolic Reparations, Legal and Administrative Measures

The RRC's symbolic reparations recommendations were designed in line with the stated wish of the TRC to help restore the dignity of survivors of gross human rights violations. Interventions at different levels were therefore determined and recommended thus:

#### Individual interventions:

- Issuing of death certificates,
- Exhumations, reburials and ceremonies,
- Headstones and tombstones,
- Declarations of death,
- Expunging of criminal records, and;
- Expediting outstanding legal matters related to the violations.

#### Community interventions:

- Renaming of streets and facilities,
- Memorials and monuments;
- Culturally appropriate ceremonies.

#### National interventions:

- Renaming of public facilities,
- Monuments and memorials, and;
- A Day of Remembrance.

### Community Rehabilitation

The RRC conceded that it would not be enough to target reparations to TRC designated survivors only and recommended that communities also be the focus of a special type of reparation. This was in light of the fact that the gross human rights violations that visited South Africans during apartheid also adversely affected communities at large. The measures necessary for this kind of rehabilitation are tabled as follows:

- National demilitarisation,
- Resettlement of displaced persons and communities,
- Construction of appropriate local treatment centres (for physical and psychological needs)
- Rehabilitation of perpetrators and their families,
- Support for community-based victim support groups,

- Skills training,
- Specialised trauma counselling services,
- Family-based therapy,
- Educational reform at the national level,
- Study bursaries,
- Building and improvement of schools,
- Special educational support services, and;
- Provision of housing.

## Institutional Reform

In addition to these community rehabilitation measures the RRC made recommendations with regard to institutional, legislative and administrative matters. These were aimed at preventing the recurrence of human rights violations by engendering a human rights culture. It was recommended that these would cover a wide range of sectors in society including the judiciary, media, security forces, business, education and correctional services (TRC Report, 1998, para. 115). The overall aim of these measures was the promotion of a human rights culture and the prevention of the kinds of violations that characterised apartheid ([Colvin, 2000](#)).

## **The process of reparation as a healing mechanism**

In addition to the imperative of promoting a human rights culture, the very process of the TRC was seen as potentially a psychologically rehabilitative mechanism ([Hamber, 1995](#)). The survivors' hearings served the important function of providing the commission with a record of the human rights violations as well as an acknowledgment of the suffering experienced by survivors during Apartheid. In addition, the TRC made recommendations to establish human rights and accountability as the core characteristic of public institutions, thus giving reassurances that human rights violations would not be repeated in future. Symbolically these interventions had a huge impact for survivors as it assisted survivors in the healing process.

There were, however, dangers in the public discourse on reconciliation, which tended to urge people to forgive and forget and to move on. This was not a view held by everyone. Hamber warned against the tendency toward 'forgiving and forgetting'. He pointed out that psychological trauma cannot disappear and that psychological restoration and healing could only occur through providing the space for survivors to feel heard and for every detail of the traumatic event to be re-experienced in a safe environment. (Hamber, 1995)

The Victims Hearings provided ample space for survivors to re-live their trauma. People's stories of suffering were acknowledged, and thus the process of healing was started. However, with the TRC having closed, government's active engagement with the issue of reparations could go a long way in consolidating this healing process. By taking on reparative measures comprehensively government can concretise its acknowledgement of the violations suffered by survivors. It can restore the survivors' dignity, and raise public consciousness about their moral responsibility to participate in healing those hurt in the past. ([Hamber, 2000](#))

## **Survivors' actual needs**

We shall now turn to the issue of the survivors' needs as expressed by them. Reparation can be presented in monetary forms. It can also come in many other forms. These are, inter alia:

- Acknowledgement of wrong done;
- Revelation of the truth;
- Exhumation of the bodies of victims
- Pension Rights;
- Medical and educational services;
- Social security;
- Housing; and
- Restoration of reputation.

'I just remember myself receiving a letter that was highlighting education, housing, medical and later I received a letter that said I would receive the final reparation' (Sefune, 2004).

'In reality I need medical treatment and psychological treatment and these things require of me to use money. So with the R30 000 that I received I am trying to buy myself the best treatment ever available but the money is about to finish. What is going to happen is when that money is all gone I will once again be confronted with realities that the pain is still here. We thought we would receive medical reparations and maybe assistance in terms of employment so we wouldn't rely only on R30 000. That never materialized. So we are faced with the same problem once again.' (Kasa, 2004)

'As I have explained we laid a tombstone for my brother and his child and we were able to unveil the tombstones.' (Phethane, 2004)

The RRC had made recommendations that recognised the need for a comprehensive rehabilitation programme that did not necessarily emphasise monetary payments at the expense of other needs: education, health, medical assistance and housing for example. This was in line with the broad principles of restorative justice. In broad terms restorative justice can be described as attempts to reassert the human dignity of the wronged. By acknowledging the multifaceted nature of victimisation, the RRC sought a remedial programme that would address the various needs arising from the different consequences of victimisation.

The once-off R30 000 grants therefore fall short of the restorative goals that reparation seeks to achieve. Without a targeted strategy of addressing the other aspects of reparation, these once-off financial grants will leave survivors unfulfilled, both in terms of addressing their actual needs – that arose from their victimisation – and in their satisfaction that the transitional deal-making was fair.

Furthermore, this runs contrary to the spirit of reparations, as set out in the principles on which the RRC recommendations were made. Reparations are meant to make the lives of

those who suffered human rights violation to be as whole as possible (Hausfeld, 2004). The RRC recommendations point out that reparations should be effected so that healing and reconciliation can be promoted.

International norms and institutions of transitional justice support reparations that go beyond pecuniary terms. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power says in paragraph 19 that remedies to survivors should include restitution and/or compensation. It also states that necessary material, medical, psychological and social assistance should be accorded (cited in von Boven, 1990).

The international law of State responsibility also binds the State to establish accountability in order to preclude the continuation or repetition of the breach of law (von Boven, 1990). Von Boven maintains that granting such satisfaction to the survivors may "individually and collectively" have broader implications, "pertaining to matters of political, social and criminal justice" (von Boven, 1990, p. 509).

By establishing the TRC, and starting a process of institutional transformation in South Africa, the government can be said to have fulfilled the latter requirements. On the strength of survivors' perception of the R30 000 grants, however, government still has a long way to go to fulfil its role towards bringing about restitution.

Examples of comprehensive reparations programmes can be found in the efforts made in South America, specifically in Chile. In Chile the government recommended the creation of a government body to oversee reparations to victims' families. They also specified a program that included:

- A lump-sum payment equal to a year's pension,
- A monthly pension (based on the average wage) for spouses, parents and children of those killed or disappeared,
- Scholarships for children of those killed or disappeared allowed for secondary or university study until they turned thirty-five,
- Free medical and psychological care, through the Ministry of Health's "Program of Reparation and Integral Health Care" (Roht- Arriaza, 2004, p. 171).

Chile's report made public the details of the suffering of the survivors and victims. A copy of the TRC's report was sent to the family of each person killed or disappeared, and the president apologised on behalf of the state (Roth-Ariaza, 2004).

The comprehensibility of this programme and the role the government played in providing reparations could provide important lessons for South Africa and other nations trying to deal with the issue of reparations in the aftermath of conflict. These efforts are a clear indication of this South American government's sensitivity towards survivors' needs.

The survivors we spoke to raised a variety of urgent needs which if not addressed, they contended, they would not be able to move on. Furthermore, they felt that they would be less inclined to reconcile with those who wronged them while they continue to be suffering the consequences of those wrongs. The violations they suffered have given rise to some needs. These needs, in no particular order, include:

- Skills training,
- Employment opportunities,
- Education for the children,
- Trauma counselling,
- Medical assistance and health services, and
- Housing.

### **Skills training and employment opportunities**

Many of our respondents expressed a desire to be employed or to open their own small businesses. Since many of these survivors suffer one form of physical impairment or another, the viability of labour intensive work becomes very limited.

As I am talking to you right now I have zinc plates on my back in my body on my legs. And look at my hand you can easily see the bones ... . The zinc plates are coming out just at anytime of the day things like that. So when I am working I cannot work like a normal human being in a day long kind of working condition I just work temporarily. So at present I do shut down for two weeks three weeks just like that. (Potlaki, 2004)

I mean if they can provide our needs things that we will live through them like establishing a community centre for us so we can be able to work in that centre engaging in handy craft and other important skills that will be necessary to empower us. (Sithole, 2004)

Job opportunities are scarce in the Vaal, and there is a marked dearth of skills amongst the survivor community and the broader community of Vaal. Furthermore, most of the respondents' education does not go beyond matriculation. In this context, skills training and community development projects are regarded as key interventions to contribute towards poverty alleviation amongst the survivors.

### **Education for children**

Older survivors expressed frustration that they could not afford to educate their children, or help them acquire skills that could enhance their chances of finding gainful employment.

... I have my child who is in Grade 10 and she looks very bright and able with her school work. So I think it is best if when they give us this money I could save a certain amount so she can have money to go to school at the later stage. And I have her brother who after the death of his elder brother was affected and I think this has an impact because he failed during that year and also today he failed his standard 8 two times you see. But the thing is he is good in art and hand work so I went to talk to his teachers and I told them that it is best that he could enrol in a technical college because at school he is experiencing problems with learning. So I have to save some money so I can be able to send him to such school even though it is expensive because you ought to pay every trimester so you see money is the problem. (Bosigo, 2004)

Four of the ten respondents that received the R30 000 grants used some of the money to

pay for the education of their children or children in their care. The desire to educate children and frustration at the difficulty of achieving this was expressed generally by parents with children of school-going age. This intervention is critical if cross generational victimisation is to be limited. Simpson (1997) argues that we cannot talk of transformation while failing to attend to factors that may continue the marginalisation of survivors. He argues that failing to deal effectively with the survivors' experience of marginalisation can only lead to continued marginalisation, the residual trauma of which may be transmuted in forms of violence (Simpson, 1997). Citing the Latin American situation, Roht-Arriaza shares this view:

Those killed were often derided as subversives and terrorists, worthy of no better fate. Often, in the midst of state terror or civil conflict, families could not even reclaim the bodies of their dead loved ones. The trauma is passed on to the next generations, spawning a legacy of violence and dysfunction that may persist for many years." (Roht-Arriaza, 2004)

Targeted bursaries to the surviving children of the victims are therefore an important intervention. This will be government's acknowledgement of the dire consequences of victimisation, and a restorative attempt at the same time. Such an intervention will also ameliorate the impact of amnesties to perpetrators which come with the automatic obligation on survivors to waive their right to seek legal redress against the former.<sup>10</sup> In other words the survivors can live with the fact that the perpetrators are walking free if they are afforded the opportunity to escape the poverty the perpetrators' actions may have precipitated.

### **Counselling services**

A need expressed by most respondents is trauma counselling. Most said counselling was critical in their own strategies to cope with the aftermath of their victimisation. Asked how she is coping with her trauma, one of the respondents said:

Khulumani helps me to receive counselling even though I am not there yet. But they are trying their level best to help me get better. I am haunted by past events and they do not want to disappear, they hang around me like a shadow but I do not know when it will disappear (Respondent, 13 May, 2004).

Another respondent said the counselling she received since joining Khulumani had helped her to rejoin society. After her son was killed she withdrew from the community and it was only through the counselling she got after joining Khulumani that she regained her strength and rejoined society.

Isolation from the broader community seems to be a common response after the trauma experienced by our respondents. Khulumani seems to be one of the few outlets that help them deal with their trauma. Other coping strategies are family support, political conviction – which seems to demand a certain degree of stoicism on the part of adherents to a course, and religious faith. The efficiency of these coping strategies should be critically appraised and a multi-pronged strategy could be an appropriate intervention to deal with specific needs of individuals or groups that speak to their different circumstances and inclinations.

## **Medical assistance and health services**

I think deep down I am hurt because the fact that I am paralyzed remains a pain to me always. When I look back I know I was active and healthy but because of what happened I am no longer able to live my life to the way I used to. I am now confined to a wheelchair and I was not involved in gangsters. So it gave me a pain because I was taking this person home and so when they shot him they also shot at me so it is still troubling me in my spirit my life is no longer the same. (Sithole, 2004)

The cost of medical assistance and the impact of the physical and psychological injuries suffered by survivors is a cause for concern. Unable to escape the impact of physical pain, survivors are forced to spend money on the medication needed to ease their pain.

At times the government thinks it has done us a favour with these R30 000 because in reality we need doctors, we qualify for medical treatment. They should have provided us with papers that will help us access medical treatment from any other doctor in the community you see? (Kasa, 2004)

The health department is undertaking an information gathering process, to find out what are the different health needs of survivors. CSVR, drawing on its extensive experience of working with survivors, has used this rare opportunity to state the various kinds of interventions that the state can make with regard to health needs of survivors. However, consulting one NGO on an Ad hoc basis is not enough. Government departments should broaden its information base, and start a process of more inclusive consultation, particularly with the survivors groups.

## **Housing**

'I live in this house with my divorced sister, my mother and my two children' Phethane, 2004).

One responded, talking about how his father died and subsequently the family lost their house said,

He just became ill because he couldn't eat properly that caused his death and the fact that he was always ill resulted to his death. He was subjected to harsh torture and interrogation and that affected him dearly as he lost his mind and he stopped living at home – things like that – until I decided to leave my parents house. I left the family house in 1983 and someone came in to rent some rooms and he ended up taking over our house just in that way. (Potlaki, 2004)

The issue of housing is one of the most emotive issues in South African life today. It is one of the top priorities in government's reconstruction plans. As such it becomes difficult to emphasise survivors over the general population, the majority of whom have been rendered homeless because of apartheid policies. A case can be made, however, for prioritising those survivors who are destitute and homeless. Having lost crucial family income through the loss of a breadwinner, prioritising them would alleviate their destitution, and afford them a degree of dignity.

## **Reparations as a form of Justice, Empowerment and Transformation**

As discussed earlier, survivors continually express a desire to be gainfully employed and live independent sustainable lives despite experiencing debilitating violations. This clearly demonstrates that survivors are not merely seeking hand-outs from government, but are instead keen to find jobs or sustain themselves in other ways such as by running small businesses.

During the debates concerning the issue of the sustainability of financial reparations, NGOs in Cape Town argued that reparations were actually symbolic and were not meant to be the survivors' means of support (Orr, 2000). Reparations ought to be seen as important for their 'restitution' value and for addressing other needs such as mourning and memorialisation. Arguments that reparations are about self-enrichment have thus received criticism.

Given the dearth of skills amongst survivors, it is necessary that targeted skills development projects can be implemented to absorb survivors into self-sustainable employment through entrepreneurial programmes.

While running a workshop with the survivors in the Vaal, many told us that they would happily take part in projects that take forward the reconciliation work. Since memorialisation is part of this work, prioritising survivors for such work would be both a symbolic and practical way to deal with unemployment amongst survivors.

### **Recommendations**

Government's reluctance to engage the issue of reparations precipitated a series of campaigns to demand a policy on reparations. These campaigns however, leaned too heavily on the issue of final financial grants. While it was important to raise the issue of the final grants as a matter on which survivors were not going to compromise, the danger of such an emphasis has been the fact that it moved attention away from the need to address other survivor needs. This study shows that the R30 000 grants received have not made any meaningful impact on the survivors' quest to overcome the consequences of their victimisation.

With the many competing needs that government has to address, it would be hard to expect more financial grants to survivors from government. Furthermore, as this report shows, financial grants fall short of addressing the day to day and long term needs of the survivors.

There are other urgent needs, which the individual financial grants cannot address. These include:

- Health services
- Skills development
- Education and
- Housing.

Government departments responsible for these need areas can prioritise survivors in their ongoing work to provide such services to South Africans in need. In addition to such

interventions, government can use the money in the president's fund that was allocated for reparations to meet some of the survivor needs. According to Finance Minister Trevor Manuel, government had allocated R800 million rand in the 2001/02 Budget to pay for reparations. (Sebelebele, 2004) So far government has paid out about R30 000 grants to approximately 16 000 survivors. This means that by the time government has paid out financial reparations to the approximately 18 000 designated beneficiaries, a balance of about R200 million plus interest will be left in this fund. This money could be used for some of the post-TRC work. It could be used also to deal with some of the restorative work, especially memorialisation processes. Working together with survivors to address these needs could provide government an opportunity to form a strong relationship with survivors.

By soliciting information from the survivors and civil society organisations on ways to address their specific different needs, government will be empowering survivors on the one hand, and gaining much needed insight into the various needs expressed by survivors. This will have a positive impact in informing a relevant reparation policy.

An effective strategy would involve developing programmes that would promote sustainable forms of income generation for survivors. With limited skills among this group, skills development should be prioritised. This should be done in consultation with the survivors themselves, and should reflect a nuanced understanding of the market needs where such operations are run.

Education for the surviving children of the victims is a critical intervention. As a vulnerable group with very limited prospects for the future arising from the loss of their parents and guardians, these children should be given priority in the offers of bursaries and scholarships. Failing here would be leaving these children trapped in a circle of poverty, which has the potential of manifesting itself in violent, criminal and other anti-social behaviour.

Health services should be understood in a broad sense, which involves comprehensive, multi-pronged interventions to effect psychological healing and medical or physical needs of the survivors. In addressing the important issue of counselling, this means finding out from survivors and those who have worked with them what the relevant interventions are. Sometimes in doing trauma counselling it is important to acknowledge the importance of methods that go beyond the western convention. (Kekana, and Kgalema, 2002) This could mean combining psychosocial counselling with traditional ways to which people attribute healing powers.

Housing was identified by the RRC as one of the urgent needs to effect restitution for survivors. Prioritising survivors in the provision of housing will be greatly welcomed, as suggested by the emphasis made by many respondents on the importance of housing in helping them to move on with their lives.

Setting up a desk on reparations within the UN, with the mandate to draft reparations principles and the powers to monitor the implementation thereof can benefit those societies that are dealing with transition. (Naidu, 2004)

## Conclusions

Reparation is an obligation of the state and in terms of international law is automatically warranted when gross human rights violations have been committed. However, the issuing of reparations has internationally been effected with various degrees of success. Politicians have demonstrated a reluctance to tackle this issue during the transitional arrangements. Often it is civil society that brings the issue on the transitional agenda.

Apart from legally binding, reparation is an important component of transition. A reparation policy that is sensitive to the needs of the survivors has the potential of encouraging reconciliation and providing the impetus to move on.

The respondents we spoke to express bitterness and a sense of betrayal on the part of government. There is a strong feeling amongst them that the failure of government to consult with survivors before deciding on the R30 000 grants reflects government's arrogance and lack of sensitivity to their needs.

Survivors do not come across as seeking self-enrichment, despite claims from some that that is the case. Instead they wish for sustainable means of earning an income.

The amount granted by government does not address other urgent needs such as trauma counselling, medical and health needs, education and skills development, as well as housing. These needs, being urgent, present survivors with difficult choices when it comes to how the money proffered will be used. Drawing on reparative practices elsewhere, such as in Chile, government can devise a reparations programme that addresses these outstanding areas.

Because government failed to consult with survivors, either through representatives or civil society groups that have worked with survivors, crucial information relevant to the needs of survivors was lost. Such information can inform an improved reparations policy if pursued.

### Notes:

<sup>1</sup> The term survivor is used to describe both the direct victims of abuses as well as the surviving relatives of victims who have died.

<sup>2</sup> The Vaal townships include Sebokeng, Sharpeville, and are located in the southern part of Gauteng Province.

<sup>3</sup> The Act that established the TRC, also referred to as "the TRC Act" in this report.

<sup>4</sup> Khulumani (Zulu for 'Speak up) Support Group is a survivors' support group which has been lobbying government for a comprehensive reparations policy. It is made up mostly of survivors, some of whom testified at the TRC.

<sup>5</sup> Khulumani leaders claim that many of their members did not testify before the TRC because, among others, they were not adequately informed about the process of the TRC, some statement takers took their statements incorrectly, or did not know about the TRC

(this was especially so for rural communities).

<sup>6</sup> See *Khulumani et al. v. Barclays et al.* (Cohen, Milstein, Hansfield and Toll, P.L.L.C.), found online at; see also "Briefing on the Reparation Lawsuit facilitated by the Apartheid Debt and Reparations Campaign of Jubilee South Africa", Press Release Jubilee South Africa Campaign, February 21, 2003. Quoted in [Buford, W. and van der Merwe, \(2004\)](#), "Reparations in Southern Africa" *Cahiers d'études africaines*, Volume 44, Issue 1-2.

<sup>7</sup> Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation on the occasion of the tabling of the Report of the Truth and Reconciliation Commission, Cape Town, 15 April 2003. Colvin cites M. Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998), p. 103, cited in [Buford, W. and van der Merwe, H. \(2004\)](#), *Reparation in Southern Africa*, soon to be published CSVR report.

<sup>8</sup> Many of our respondents assert that this official number of the dead is an underestimation as many people who did not die on the day died in days that followed from the injuries they sustained on the day.

<sup>9</sup> Inkatha (later rechristened the Inkatha Freedom Party, or IFP) was a predominantly Zulu cultural organisation with membership limited largely to rural KwaZulu and among Zulu speaking migrant workers in urban hostels. It was implicated in much of the political violence of the late 1980s and early 1990s which, it was later established, Inkatha carried out with the full knowledge and assistance of the SADF's top ranking officials and the full knowledge of the top executive structure of the government of the day.

<sup>10</sup> See the judgment, especially of Justice Ismail Mohammed

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