THE EFFECTS OF REPARATIONS ON RECONCILIATION AND THE ENDS OF JUSTICE: THE SOUTH AFRICAN CASE

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DECLARATION

I declare that this research report is my own unaided work. It is submitted in partial fulfilment of the requirement for the degree of Master of Arts in Politics at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination at any other university.

Tokelo Julius Nhlapo

15 February 2019

DEDICATION

To my mother, Manana Sengangele, who washed, ironed and cleaned for white people so that her children could read and write.

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To my siblings - my sister Sebabatso and brother Lebohang Nhlapo. A special thanks to my dearest friend and partner, Matshidiso Motsoeneng, the world is a better place with you by my side.

ABSTRACT

South Africa's first multiracial and democratic elections in 1994 succeeded nearly half a century of institutionalised racial discrimination and oppression under apartheid which left hundreds of thousands disadvantaged. As a consequence of a political settlement between the negotiating parties, the Truth and Reconciliation Commission (TRC) was established through an Act of Parliament to uncover the causes, nature and extent of gross violations of human rights in and outside the country. In an effort to balance the moral predicament of affording amnesty to perpetrators, the TRC also recommended reparations for victims of gross violations of human rights. This report argues that the overreliance on judicial means, to resolve political questions of marginalisation and repression was inadequate. Consequently, the TRC's recommendation for reparations determined by a legal imagination therefore aimed at only direct victims of the consequences of the crime of apartheid to the exclusion of many.

Using first-hand experience of participants as well as secondary material, the report concludes that the TRC reparations recommendations' failure to deal with the interconnectedness of apartheid violations, manifests in South Africa's increasing racial hostilities, racialised poverty and inequality 25 years into democracy. Because poverty and inequality disproportionately affects previously marginalised groups, as well as government's failure to provide adequate reparations that meaningfully restore victims sense of dignity and moral worth, perceptions of reconciliation and justice are significantly undermined.

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List of Abbreviations

- **AC:** Amnesty Committee
- **CONADEP:** National Commission on the Disappearance of Persons
- **CSVR:** Centre for the Study of Violence and Reconciliation
- **HRV:** Human Rights Violations Committee
- **HRW:** Human Rights Watch
- **ICTJ:** International Centre for Transitional Justice
- **IJR:** Institute for Justice and Reconciliation
- **IRG:** Individual Reparations Grant
- **SAIRR:** South African Institute of Race Relations
- **RRC:** Reparations and Rehabilitation Committee
- **SABC:** South African Broadcasting Corporation
- **SAHA:** South African History Archive
- **SAHRC**: South African Human Rights Commission.
- **TRC:** Truth and Reconciliation Commission.
- **UN**: United Nations

CHAPTER ONE

1. Introduction

In December 2015, I visited Robben Island and met a former political prisoner, as some are working as a tour guide in the same prison where he spent years serving time for the freedom of a non-racial and democratic South Africa. I asked the respectable old gentleman if he truly believed we were one nation, or a rainbow nation, as he repeatedly and affectionately told the mostly white collective.

He calmly replied; “I’m doing this to heal. We are not healed. So now I’m a tour guide. If you really want to know what I think is happening, and what I think should happen, let us talk in Cape Town.” After finishing the tour of the prison, He approached me and said: “We want our land, our mines and our economy. We want self-determination. Mandela was the captain of the ship and he said, ‘Peace. One man, one vote.’ We respected that, but Joe Slovo trapped us into the sunset clauses. Now we don’t know what to do. The ministers who come here, can’t tell us why we must continue to live and work for whites.” He continued; “I’m tired of the anger. I must survive, for my family.”

In the same week, I visited Table Mountain and almost all the people on the mountain were white. Driving back, I was taken aback by how in almost all the tourist attractions and restaurants white people were being served or entertained by black people. I stopped at the gas station and I was attended by a black petrol attendant whom I asked if he had been to Robben Island or up Table Mountain on the Cable Car. He quickly responded, “Hayi.”

“But you live in Cape Town,” I objected.

He responded, almost without emotion, in IsiXhosa: “Hayi bhuti wam, andihlali kwikapa. Ndihlala kwa Langa. Ndi sebenza apha”. Loosely translated: “No, my brother. I do not live in Cape Town. I live in Langa. I work here.”

Twenty-three years since the beginning of South Africa's Truth and Reconciliation Commission (TRC) that was aimed at reconciling a once deeply racially divided society after the end of apartheid in 1994, the country continues to grapple with racial hostilities as well as racialised poverty and inequality (SAHRC, 2018). For many victims who came to testify at the TRC, it was an opportunity to find the truth and possibly heal and to reconcile the past. For some perpetrators, it was an opportunity to accept responsibility, disclose the circumstances of their actions and be granted amnesty. This would be the basis of creating a “common history” among all South Africans.

The TRC was designed to be a springboard from which the promotion of reconciliation and justice could be built through the exchange of truth and amnesty for perpetrators and reparations for victims and survivors of gross violations of human rights. However, “for many South Africans the TRC came to represent a betrayal” (Nelson Mandela Foundation, 2018). Twenty-three years since the TRC opened its doors in April 1996 and 21 years since it handed over its first report to the late President Nelson Mandela in a special ceremony in Pretoria on October 29, 1998, many victims and survivors of apartheid gross violations of human rights continue to seek reparation for the harm done to them. These violations have left them disadvantaged and in need of special measures to ensure their ability to access the opportunities that have become available since democracy. According to Fernandez (2009, p. 29), “There [is] a strong feeling within the previously victimised population that it was not enough merely to acknowledge gross human rights violation”. The government needed to do more to relieve those who suffered violations under apartheid and bring justice by

providing reparations that are adequate, inclusive and restore their moral worth and dignity.

South Africans continue to mostly live apart along racial lines (Institute for Justice and Reconciliation, 2012) and increasingly "issues of discrimination on the basis of race have received significant attention over the past years, with matters such as the separation of students on the basis of race at a private school, as well as highly visible racist utterances on social media, receiving national attention" (SAHRC, 2018). Examples of these include Vicki Momberg, a white South African former real-estate agent found guilty of crimen injuria after calling a black police officer 'kaffir' when he tried to help her following an incident of crime (News24, 2018). Kaffir is similar to Nigger, a racist and derogatory term used against African Americans. In the South African context, "kaffir is the most notorious word in South African history, known most pointedly for its license of violence towards Blacks during apartheid, but first used and elaborated during the colonial period" (Baderoon, 2002, P. 6). In a similar incident a white South African, Adam Catzavelos, caused a massive uproar when a video of him referring to black people as 'kaffirs' while on holiday in Greece went viral (New York Times, 2018); as well as black South African, Velaphi Khumalo who faces charged related to posting racial slurs against white people on social media (Times Live, 2018). In addition, the recent alleged exclusion of black people in Cape Town's formerly segregated Clifton Beach, where anti-apartheid activist Fatima Shabodien and her friends were approached by security personnel from the company, Professional Protection Services, just before 8pm to inform them the beach was closing (Politics Web. 2019) once again illustrates a glimpse of South Africa's trouble with its past.

Former South African Minister of Justice between 1994 to 1999, Dullah Omar stated that "a commission is a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the

cause of reconciliation" (TRC, 1997). However, due to the government's failure to make provision for adequate reparations for victims and survivors of apartheid gross violations of human rights as well as heightened racial hostilities, it is important to revisit the work of the TRC particularly regarding perceptions of reconciliation and justice among victims and survivors. What does the work of the TRC signify today? Was the TRC established to pacify victims and survivors? Why has the state minimally responded to the recommendations of the TRC? Where does South Africa stand in relation to perceptions of reconciliation and justice? Was the 'rainbow nation' a façade?

In grappling with these questions, this report undertakes an exploration into the perception of reconciliation and justice, in particular the right to redress for victims and survivors of apartheid gross violations of human rights. The principal objective of this research report is to provide a window into victims' and survivors' perception of South Africa's reparations process in relation to the promotion of reconciliation and justice. However, the empirical data collected about victims' perceptions is also read in relation to a set of theoretical assumptions and debates centred on questions of redress, justice and reconciliation. As such the focus of this paper is both on the theoretical assumptions that reparations "can give victims a sense of moral worth and dignity; force society to conceptualize its identity; promote public trust in state institutions" (Verdeja, 2008, p.209) as well as victims' perceptions.

With regards to reparations in the promotion of reconciliation and justice, a number of conclusions are drawn that go beyond mere perceptions. These conclusions are drawn based on the historical conceptualisation of the TRC, and the choices to exchange amnesty for truth, and the character of reparations made to victims and survivors. In so doing, I provide a detailed conceptualisation of the TRC and recommendations for the promotion of reconciliation and justice as well as the reasonable expectations of victims and survivors. Part of what the research

report tries to do is to place the debate over reparations for victims and survivors of apartheid gross human rights violations on a firmer theoretical ground by providing a critic of the judicial conceptual framework of the TRC's reparations recommendations. I change away from the legal imagination of reparations which has shaped the recommendation of the TRC to an ethical one.

Like others, I argue that judicialisation of political questions-in other words, the overreliance on judicial means to address core moral predicament of the system of apartheid ranging from forced removals, racist domination, discrimination and state sanctioned violence were inadequate. As such, the TRC's recommendations for reparations were aimed at direct victims of the consequences of the crime of apartheid at the exclusion of many victims. Finally, the paper argues that the TRC's failure to deal with the interconnectedness of apartheid violations is evident in its recommendations evident in South Africa's increasing racialised poverty and inequality which largely affects previously marginalised groups. Accordingly, perceptions of reconciliation and justice are negatively affected. More broadly, this report provides a window into perceptions of South Africa's reparations programme in the promotion of reconciliation and justice.

1.1 Outline of Report

This report is made up of five chapters including this one. In the section below, I set out my research questions and methodology, as well as give a brief introduction to the area the research is focused on.

In Chapter One I presented a broad rationale and the aims of this research report. In addition, I have provided a context with regards to the establishment of the TRC and its objective to promote national unity, reconciliation and justice while briefly highlighting the inadequacy of South Africa's reparation programme to victims of gross human rights violations. I also provided a detailed description of the research methodology and the reasons for the choice as well as its limitations.

Chapter Two discusses the existing literature of transitional justice broadly and begins to highlight the evolution of the subject of transitional justice and the basis for the establishment of the TRC in post-apartheid South Africa. The literature highlights in-depth the inadequacies of South Africa's reparation programme in the promotion of reconciliation and justice over two decades since its first multiracial and democratic elections. Furthermore, this chapter highlights the restrictions of the theoretical framework of South Africa's reparations programme which largely relied on a legal framework to provide reparations to victims of apartheid human rights violations. I argue that the TRC attempted with limited success to survey almost a century of violence but its reparations covered a limited number of those who were victims. In this chapter, I also introduce and define a set of theoretical concepts and begin to outline their relevance to the discussion regarding reparations in the promotion of reconciliation and the ends of justice in South Africa.

Chapter Three, "The range and scope of South Africa's reparations programme", discusses in detail the recommendations of the Reparations and Rehabilitation Committee (RRC). I survey the recommendations in relations to the expectations of victims including what ultimately became government's position on reparations for victims. I argue that it is possible to view reparations as a gesture of recognition of victimhood in order to assist victims of human rights violations to rehabilitate themselves and reintegrate into society as an attempt to promote reconciliation and the ends of restorative justice.

In addition, I argue that that the judicialisation of the of the political question resulted in strict legal categories of "victim" and "gross human rights violation". By judicialisation, I refer to the overreliance on judicial means to resolve deeply political questions. The implications inevitably, affected the recommendations of the RRC which were concerned with direct victims of the strict legal categorisation of violations. I contend had the acts of gross violations of human

rights been considered in the context of apartheid being a crime in itself, the RRC recommendations may have been broad violations. Furthermore, I demonstrate that governments' approach to the redress was the politicisation of reparations within the broad framework of social reconstruction based on the orthodox neoliberal economic programme to which redressed was conditioned.

Chapter Four, "With nothing to atone", provides analysis based on first-hand experience of victims of apartheid violations. I argue that due to victims' personal experiences, increasing racialised poverty, inequality, general inferior quality of life of previously marginalised groups, as well as government's failure to provide adequate reparations to restore the moral worth and dignity of victims, perceptions of the promotion of reconciliation and justice are undermined.

I expand the argument by connecting the experiences and expectations of apartheid victims of human rights violations to demonstrate that government's failure to provide adequate reparations as well as continued racialised inequality negatively affects perceptions of reconciliation and justice. The victims' experiences are significant since this research seeks to explore perceptions of reparations in the promotion of reconciliation and justice. Moreover, the victims' experiences is significant because the TRC embodied and was "understood as having a nation-building mandate to facilitate forgiveness and reconciliation between populations bitterly divided by generations of racial oppression and exploitation" (Pisan & Kim, 2004, p. 82) in ways that restore the livelihoods of victims.

Chapter Five concludes the research report with a summary of the key arguments advanced, as well as ways in which the research may be expanded and areas where more detailed research is critical.

1.2 Research questions and methodology

This report moves from the assumption that reparations provide a useful opportunity to reflect on strategies in the promotion of reconciliation and justice. It is because reparations are primarily concerned with the wellbeing of the victim or survivor. The report aims to uncover memories, and experiences to develop an understanding of the TRC process and the perceptions of reconciliation and justice from the perspective of victims and survivors of apartheid gross human rights violations. There are several questions that are taken up towards this end.

1.3 Research question

- What are the perceptions of South Africa's reparation and rehabilitation process in promoting reconciliation and the ends of justice?

1.3.1 Subsidiary questions

- Has South Africa adequately fulfilled the reparation and rehabilitations recommendations of the RRC?
- Were the RRC recommendations adequate in addressing the history of violence, racial discrimination and exploitation in South Africa?
- What are the effects of the South African government limiting the number of reparations beneficiaries for the promotion of reconciliation and the end of justice?
- What are the effects of the non-implementation of the wealth tax on businesses in the promotion of reconciliation and justice?
- How have South Africa's reparations processes shaped the perceptions of victim's reconciliation and the ends of justice?
- What other factors (besides reparations) may promote reconciliation and the ends of justice?

1.4 Research methodology

This section of the report outlines the methodological approach and the nature of the research. The use of a suitable methodology for this project became a critical and challenging aspect of this research project, as it became apparent that secondary literature, archival material and interviews were equally important in responding to the research questions. In designing the research process, I used a qualitative approach as a research paradigm for a number of reasons. Firstly, this research aimed to explore perceptions of reconciliation and the ends of justice through experiences of victims and key informants who had a direct experience with the work and processes of the TRC. I used purposeful sampling to obtain a representative sample of victims who participated in the TRC public hearing and subsequently received the once off reparations payments as well victims who did not.

Secondly, a qualitative methodology is able to take into consideration the socio-historical, economic, political and ethical issues that may arise in the field given the context and the complex subject matter of the research project. Additionally, a qualitative research method is interpretive and enables participants to present their own narratives in detail (Devine, 2002). Finally, the methodology used enabled the use of a reasonably small number of participants while assisting in developing an understanding of the subject matter (Devine, 2002). The research report uses typical case sampling to interview informants with a broad general knowledge of the topic or those who have undergone the experience and whose experience is considered typical to the subject matter (Coyne, 1997) in exploring perceptions of reconciliation and justice.

I recognised that the qualitative nature of the research would be best supported by undertaking an in-depth examination of secondary literature and archival material as well as conducting interviews with key informants. Specifically, this study uses Michael Burawoy's (1998) extended case method in order to make

links between the theoretical framework built from the literature on restorative justice to unravel the complexities of participants' experiences and perceptions of reconciliation and ends of justice.

While this study relied on interviews for data on perceptions of reconciliation and justice, it also uses personal circumstances of specific incidents affecting the participants, through a long period of time, and shows their perceptions of reconciliation and justice within the framework of their different experiences. In order words, the study uses personal experience of the victims of apartheid violence to demonstrate its broader arguments.

This methodology is also useful to overcome well-recognised limitations of theory, namely, the lack of colourful stories that are told (Putnam et al. 1993). The interviews are analysed alongside and in conversation with archival material. Accordingly, this study will attempt to focus on the difference between similar cases, contrasted with the approach taken, grounded on restorative justice theory. Three elements of its application within this study are offered, first the use of fluid concepts of restorative justice and reconciliation, conducting multi-systemic analyses and use of interpretative findings to extend existing theory.

1.5 Methods of data collection

This research used a number of sources and methods to gather information. The semi-structured interviews formed a considerable amount of the research and focused on participants' perceptions of reparations concerning the promotion of reconciliation and the ends of justice. The two key informants were complementary in broadening an understanding of transitional justice in South Africa as well as highlighting the personal experiences of victims and survivors of apartheid gross human rights violations. The interviews were guided by a set of flexible questions around the themes of this research project.

The first set of questions were around participants' understanding of transitional justice in general, in particular their experience and expectations of the TRC process. The second set of questions referred to participants' perceptions of reparations in promoting reconciliation and justice. The third set of questions related to participants' perception of reconciliation and justice in relation to their participation or non-participation in TRC process. With regards to two additional key informants, the questions were similar, although focused on their involvement with the TRC process and their sense of the project of national unity and reconciliation since the conclusion of the TRC in relation to the question of reparations.

The interviews varied in length; some took over an hour whilst others were just under half an hour long. On average most of the interviews took between thirty to forty minutes to complete. The interviews were designed to give the space for participants to offer their own experiences, in their own words and language around how they perceive the work of the TRC, their expectations and their feelings regarding the promotion of reconciliation and the ends of justice.

1.6 Participants

Participant sampling was given extraordinary consideration in an effort to expand perceptions. Important ethical considerations were taken into account, in particular regarding victims of gross human rights violations as they are considered a vulnerable group. In this regard, four interviews with victims were facilitated by Khulumani Support Group, a non-partisan organisation representing apartheid's survivors and victims of human rights abuses. Access and availability of participants was relatively easy due to the facilitation of Khulumani Support Group and all four interviews with victims were conducted in the presence of an official from the organisation.

The two additional key informant interviews were also relatively easy. Former TRC Commissioner, Advocate Dumisa Ntsebeza was identified for his obvious role as a former Commissioner but also his continued work and support with victims through his legal profession. Ntsebeza was part of the legal team with Khulumani Support Group which sued Ford Motor Company and IBM to pay reparations to victims for "aiding and abetting" gross violations of human rights. The second key informant, Max du Preez is an anti-apartheid journalist who worked to expose government repression (Freedom Collection, 2018), and during South Africa's transition extensively covered the TRC for the South African Broadcasting Corporation (SABC) television station.

The sample of participants was balanced in terms of gender. Participants were also balanced in terms of victims who made representations at the TRC and those who did not. Additionally, I attempted to balance age difference. There was a concerted effort made to interview both male, female, young and old participants. However, by the end of the process I had interviewed more female victims and only one male victim. The majority of the participants were older than 60 and female. This is perhaps due to the reality that the study is concerned with incidences of over two decades ago and how they affect perceptions of reconciliation and justice today.

1.7 Documentary analysis

The archive that I anticipated would be useful for this research included: The South African History Archives (SAHA) in Johannesburg. Selected digitised archival materials from SAHA collections relating to the TRC were also accessible on the Traces of Truth website. Other archives were derived from Khulumani Support Group in Johannesburg and most were accessible from their website. Additionally, I used historical papers at the William Cullen library at the University of Witwatersrand, in particular the Kairos Collection material on reparations. Lastly, I reviewed digitised archives from organisations like the

Centre for the Study of Violence and Reconciliation (CSVR) and the SABC Truth Commission Special Report archive including the original transcripts of the TRC hearings, recommendations, and the TRC Final Report. Consulting previous research where these records were used also proved critical in providing a more expansive account of the subject at hand.

1.8 Limitations to research

Some of the limitations of the research are addressed in the research methodology section. In terms of documentary analysis, the major challenge was finding the relevant archives while some archives were restricted. I addressed this limitation by consulting secondary material such as historical newspaper articles and other material relevant to the subject of this project.

In addition, due to the small number of interviews conducted, there is a possible limitation in terms of the exemplification of insights and perceptions in this regard. I have already addressed some of the techniques employed such as using typical case sampling to interview informants with a broad general knowledge of the topic or those who have undergone the experience and whose experience is considered typical (Coyne, 1997) to the subject matter in exploring perceptions of reconciliation and justice as well as using archival material.

1.9 Ethical considerations

This research project aimed, at all times, to remain ethical and not harm or infringe on the rights of participants during interviews. The purpose of this study is to understand the participants' perceptions of the effects of reparations in the promotion of reconciliation and the ends of justice. All participants were above the age of 18 and were made fully aware of the purpose of the interviews. Informed consent was gained for all interviews and all participants were informed verbally and in writing for this purpose.

Before interviews were conducted, copies of information sheets that explained the research project in writing were provided to participants to complement the verbal information which I provided. It was also made clear that participants could speak in any language of their choice and may request an explanation of the research in a language they understand. In addition, all participants were made aware of the fact that they were not obliged to answer any questions nor were they obliged to carry out the interview to the end.

Following the interviews, the recordings were transcribed and stored on a password-protected laptop. Victim participants were assured of confidentiality as well as anonymity during the writing of the research. Full anonymity could not be guaranteed for participants because interviews were facilitated by Khulumani Support Group. Participants were aware of this, so I opted to use pseudonyms for all participants considered to be victims in order to preserve their privacy and anonymity during writing. Anonymity also proved difficult for some of the cases that were previously reported on in the media or written about before. I determined that it would be better to avoid any possible negative complications for any participants that took part in this research and opted for pseudonyms.

CHAPTER TWO

2. Introduction

In this chapter, I present and broadly discuss existing literature covering transitional justice as a concept. I discuss the development of the notion of transitional justice from the legalistic or retributive form of justice to restorative form of justice subsequent to mass violence in the promotion of accountability for past harms, reconciliation and justice. The development of the notion of transitional justice and the mechanism for dealing with the aftermath of gross violations of human rights have mainly taken three forms, namely prosecutions or trials, purges and the establishment of truth commissions.

Besides the descriptive accounts of mechanisms for dealing with past violence, I also highlight evolution of key conceptual conclusions regarding notions of justice and reconciliation in post conflict societies. Additionally, this section discusses transitional justice in relation to South Africa and consequent recommendation of the RRC for victims of apartheid gross human rights violations. I argue that the TRC attempted - with little success - to survey almost a century of violations with an incoherent conception of 'conflicts of the past' which inevitably limited its focus to direct victims.

2.1 Transitional justice

> *"The notion of transitional justice…. comprises the range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuse, in order to ensure accountability, serve justice and achieve reconciliation" (United Nations, 2004).*

The aftermath of periods of systemic widespread human rights abuse, dispossession, forced removals, racist discrimination and state sanctioned violence pose profound moral and practical questions about the balance between the promotion of reconciliation and the ends of justice. The notion of transitional justice has come to define "approaches to deal with the past in the aftermath of violent conflict or dictatorial regimes" (Zistel, 2010, p. 14). These approaches include criminal tribunals, mixed tribunals and measures of community justice, which were pursued as alternatives to national trials and which reflected an ideological clash between the universality of human rights and local practices (Kelsall, 2009).

Some authors trace transitional justice to the aftermath of the Second World War with the Nuremberg and Tokyo trials while others go as far back as ancient Greece (Elster, 2004). The actual concept however originates from discussions on how emerging democracies in Latin America would redress gross human rights abuses committed by previous dictatorships (Arthur, 2009).

The historical pursuit of justice adopted to deal with the consequences of mass violations of human rights in the aftermath of regime change, violent conflict, civil war, and other historical injustice has evolved over a period of time (Teitel, 2003). The term "transitional justice characterises the choices made and quality of justice rendered when new leaders replace authoritarian predecessors presumed responsible for criminal acts in the wake of the 'third wave of democratisation'" (Richard, 1998, p. 429). Indeed, some authors trace transitional justice from the post-WWII period in which justice was defined by the "unjust war and the parameters of justifiable punishment by the international community" (Feitel & Teitel, 2003, p. 72).

The first phase of transitional justice involved considerations with reference to adequate punishment of perpetrators, marked by an "exceptional and international approach" evident in the proliferation of international treaties like the Genocide Convention (1948), the Universal Declaration of Human Rights (1948), the Geneva Convention on Laws of Crime (1949) and international criminal accountability through the Nuremberg and Tokyo trials. Following the end of World War Two, transitional justice was centred around an international legal response, with the establishment of the International Criminal Court (ICC) that "expanded to transcend its operative action upon states and to operate upon private actors" (Feitel & Teitel, 2003, p. 73). Central to this evolution had been a resurgence of the idea of international human rights law and the belief in the capacity of law to rise above partisan international politics and therefore intervene objectively for social change.

Therefore, transitional justice was historically based on western liberal traditions of accountability where "the international community has pursued prosecutions through ad hoc international criminal tribunals, hybrid domestic/international courts and the permanent ICC (Cassese, 2003; Romano et al, 2004; Schiff, 2008). In the last century, the United Nations (UN) established two international criminal courts (Forsythe, 2008).

Overall, the noticeable response to historic injustice was essentially punitive, where "justice after war has oscillated between a greater or lesser degree of punishment" (David, 2017, p.152). Prosecutions such as those instituted by the International Tribunals on Rwanda and Yugoslavia were meant to objectively put perpetrators on trial so as to ensure responsibility and promote reconciliation through the impartiality of the legal process rather than a moral argument (Forsythe, 2008). Beyond fitting punishment for perpetrators, the objective of transitional justice during this period was deterring future atrocities, bringing

psychological closure to victims, producing reconciliation among divided communities and building a rights protective polity in the future (Forsythe, 2008).

Consequently, the international legal framework provides for transitional justice, universal jurisdiction on issues of accountability and gross violations of human rights. Supported by international treaties, it is generally accepted under international law that there is an obligation for states to provide some kind of justice to victims of gross human rights violations. Under international law, "the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law assert that victims of such abuses have a right to prompt, adequate and effective reparation" (International Centre for Transitional Justice, 2018). In addition, the UN Universal Declaration of Human Rights recognises there is "inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world" (UN, 1948).

Based on this notion of transitional justice, "the international community pursued prosecutions through ad hoc international criminal tribunals, hybrid domestic/international courts and the permanent ICC" (Lambourne, 2014, p.28). Teitel (2003) suggests that the choice to convene international proceedings reflected the prevailing political circumstances of the period, particularly the limits of national sovereignty. While the stated norm of justice was accountability, the "striking innovation at the time was the turn to international criminal law and the extension of its applicability beyond the state to the individual" (Feitel & Teitel, 2003, p.73).

Evidently, tribunals have been the common response to successor governments facing the challenge of dealing with mass repression and human rights violations. The main instrument being retributive justice formed on national or international

level (Kasapas, 2008). Proponents of retributive justice suggest that criminal trials provide a critical role in the pursuit of justice and reconciliation in a number of ways. First, criminal trials as a response to historic injustice serve as a deterrent against acts of private revenge. Secondly, they break the circle of impunity. Third, they discourage future violations; and fourthly they fulfil a moral obligation to the victims of violence and restore functioning relations between perpetrators and victims while ensuring perpetrators do not remain in positions of power (Kasapas, 2008)

Notwithstanding the robust arguments in favour of criminal tribunals in the context of post-conflict societies, there has been a fundamental shift since the 1980s and 1990s (Hayner, 1994; Teitel, 2003) in post-conflict reconstruction. While earlier debates on transitional justice primarily focused on the documentation of efforts that were already being made by states to deal with abuses of preceding governmental abuse of power, the notion was initially narrowly defined by dealing solely with judicial responses to human rights abuse and operating alongside other forms of post-conflict reconstruction, such as state building and democratisation. This period of transitional justice was marked by the "cataloguing of those structural realities within political transitions that harness the possibilities for victims' justice" (Dancy, 2010, p.356).

Though still operating within a legalistic framework, the shift towards human rights and international criminal law contributed to the emergence of an overarching conceptual field of transitional justice (McEvoy, 2007), one which sought to reconcile justice for victims of human rights abuse while also supporting the emergence of democracies in Latin America (Turner, 2013, p.196). Teitel (2003) suggests that the last two decades of the twentieth century and the collapse of the Soviet Union have been characterised as a veritable wave

of political transition which marked a liberalisation of the global order and the democratisation of South American countries in the late 1970s and early 1980s.

2.2 Transitional justice beyond prosecutions

The secretive nature of oppressive regimes who mostly relied on "secret police, surveillance, and clandestine operations, and the official denial of atrocities raised public demands for truth, social acknowledgment, and other alternative measures that served, at least tentatively, as proxies for justice and reparation" (David, 2017, p.152). This shift from the legalistic cataloguing of historic human rights violations revived traditional notions, "such as truth, confession, forgiveness, reconciliation, healing, and apology, and their elevation to the macro political scene" (David, 2017, p.152). Consequently, truth commissions have become an important aspect in aiding countries in transition to address legacies of massive human rights violations and build civic trust in state institutions (ICTJ, 2018).

Truth commissions have been "described as a 'third way' between trials and 'national amnesia,' [that is] the most prominent mechanism of restorative justice" (Kasapas, 2008, p.64). They are temporary bodies established in new democracies that emerged in South America in the late 1970s and early 1980s in response to truth deficits such as cases of the disappearances and other gross human rights violations.

Unlike tribunals which rely on the impartiality of the legal system, truth commissions are an attempt to promote reconciliation through acknowledgement and compassion. Following periods of repression, successive democracies that emerged in Argentina, Chile, Bolivia, El Salvador and Guatemala in this period were confronted with questions of how to deal with human rights violations of previous military governments (Liebenberg, & Zegeye, 1999). These new democracies opted to establish truth commissions to investigate patterns of gross

violations of human rights committed by previous military regimes (Hayner, 1994).

According to Hayner (1994) the shift was due to the inability of criminal tribunals to satisfy victims and communities' needs in post-conflict settings as many questions remained unanswered about exactly what happened in the past. The notions of "truth, reconciliation, justice" cannot be effectively studied from a single disciplinary perspective, whether legal or political. As a result, transitional justice has attracted scholars from a variety of academic backgrounds. While the effects of truth commissions remain contested, they are "purported to provide victims and societies with healing effects and closure, shame perpetrators, and pave a way to reconciliation" (David, 2017, p.157).

Consequently, truth commissions emerged as part of a recognition that dealing with massive human rights abuse requires an approach that confronts the past while consolidating democracy as an objective. The question of transitional justice has become more critical, especially with the attempts by various countries to build durable reconciliation, democracy and the rule of law. Consequently, truth commissions have attracted scholars and activists from multidisciplinary backgrounds and become a popular method for countries in transition.

Human rights activists and scholars have become increasingly concerned with questions of how to address the systematic abuses of former regimes in ways that restore victims' dignity and moral worth and also assist former perpetrators to rehabilitate themselves into society. Since the early 1980's, truth commissions were introduced to consolidate a transition from authoritarianism and conflict to democracy and peace evident with over thirty commissions (Campbell, 2004, p.41). It is therefore impossible to discuss all truth commissions ever established, for this reason, this study will primarily focus on the South African TRC while

making reference to other truth commissions as far as they relate to this study, particularly the Argentinian National Commission on the Disappearance of Persons (CONADEP). Of particular interest to this study is the perception of reparations and rehabilitation for victims of apartheid's gross violations of human rights in the promotion of reconciliation and justice.

2.3 The South African transition

> The amnesty clause … in the [South African] Constitution, which gave rise to the establishment of the TRC, was seen as a bridge to building a new society within which former enemies would find meaningful ways to live together. It was not envisaged that this would take place against a background of amnesia, but that the process of gaining amnesty demanded accountability, truth-telling, acknowledgement of victims and a proper process of reparation (Sooka, Y, 2002, p.3).

One of the challenges confronted by the democratically elected government in South Africa was to establish confidence in the justice system, and cultivate a culture of human rights (Fernandez, 2009) as well as to begin a process to reconcile a once deeply racially divided country. Since South Africa's transition emerged "through negotiation, not through victory on the field of battle nor through the collapse of the former regime" (Villa-Vicencio, 1998, p.1), a necessary step before any negotiations could take place was the Indemnity Act, passed in November 1990 to allow the return of exiles and release of political prisoners (Campbell, 2000).

This was followed by the establishment of the TRC in 1995 in terms of the Promotion of National Unity and Reconciliation Act (Act no. 34 of 1995) "to establish the truth in relation to past events" and to provide as "complete a picture

as possible" about these events. The truth finding mandate was restricted specifically from 1 March 1960 to 10 May 1994 as well to the kinds of gross violations of human rights. Due to its public hearing, the TRC "grabbed public attention for years and created high hopes for substantial redress" (Swartz, 2016, p.17) as it was seen as an improvement from other experiments in Latin America.

Unlike other truth commissions, such as the examples in Chile, Argentina and El Salvador; the South African TRC was established with powers to grant amnesty through its Amnesty Committee (AC) for gross human rights violations committed in political contexts, on condition of a full disclosure of all relevant information concerning the violations. The TRC also consisted of the committee for human rights violations (HRV) mandated with collecting testimonies of politically motivated gross human rights abuses. Finally, the committee for reparations and rehabilitations (RRC) was authorised to provide support for victims in an effort to restore their dignity, "assigned the task of formulating policy proposals and recommendations on how to promote the rehabilitation and healing of survivors, their families and the community at large" (Campbell, 2000, p.48).

Throughout its work the TRC had a positive international response. However, Gibson and Gouws (1999) conducted a survey experiment in 1997 with 1 518 South Africans to investigate the attributions of blame over apartheid (Du Pisani, 2004). The survey examined the effects of the position of the perpetrator, their affiliation to the state, their motives in relation to their violent actions and the apportionment toward blame. The survey found that being a leader or a member of the apartheid government's security branch was a positive predictor of the blame attribution. Gibson and Gouws (1999) also found that blame attribution was positively correlated with punishment and negatively correlated with amnesty and forgiveness (Gibson & Gouws, 1999, p.512). In other words, most

of the participants in the survey attributed blame more to perpetrators associated with the apartheid state. However, victims did not view amnesty in a positive light but rather favoured punishment. In addition, the survey pointed to some contradictions in the attitudes of South Africans to the process of dealing with the apartheid violations. Furthermore, the survey found that majority of South African participants felt that if TRC was to establish accountability, then the natural consequence of accountability was a demand for justice, not for amnesty (David, 2017, p.156).

In another experiment, Gibson (2002) surveyed perceptions about the fairness of amnesty in the TRC process in South Africa (David, 2017). The experiment involved 3 710 South Africans and focused on "giving victims an opportunity of truth-sharing at amnesty hearings versus denying them the opportunity; sanctions against the perpetrator (by his family) versus the absence of sanctions (family support); apology by perpetrator accepted by victims versus apology rejected by victims; and financial compensation versus no financial compensation and social acknowledgment" (Gibson, 2002, p. 547). The experiment found that "financial compensation was the strongest predictor of the fairness of amnesty, followed by victims' truth-sharing and the acceptance of apology" (David, 2017, p.157).

In another extensive study on the effect of the TRC, Gibson (2002) included 153 victims of apartheid in Cape Town. Backer (2010) observed a marked decline in the approval of the TRC amnesty process. For instance, the initial approval of amnesty dropped from 57.5% to just 20.4% (Backer, 2010, p 8–11). David (2017) draws two conclusions from the studies of Backer (2010) and Gibson and Gouws (1999; 2002); firstly, that the TRC process required victims to lose their right to justice in exchange for the truth and reparations. Secondly, the needs of victims may change due to a number of environmental factors. The Gibson research surveys demonstrates that most victims were not supportive of the amnesty

process, more importantly that victims viewed financial compensation as the strongest predictor of the fairness of amnesty.

Therefore, reparations and rehabilitations for victims of apartheid violence formed an integral part of the reconciliation process, such that "if amnesty provides a basis for truth telling and the re-integration of the perpetrator into society, victim testimony together with reparation and rehabilitation is designed to provide relief to the wounds of the victims" (Villa-Vicencio, 1998, p.9). There is debate regarding the form and nature of reparations and rehabilitation regarding the needs of those who testified before the TRC against the needs of the nation as a whole. In its final report, the RRC recommended symbolic and legal UIR, individual reparation grants, as well as community rehabilitation programmes (TRC,1997).

The notion of reparations for victims of human rights abuse is certainly not a unique South African occurrence. In Argentina for instance, the new government established the National Commission on the Disappearance of Persons (Conadep) in 1983 to investigate the fate of the victims of forced disappearance and other human rights abuse caused during the military dictatorship between 1976 and 1983 (Wilson, 2004). As part of Argentina's reconciliation process, the Argentine government passed several reparations laws that provided economic compensation for the families of the disappeared (Wilson, 2004). The reparations grants were provided as "monthly pension to children of the disappeared who were under the age of 21 years and to spouses, siblings, and children of the disappeared who found themselves unable to work" (Sveaas & Sonneland, 2015, p.226).

In addition, the new Argentine government incorporated monies to minors born in detention including those who survived abduction and torture (Wilson, 2004).

In a similar attempt to South Africa, Argentina passed two laws in 1986 and 1987 respectively to end criminal prosecution against military juntas (Sveaass & Sonneland, 2015) effectively denying victims to repair through the court and granting amnesty to military juntas. This was challenged and in "June 2005, the amnesty laws were finally deemed unconstitutional after a decision by the Supreme Court" (HRW, 2018), which opened possibilities for new legal proceedings. This further demonstrates that further contestation in the aftermath of violence persists in countries emerging from conflict, and harmonising the promotion of reconciliation and the ends of justice is an ongoing struggle.

2.4 Reparations for victims of apartheid

In the course of the TRC's two-year operational period, the HRV committee held approximately "140 hearings across the country, including victim hearings, event hearings, special hearing, institutional hearings and political party hearings" (Pisani, & Kim, 2004, p.78). During these hearings "about 2,400 victims of gross violations of human rights testified and the names of 27, 000 victims were recorded" (Pisani & Kim, 2004, p.78) for whom it recommended reparations.

The RRC maintained that while the granting of amnesty to perpetrators was an unavoidable consequence of the political negotiated settlement, the provision to provide reparations to victims was an attempt to restore a moral balance to the amnesty process (TRC, 1998). The argument for the provision of reparations was not only on legal grounds as the RRC insisted that the granting of "Urgent Interim Reparation (UIR) is a moral imperative, as is the need to ensure that final reparation is granted as soon as possible after the Commission closes" (TRC, 1998). The decision to provide reparations was to enable the country to "get over the past and build national unity and reconciliation" in order to ensure that "people who suffered gross human rights abuses are acknowledged" (TRC, 1998).

For various reasons many people who wished to make representations to the TRC were unable to do so (Khulumani, 2018) yet the commission opted for a “closed list” of victims. Former TRC commissioner Wendy Orr acknowledged that “the Act's definition of a victim immediately excluded millions of South Africans who, while they may not have suffered a gross violation of human rights in terms of the Act, nevertheless suffered the daily violation of living under apartheid” (Orr, 1999, 247), maintaining that the commission had to limit reparations recipients as defined in the Act.

In its final report, the RRC made wide-ranging recommendations including the provision of reparations of between “R17,029 and R23,230 ZAR per year for six years to about” (TRC,1998) 20 000+ victims of apartheid (Mamdani, 2002). It further recommended financial compensation in the form of Individual Reparations Grants (IRG), symbolic reparations, community rehabilitation, health care and social services, institutional reform, as well as a once-off tax on corporate and private income. The authority of the RRC in this regard however was to make “Reparation Policy Proposals,” while acknowledging that “much will depend on whether and how much [these Proposals] are diluted during adoption” (Orr, 2000, p.36) by government.

In 2003, government announced its official position on reparations in a joint parliamentary sitting in the National Assembly and National Council of Provinces (Buford, & Van der Merwe, 2004). As the TRC was mandated to make recommendations, then President Thabo Mbeki announced that the government would give a once-off payment of R30 000 to each person, or family, designated a "victim" of gross human rights violations (during the time period 1960–1994) by the TRC (Buford, & Van der Merwe, 2004, p.3). Government also accepted the TRC’s recommendation for "rehabilitation of communities" and systematic

programmes to "project the symbolism and the ideal of freedom" (Buford, & Van der Merwe, 2004). This included erecting statues and monuments that honour the struggle for freedom.

Victim support organisations and some former TRC commissioners received the news with much disappointment, the main complaint being the lack of proper consultation with victims (Colvin, 2000). Khulumani Support Group has since the year 2000 engaged in advocacy campaigns to lobby government to engage with victims on unresolved issues relating to the TRC process. These issues include government's commitment to the process of rehabilitating victims, reparations and giving survivors the opportunity to make representations as well as statements that we rejected by the commission (Khulumani, 2000). Other criticism of the reparations process is the fact that reparations were "provided for less than 17, 000 of the approximately 33 million black South Africans who suffered from the injustices of apartheid [which] illustrates the limited degree of compensation the TRC was able to achieve" (Hamber, & Kibble, 1999).

Furthermore, this research report moves from the assumption that victims play an important role in the macro political decisions with implications for transitional justice. In addition, satisfaction of victims' needs was a central argument for the establishment of truth commissions (Hayner, 2001) and for symbolic non-monetary compensation (Minow, 1999). Additionally, reparations are crucial in political transitions as they are "regarded as the only truly victim-centred approach" (Van der Merwe, 2004; p.2) focusing directly on victims' situation. Transitional justice scholars, former TRC commissioners and victims alike assert that reparations would "make or break" the TRC. In this regard, Colvin (2003, p25) writes:

> "Victims have frequently raised the objection that both the TRC and the government have been much more interested in placating perpetrators than meeting the needs of victims. In this context, reparations have come to mean much more than a means of support or a kind of recognition of suffering. They have become the unfulfilled answer to the question of whether or not justice has been done in the transition process".

2.5 Theoretical framework: Reparations and Justice

In developing a theoretical approach to its questions, this study primarily relies on restorative justice literature. Notwithstanding the extent of this literature I will draw on the writings of Martha Minow (1999), Pablo de Greiff (2006), Margaret Walker (2006) and Theo Gavrielides (2007) as well as literature on reparations and transitional justice by Ruti Teitel (2005; 2010), Enesto Verdeja (2008), David, C Garry (2007) and Antonino Buti (2008).

Definitions can be restraining, particularly when referring to continuously evolving and sometimes subjective concepts like reconciliation, truth and justice. In relation to this research study, I shall be referring to restorative justice as an "ethos with practical goals, among which is to restore affected parties in a (direct or indirect) encounter and standing through voluntary and honest dialogue" (Gavrielides, 2007, p.169). In the context of transitional justice, restorative justice would entail the essential purpose of finding balance between demands of justice and reconciliation.

I indicated earlier that restorative justice in the context of transitional societies emerged as an alternative to retributive justice. In restorative justice "practice and its theoretical sources are quite diverse –they include religious, cultural and ethical perspectives" (Minow, 1998 in Teitel, 2003, p.82). In general, restorative justice refers to an alternative model for facing past human rights abuse or crimes,

which is based on the social importance of reconciliation between victim and perpetrator. It usually involves communication to provide a setting for acknowledgment of wrong by the perpetrator, restitution of some kind to the victim, - including both apologies and material exchanges or payments - and often new mutual understandings, forgiveness, and agreed-to new undertakings for improved behaviours (Minow, 2007). The notion of restorative justice is grounded on the belief that those affected by injustice should feel a sense of fairness that enables reconciliation.

In its most idealised form, the process of restorative justice should include the four "Rs", to repair, restore, reconcile, and re-integrate perpetrators and victims into society based on shared values. Fundamentally, restorative justice is the "repairing of harm and restoring losses, allowing offenders to take direct responsibility for their actions" (Umbret, 1989, p. 55), and more importantly, to assist victims to move beyond vulnerability towards some degree of closure and justice. Restorative justice therefore stands in "contrast to the values and practices of the conventional criminal justice system with its focus on past criminal behaviour through ever-increasing levels of punishment" (Umbret, 1998).

Throughout the broad literature of reparatory justice, the concept of reparations is primarily concerned with repairing the harm caused violence, makes central the experiences and needs (material, emotional, and moral) of victims, insists on genuine accountability and responsibility-taking from those who are responsible for harm, effects meaningful repair, offers opportunity to perpetrators through accountability and to build and strengthen individual and communities' capacities to do justice actively (Walker, 2006).

There are several foundational concepts to restorative justice that have been elaborated and extended by scholars which include the following:

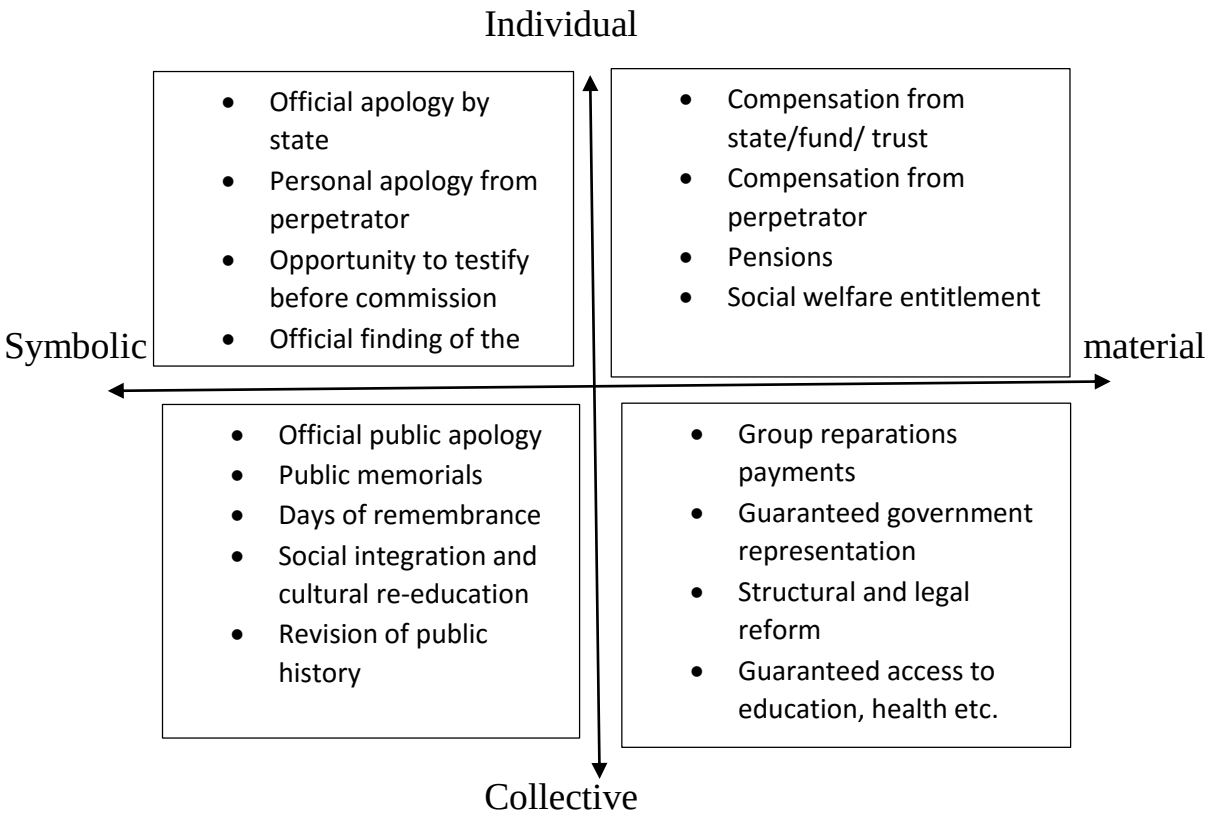
- Personalised and direct or indirect participation in a process of speaking and listening to both a wrongdoer (offender) and a victim;
- Narration of what an act of wrongdoing consisted of and the harm or injury it caused to those affected;
- Explanation by the offender of what was done and why;
- Acknowledgment and acceptance of fault for the wrong committed by the offender with recognition of the harm;
- Opportunity for appreciation or understanding of why the wrong occurred;
- Consideration of appropriate outcomes or restitution to those wronged;
- Reintegration of the wrongdoer into the larger community, through apology, restitution, and/or support;
- Reconciliation of wronged and wrongdoer, within a renewed commitment to shared social norms;
- An orientation to the wrongdoer that treats the act separate from the person so that the person may be redeemed as the victim/community is repaired; and
- An orientation to the future, to the extent possible, to make right what was wrong and to rebuild new relationships and new communities. (Menkel-Meadow, 2007, p.10.4)

Teitel's (2000, p. 127) study of transitional justice states that "reparatory practices have become the leading response in the contemporary wave of political transformation," however, reparatory practices in political transition "defy categorisation as either criminal or corrective justice" (Teitel, 200, p. 127) by both redressing individual rights violations and signifying responsibility for criminal wrongdoing. In contention, however, is the extent to which restorative justice should be a process rather than an end in itself. Teitel (2005) makes a case

for collective reparations, however, cautions that they may fail to adequately address or restore individual victims of political violence. Reparations on their own are not a blueprint for the promotion of reconciliation or the ends of justice, however "they can give victims a sense of moral worth and dignity; force society to conceptualize its identity; promote public trust in state institutions" (Verdeja, 2008, p.209).

Pablo de Greiff (2006) makes the case for reparations to re-establish the status quo ante by proportionate compensation for harms. He proposes a political conception of reparations programmes that measures their effectiveness in terms of social justice rather than on legalistic notions. He insists that "whoever is in charge of designing a massive program of reparations has to respond to a much wider and complex universe of victims, and has to employ, per force, methods and forms of reparation suitable to these circumstances" (de Greiff, 2006, p.454). In addition, the aim of reparations is to provide a felt sense of justice to victims, aiming to return their status as citizens, and that recognition is both a condition and a consequence of justice.

Verdeja (2006) provides a broad scope of reparations using "four ideal-typical scope" namely "symbolic and material" and "collective and individual" reparations as demonstrated in the diagram below.



As demonstrated in the diagram above, the symbolic collective reparations may differ depending on the context. From public monuments to official apologies or establishing museums, commemoration days to preserve the collective memory, the purpose is to combat the social stigma associated with previously victimised groups and re-establish their status parity (Verdeja, 2008). On the other hand, collective material reparations are "meant to return victims to the status quo ante, serve as a moral repudiation of the past, enable once-oppressed groups to achieve self-actualization" (Verdeja, 2008, p.208).

While it may be almost impossible to acknowledge all individual victims, equally important are individual material reparations, which emphasises "remembering that victims are not merely a statistic but actual people who often suffered intolerable cruelties" (Verdeja, 2006, p.456). The purpose of individual material reparations is to restore victims back into society because of their historic victimisation. Finally, individual symbolic reparations are also important to

enable victims to recapture their sense of confidence, esteem, dignity and self-worth. It is the contention of this report that the obligation for reparations primarily relies on a political and moral rather than a legal basis (Buti, 2008).

Relying on the above broad scope of reparations of restorative justice, this study seeks to reflect on the perceptions of effects of South Africa's reparations and rehabilitation process in the promotion of reconciliation and the ends of justice. Additionally, the study will use the theoretical framework which departs from the position founded on the model of justice that focuses on the restoration of the victims to reflect on the perception of reconciliation and the ends of justice. The implicit account of the theoretical assumptions will be engaged to critically explore the effects of South Africa's reparation programme in relation to the promotion of reconciliation and the ends of justice.

2.6 Reconciliation: South Africa

Reconciliation is a contested concept but also one that continues to feature in post-conflict literature. Scholars and activists alike view reconciliation as a necessary requirement for durable peace and coexistence. For most authors, reconciliation "describes a process rather than an end state or outcome, aiming at building relationships between individuals, groups and societies. Reconciliation has also been defined as a process through which society moves from a divided past to a shared future" (Fischer, 2011, p.415).

It is important however to differentiate between forgiveness and reconciliation. Freedman (1998) suggests that it is possible for one to forgive and not reconcile. He maintains that forgiveness involves "an unjustly hurt person deliberately giving up resentment towards an offender, in a context of a deep, personal and unfair hurt" (Freedman, 1998, p.201), while reconciliation is dependent on

whether the offender's destructive behaviour and intentions change (Fischer, 2011).

In its preamble, the TRC Act states its objective of promoting 'National Unity' through among other measures the "taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity, of victims of violations of human rights" (TRC, 1995). Therefore, the TRC's reparations and rehabilitation policy formed an integral part of the reconciliation and healing process. In other words, if the granting of amnesty to perpetrators provides a basis for truth telling and their reintegration into society, government ought to make provisions to restore the moral balance to the amnesty process by providing victims of gross human rights violations an opportunity to articulate their experiences in an affirming environment and by making provision for the granting of reparation (TRC, 1995).

Towards the end of the TRC's work, the former chairperson of the TRC felt it necessary to explain the notion of reconciliation in so far as the TRC was concerned;

> "... to remind us all that the TRC is expected to promote, not to achieve, reconciliation. Reconciliation has to be the responsibility of all South Africans, a national project – and we hope that the churches and other faith communities will be in the forefront of this healing process which is possibly going to go on for decades. We have all been deeply wounded and traumatized and it will take long to undo centuries of the alienation and animosity that were deliberate state policy" (Tutu, p.6)

2.7 Conclusion

In this chapter I discussed the development of transitional justice as a concept in which countries emerging from histories of conflict relied on legal notions of justice through tribunals. Since transitional justice has relied on historical experiences, I demonstrated the development of transitional justice largely marked a liberalisation of the global order and the democratisation of South America in the late 1970s and early 1980s and its influence in the reliance on truth commission for countries in transition.

Consequently, the establishment of South Africa's TRC was not unique. What was unique in South Africa's case, however, was the moral balance between the provision of amnesty for former perpetrators in exchange for the truth and the provision for reparations and rehabilitation for victims of apartheid's gross violations of human rights. I maintained that reparations and amnesty provision formed an integral part of the reconciliation and nation building project. In part, I demonstrated that the TRC largely relied on a legal obligation for the provision of reparations while arguing that reparation ought to also be considered as a moral obligation. I did so by highlighting the restorative justice theoretical framework which includes direct or indirect participation of victims and perpetrators, an opportunity for appreciation or understanding of why the wrong occurred, considerations of appropriate outcomes or restitution for victims, reintegration of the perpetrator and reconciliation (Menkel-Meadow, 2007). This chapter also highlighted the lack of a comprehensive framework for reparations, which largely relied on a legal framework to resolve a largely political question. Consequently, the TRC attempted to survey - with little success - almost a century of violence hence its focus and recommendations for reparations were aimed at direct victims at the exclusion of hundreds of thousands of others who lived under apartheid.

In the following chapter, I contextualise the establishment of the South African TRC and its moral balance between the provision for amnesty for former perpetrators with the provision for reparations for victims of apartheid's gross violations of human rights. I continue with the argument that reparations formed an integral part of the reconciliation and justice process since the amnesty provision limited the right of victims to seek justice through the legal justice system. I begin to highlight the limitations of the TRC by historically contextualising the crimes of apartheid which inevitably reconstruct the very history it seeks to reconcile by inadvertently excluding other victims who suffered under apartheid. I argue that the kinds of violations that the TRC considered gross violations of human rights ought to be considered in the context of apartheid as a crime in itself.

CHAPTER THREE

3. Reparations in the promotion of reconciliation and justice

> "TRC victims are individuals, a legal category, but there are also victim communities, all black South Africans were victims, and there were victim communities, we are a nation of victims. So we see reconciliation as broader than just the TRC process, we see reconciliation as involving a way of repaying to victims what they fought for. And what they fought for is freedom, what they fought for is transformation, ending poverty, making sure that the sufferings that they endured at the hands of farmers, mine owners, police generally and so on, that those things are reversed…. All those things form part of our vision for reconciliation, because we are saying that there can be no reconciliation without transformation" (Omar, 2002).

Strictly speaking, the main objective of the South African TRC was to promote national unity and reconciliation. This would be done in the "spirit of understanding which transcends the conflicts and divisions of the past" (Terreblanche, 2000, p.7) by establishing as complete a picture as possible, the causes, nature and extent of the gross violations of human rights which were committed during the period 1 March 1960 to 10 May 1994 (TRC, 1995).

The TRC "process sparked off huge amount of reflection, controversy and criticism" (Verdoolaege, 2006, p.16) much of which is well-known. These reflections have many thematic analyses such as legal, religious, political, psychological and anthropological. In this chapter I am mainly interested in the kind of reconciliation and restorative justice that has been shaped by the TRC

process. As stated previously, the TRC itself was a product of negotiations, to balance the moral predicament for the exchange of truth for amnesty and the re-integration of perpetrators into society, for that reason, reparations formed an integral part of the process of the promotion of reconciliation and nation unity. Accordingly, the granting of amnesty to former perpetrators coupled with "affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of victims' violations of human rights" (TRC, 1995) was an interconnected process of the reconciliation process.

In the first part of this chapter, I outline and discuss what the TRC considered "gross violation of human rights", highlighting that the judicialisation of the political question resulted in the narrow and legalistic definition of what constituted a "victim". The narrow legalistic interpretation adopted by the TRC inevitably had consequences in the form of restorative justice, reconciliation and national unity it has shaped. I discuss in detail the subsequent reparations recommendations by the RCC and the final reparations policy recommendations. Besides the descriptive account, I provide as well the justification for reparations, not only as a legal but a moral question as a means to promoting reconciliation and restorative justice.

I maintain that the judicialisation of South Africa's conflicts of the past which result in the narrow legal categorisation of a victim and "gross violations of human rights" as individual acts of "killing, torture, and severe ill-treatment" the TRC's adopted approach has had unintended consequences for the kind of justice and reconciliation it has shaped. This largely ignored "violations which were part of a systematic pattern of abuse" (TRC, 1998). I argue that the legal conceptualisation of reparations has significant implications for the interpretation and reconstruction of the past the TRC seeks to restore.

3.1 Nature of gross violation of human rights

The establishment of the TRC was to provide a historic bridge between South Africa's racially divided past characterised by racist conflict, repression and injustice, and a future founded on recognition of human rights, peaceful coexistence and reconciliation (TRC, 1995). The TRC Act however limited gross violation of human rights to "the killing, abduction, torture or severe ill-treatment of any person, or any attempt, conspiracy, incitement, instigation, command or procurement to commit any acts" (TRC, 1995), provided they were committed for political ends limited the time period between 1 March 1960 to 10 May 1994. As a result, the TRC limited gross violations of human rights to a legal category. However, these violent acts ought to have been considered in the context of apartheid as a crime in itself (UN, 1973).

Mamdani (2002) correctly points out that the TRC's analysis of conflicts of the past was reduced to the relationship between the apartheid state's violations against entire targeted communities to one between the state and individuals. Inevitably, due to the disposability of black people's lives during apartheid – those who were denied the franchise of citizenship, freedom of movement through pass laws, forced removals from their lands, ill-treatment in the workplace including discrimination in access to education and to work opportunities – the TRC concentrated on the consequences of legally defined violations rather than their root causes. In other words, the TRC excluded violations which ought to have been considered either on the basis that they were not committed with explicit political motives or that they fell outside the mandate period of 1960 to 1994. The over-reliance on a legal definition and means, to address what is not only a legal but a moral and sociological question about the exclusion and subjugation of entire communities is arguably the most significant

to factor in the development of the commission and consequently its recommendations for reparations and rehabilitation for victims.

The judicialisation of the political question of apartheid, which established and maintained dominance by systematically oppressing one racial group over another, ultimately resulted in the narrowing of the definition of the "victim". A victim was defined as anyone who "suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights, (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective" (TRC, 1995). By judicialisation, I refer to the phenomenon of "the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hunt, 2013, p.2).

In reality, the over reliance on a judicial means through the establishment of the TRC to resolve a deeply political question meant the exclusion of violations which were a result of apartheid's political dominance. For instance, the TRC did not consider the effects of the 1950 Population Registration Act, which required people to be identified and registered by their race from birth; the Group Areas Act, which made it compulsory for people to live in areas designated exclusively for their racial classification; or the 1953 Reservation of Separate Amenities Act, which declared public facilities be reserved for particular racial groups and many racially other racially discriminatory laws. The above violations, as well as the corruption committed by the apartheid state, fell outside of the mandate of the TRC and was therefore not meaningfully discussed or considered by the TRC (Van Vuuren, 2006).

3.2 Limitation of the legalistic interpretation of the TRC Act on the RRC

The origins of the conflict in South Africa date back to the arrival of the first European settlers in 1652, "the gradual expansion of colonial territory brought the colonial powers and local settlers into conflict with numerous African communities over the next two centuries" (Van der Merwe, & Lamb, 2009, p.5). The obvious limitation of the TRC which Mamdani (2002) correctly points out is the mandate period of between 1960 and 1994. Ntsebeza (2018) states that "the rationale was that 1960 marks the date from which Poqo (the military wing of the Pan Africanist Congress) and Umkhonto we Sizwe (the ANC armed wing) on the one hand declared that it was no longer possible to engage in a peaceful struggle for the liberation of South Africa", and on the other 1994 marks the first democratic election. Evidently, the violations which the TRC considered were a consequence of the already existing conflict of the exclusion and repression of the majority of black people which were overlooked for a narrow and legalistic definition of 'conflicts of the past'.

The historical context of South Africa's conflict is essential to repairing historic harms. The white minority rule was formalised through the sale and expropriation of land, the establishment of the Cape and Natal colonies and the Boer Republics in the 1800s (Van de Merwe, & Lamb, 2009) which resulted in the continued tensions over political exclusion, land dispossession, taxes and other oppressive laws which gave rise to hostilities between the natives and colonial authorities.

Although the main objective of the TRC, strictly speaking, was the promotion of national unity, Sampie Terreblanche (2000) contends that by focusing on only 34 years, the TRC "made no attempt to put the results of its investigations into proper historical context" (Terreblanche, 2000, p.24) which gave rise to all kinds of inconsistencies. The formal introduction of apartheid following the Nationalist

Party victory in 1948 was also met with resistance from the black majority who were systematically repressed. Terreblanche (2000) continues that the TRC's inability to do fairness to broader investigations of social injustice inherent to the system of "white political dominance and racial capitalism can perhaps be found in the fact that the Commission's timeframe was too short" (Terreblanche, 2000; p.23). Unsurprisingly, these limitations have had profound implications for the kind of reparatory justice and the shaping of the past the TRC seeks to reconcile.

Evidently, only 18 000 people are acknowledged to have been killed and 80 000 detained during apartheid (Wielenga, 2009) and over 3.5 million black people were forcibly removed from their properties between 1960 and 1982 (Mamdani, 2009), creating the impression that apartheid was 'not that bad'. This is evident in Western Cape Premier Helen Zille's comments when she posted on her Twitter account that, "For those claiming legacy of colonialism was only negative, think of our independent judiciary, transport infrastructure, piped water etc." Zille's commentary seems to suggest that while apartheid was racially repressive, it also gave black people benefits which they should be grateful for. The apartheid pass laws and homelands system provided cheap black labour for white-owned businesses and the 1913 Black Land Act prohibited black people from owning or renting land outside designated reserves that existed across approximately 7% of land in the country while black people constituted 87% of the population (Pillay,1998). The consequences of which are evident twenty-five years into South Africa's democracy.

Evidently, the TRC limited its investigations to "killing, abduction, torture or severe ill-treatment and the attempt, conspiracy, incitement, instigation, command or procurement to commit such acts" (TRC, 1995), committed on the basis of political motives in the period of only 34 years. To the extent that the idea of the victim and the definition of gross violations of human rights of

apartheid is conditioned by legally coded definition it was unavoidable that the political would be judicialised.

Since the TRC concentrated almost exclusively on gross violation of human rights of individuals by individual perpetrators, while virtually overlooking apartheid's systematic patterns of repression and gross violation of human rights, it is unsurprising that its legal categorisation has had profound implications of the kind of constricted reparations that the RRC recommended. From a historical and socio-political point of view, "the entire black population [that is, Africans, Coloureds and Indians] could arguably regard themselves as victims of gross human rights violations from the time apartheid was introduced" (Fernandez, 2009, p.211) particularly in the context of apartheid being a crime against humanity (UN, 1973). However, since the definition of the victim was conditioned by a legal category, the TRC narrowly limited itself to a fraction of apartheid's violations.

To this effect, Mamdani (2002) correctly points out that the TRC "individualised" the victims of apartheid even though it acknowledged that apartheid was "a crime against humanity which targeted entire communities for ethnic and racial policing and cleansing" (Mamdani, 2002, p.33). Terreblanche (2000) extensively explores the TRC's unwillingness to accept what he calls the "systematic exploitation" argument maintaining the causal link between poverty, deprivation and exploitation of black people and collective "guilt" of beneficiaries of apartheid policies. He points to the 350 years of the history of deprivation of the indigenous people's land by colonial authorities and the successive white minority groups "who succeeded to monopolise white political power, and…the subjugation of the indigenous people to the status of an unfree, bonded and cheap black labour force" (Terreblanche, 2000, p.20) would have lasting effects on the democratic state, most of which were not discussed or seriously considered by the TRC.

Coupled with the judicialisation of the political questions of dispossession, repression, racial discrimination and various violations committed by the apartheid state, it is unsurprising that during the period of formal negotiations (1990–1994) approximately 13 000 people were killed as a result of political violence according to the South African Institute of International Relations (SAIIR, 1996). This in "comparison with the figure of approximately 5,390 in the previous five years" (SAIIR, 1996), almost all of whom would have been considered as victims by the TRC.

3.3 Reparations, amnesty and the promotion of national unity

In its preamble, the reparations and rehabilitation committee (RRC) acknowledges that apartheid denied majority black people fundamental human rights on the basis of their race (TRC, 1998). The report further states that, "because the South African amnesty process deprives victims of access to the courts, its international legitimacy depends on the provision of adequate reparations to the victims of gross violations of human rights" (TRC, 1998). Colvin (2006) observes that the principle of reparations in South Africa's TRC is in one form or another accompanied with the development of the amnesty process by providing reparations to victims of gross violations of human rights because their ability to seek justice through the courts had been taken away. It thus became an inescapable moral obligation on the part of the post-apartheid state to provide reparations (TRC, 1998).

The apparent controversy of the TRC regarding amnesty involved precisely the victims' automatically forfeited right to seek claims through the criminal or civil justice system in the TRC Act under Section 20(7), including the provision for amnesty to perpetrators. The Azanian People's Organisation (AZAPO) challenged the constitutionality of the provision of amnesty, which the court

dismissed. In delivering judgment, then Constitutional Court Justice Mahomed "argued that the amnesty clause was constitutional since amnesties made it possible for the truth of human rights violations to be known and the cause of reconciliation and reconstruction to be furthered" (Colvin, 2006, p.11).

3.4 RRC recommendation for the rehabilitation of victims

The TRC embarked on an eighteen-month consultative process where it collected "information from a variety of sources, including victims and survivors, representatives of NGO's and community based organisations, faith and academic institutions" (Buford & Van der Merwe, 2004, p.8) before it could make its final recommendations on reparations and rehabilitation. The committee on reparations and rehabilitation maintained that reparations were meant to be "a vehicle for reconciliation and healing" (TRC, 1998), moreover to improve the quality of life and provide sufficient resources for victims to make tangible improvements to their lives.

Additionally, the RRC proclaimed that the final proposed policy recommendations on reparation and rehabilitation are "meant to acknowledge the wrongdoing done to victims, to improve the quality of their lives, to afford recognition through affirmation and acknowledgment of the harm suffered, and to build civic trust and solidarity" (Sooka, 2006, p.320). The RRC stressed the following principles in reparations (TRC, 1998) which provided a framework for elaborate reparations:

a. Redress: the right to fair and adequate compensation;
b. Restitution: the right to be reinstated, as far as possible in the situation that existed for the beneficiary prior to the violation;
c. Rehabilitation: the right to the provision of medical and psychological care and fulfilment of significant personal and community needs;

d. Restoration of dignity, which could include symbolic forms of reparations and;
e. Reassurance of non-repetition: the enactment of legislation and administrative measures which contribute to maintenance of a stable society and the prevention of the re-occurrence of human rights violations.

The RRC consequently proposed a reparations policy to include urgent interim reparations (UIR), individual reparations grant (IRG), symbolic reparations, community rehabilitation and institutional reform (TRC, 1998).

3.5 Final reparations and rehabilitation policy recommendations

Following the TRC's public consultative process which victims "criticised as being unnecessarily protracted and sluggish, the most important decision facing the RRC was whether reparation should be financial and, if so, how much money should be given" (Fernandez, 2009, p.215). The final report accepted that the commission created a legitimate expectation on the part of victims of gross violations of human rights that they are entitled to reparations.

Evidently from the public consultations "the final and most important factor in favour of individual monetary grants, was that the analysis of a representative sample of statements revealed that most deponents requested reparation in the form of money or services that money can purchase…the highest expectation of reparations process was monetary assistance" (TRC, 1998). Others expected compensation with regards to education, housing, medical services and erection of tombstones.

On 28 October 1998, the RRC submitted its final recommendations to the president as part of the final report on the TRC. The RRC made recommendations for reparation and rehabilitation as a moral and legal obligation to meet the needs

of victims of gross human rights violations (TRC, 1998). In this regard the RRC made the specific proposals outlined below:

3.5.1 Urgent interim reparation (UIR)

In recognition of victims urgent need for support, the RRC proposed urgent interim reparations (UIR) to support victims who were left indigent and lost breadwinners. The UIR would be given to victims in urgent need including "victims or their relatives and dependants who have urgent medical, emotional, educational, material and/or symbolic needs" (TRC, 1998). The urgency would be calculated according to the number of dependants the victim supported. A victim with "no dependants was eligible for up to R2000. One dependant raised the maximum possible payment to R2900.

The implementation of the UIR was however delayed due to the government's slow pace in the proclamation of the regulations. As a result, the first payments were made in July 1998 and they varied between R2000 and R5000. By February 2000, a total of 7000 victims had received UIR (Cape Times, 25 February 2000). The delay in the payment of UIR caused great distress and frustration to victims who were in need of urgent support.

The Cape Times (25 February 2000) reported an interview with a victim of rape by the apartheid security police who applied for the UIR but had not received reparations (Fernandez, 2009). The frustrated victim is quoted as saying, "My family and I are still suffering from what happened. I lost my job because the police told my boss I was a terrorist. I had to keep going to the doctor and there was no money for anything. The perpetrators get amnesty but what do we get?". While "approximately R44 million was paid out to about 14,000 victims and family members for UIR" (Buford & van der Merwe, 2004, p3) it is unclear how

many more potential victims in need of UIR have died waiting for their allocation to be made (Fernandez, 2009).

3.5.2 Individual reparation grants (IRG)

Acknowledging victims' rights, the RRC recommended that the final reparations include money for individual reparations grant (IRG) to be paid to victims or equally divided among dependants who applied for reparations (TRC, 1998). The amount of the grant was based on a formula "benchmarked to R21 700, which was the median annual household income in South Africa in 1997" (TRC, 1998, p.187). According the final report, the basis for IRG was international legal norms that victims of gross violation of human rights have a right to restoration of their dignity by providing resources to enable access to services and facilities and to subsidise their daily living costs.

Each victim or beneficiary of IRG would be entitled to maximum individual grant of R23 023 annually for six years and with an "estimated 22 000 victims, the provisional total cost of implementing the reparations policy is estimated at R2 864 400 000 over six years, which represents 0,5 per cent of South Africa's national budget" (Fernandez, 2009, p.216). The reality however looked far different, since government announced in 2003 a "once-off payment of R30 000 to each person, or family, designated a "victim" of gross human rights violations (during the time period 1960–1994) by the TRC (Buford & van der Merwe, 2004, p.3).

This reality was sharply criticised by both victims and former TRC Commissioners. As TRC Chairperson Archbishop Desmond Tutu remarked, "it is very distressing that it appears nothing is been done for the people who sacrificed greatly for our country" (Cape Times, 25 February 2000). According to former TRC Commissioner and head of the HRV committee, Dumisa Ntsebeza

(2018), the intention of the RRC recommendations was not to reduce injury or loss of life to monetary compensation but rather as a form of acknowledgment and a process of restoration. Ntsebeza remarks:

> "our view was that we can recommend to government that you should get a monthly stipend of about R2000 [a month]. We are not saying that is what you are worth, and we're not saying being tortured or lost a limb amounted to that but we say if for a period of 6 years, each month, you would be reminded that this is how much the South African society recognizes your victimhood".

Although government established a President's Fund in terms of section 42 of the TRC Act, thousands of victims still await adequate reparations despite the fund having approximately R1.5-billion in its reserves (Presidency, 2017/18). According to Ntsebeza (2018), had government accepted and implemented the 1% wealth tax against corporations listed at the Johannesburg Stock Exchange that operated under apartheid, the government would have generated R11-billion in the fiscus towards reparations for victims. Government silenced the recommendation of a wealth tax, instead encouraging all South Africans to contribute to the Fund. In his April 15, 2003 speech to Parliament, then President Mbeki declared;

> "While government recognises the right of citizens to institute legal action, its own approach is informed by the desire to involve all South Africans, including corporate citizens, in a co-operative and voluntary partnership to reconstruct and develop South African society. Accordingly, we do not believe that it would be correct for us to impose the once-off wealth tax on corporations proposed by the TRC" (Mbeki, 2003).

Ntsebeza further remarks that "that gesture in and of itself would have been reparatory in its nature but our government kicked in the teeth!". Ntsebeza attributes the lack of adequate reparations to government's lack of political will. To date, thousands of victims have died while others have become too old to lobby for government to provide adequate reparations.

3.5.3 Symbolic reparations and community rehabilitation

The RCC also recommended measures aimed at the communal process of commemorating the pain and celebrating the victories of the past (TRC, 1998). These measures included issuing of death certificates, declarations of death, exhumation of bodies, reburials and tombstones including implementation to "facilitate the resolution of outstanding legal matters which are directly related to reported violations" (Fernandez, 2009, p.217).

Government largely accepted recommendations for community rehabilitation through changing the names of streets and building monuments to reflect, remember and honour individuals or events in particular communities. South Africa also commemorates annually national public holidays such as Youth Day, Freedom Day and National Day of Reconciliation, but the impact of the annual commemorations remain unclear in the promotion of reconciliation and justice. According to the President's Fund annual report (Presidency, 2017/18) this aspect of reparations is implemented through of Department Arts and Culture and is continuing throughout the Republic and not funded through the fund. Its effects on the promotion of reconciliation remain largely unclear.

3.5.4 Community rehabilitation

As indicated earlier, during the period of formal negotiations approximately 13,000 people were killed as a result of political violence. For this reason, the RRC recommended community rehabilitation for communities who suffered

adverse effects of post-traumatic stress disorder. The Commission recommended that rehabilitation programmes be established both at community and national level to demobilise political violence. This included bringing education and sport institutions into the programmes, which must consist of social, therapeutic and political processes and interventions (TRC, 1998).

The RRC called for relevant government departments such as health, housing and welfare to provide for the necessary needs of victims and survivors of human rights violations. On the other hand, the Commission recommended that perpetrators be integrated into normal community life (TRC, 1998). In order to compensate for lost educational opportunities as a result of human rights abuses, the commission recommended the "establishment of community colleges and youth centres which could help to reintegrate the affected youth into society" (Fernandez, 2009, p.219).

According to the President's Fund annual report (2017/18), the implementation of this rests with the Department of Justice and Constitutional Development which has conducted a "needs analysis in communities across the country and "submitted the draft Regulations to the Office of the Chief State Law Advisor for certification in preparation of the necessary documents to the Minister for his approval" (Annual Report 2017-2018, p.8). In addition, assistance "to the value of R1 905 604 was granted up to 31 March 2018 to families who applied for contributions towards re-burial expenses in terms of the regulations", according to the President's Annual Report (2017/18). The report further claims that the complexities of these community reparations "required extensive legal and technical input from various specialists" (Annual Report 2017-2018). The effects of these initiatives also remain largely unclear.

3.5.5 Institutional reform

In light of the lost confidence in the administration of justice during the years of apartheid, the final report of the TRC made recommendations regarding institutional reform aimed at preventing the recurrence of human rights abuse and re-establishing public confidence in the administration of justice. In practical terms, the state needed to ensure that people have access to justice on the basis of equality before the law by developing an alternative state legal aid (Fernandez, 2009). The RRC recommended institutional reform ranging from legal, administrative and institutional measures designed to prevent the recurrence of human rights abuses, form "part of the operational plans and ethos of a wide range of sectors in society including the judiciary, media, security forces, business, education and correctional services" (TRC, 1998).

3.6 The failure of good intentions

The TRC's obvious objective was to bring healing to a wounded nation and to "return to victims their civil and human rights; to restore the moral order of the society" (Swartz, 2006). However, much bitterness still surrounds the issue of reparations to victims. Since the RRC submitted its final report to the President in 1998, the big question remained whether government would accept and implement the recommendation to provide R120,000 as financial compensations to each of the 22 000 victims?

In June 2003, former President Mbeki announced government's official position on the recommendations of the RRC on the occasion of a joint parliamentary sitting of the National Assembly and the National Council of Provinces (Buford & van der Merwe, 2004). Much to the disappointment of victims, government would only provide a once-off amount of R30 000 to each person, or family, designated a "victim" of gross human rights violations and also accept recommendations for rehabilitation of communities and systematic programmes

to “project the symbolism and the ideal of freedom” (Mbeki, 2003). These measures would include erecting symbols and memorials that exalt the freedom struggle, including new geographic and place names (Buford & van der Merwe, H. 2004).

Mbeki re-politicised the question of reparations, interpreting them as part of a collection of government’s initiatives in the reconstruction of a society. While the struggle against apartheid and the subsequent establishment of the TRC raised expectations considerably for political liberation as well as economic and social transformation, Mbeki detailed his belief on how the issue of reparations should be approached. In an address to Parliament, he stated; “First of all, an integrated and comprehensive response to the TRC Report should be about the continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social programmes, improving citizens' safety and security and contributing to the building of a humane and just world order” (Mbeki, 2003). For Mbeki reparations formed part and parcel of the development and reconstruction of the country which was inconsistent to the essence of the TRC, in particular reparations- in its conceptualisation of restoration of victims.

It is also important to highlight that for Mbeki’s government; reparations were part of the neoliberal macro-economic policy in which social reconstruction and redress was conditioned by economic growth. Since Nelson Mandela’s release from prison in 1990 South Africans economists have been addressing the concepts of redistribution, affirmative action and redress emphasising “efficiency, stability and incentives, which they argue are necessary for economic growth” (Schneider, 2003, p. 38). The governing party’s adoption of the Growth, Employment and Redistribution (GEAR) strategy in 1996 (Schneider, 2003) and subsequent pro-market policies placed more emphasis on “more investment, and

measures to restore investor confidence through the stabilisation of property rights, the enforcement of contracts, and the removal of uncertainties (Lipton and Simkins 1993: 29).

In recent years, a contentious issue has been South Africa's land reform which fell outside the mandate of the TRC despite land being part of the conflict of the past. It is generally accepted that under apartheid, blacks were forcibly removed from their land and through the various discriminatory laws that pushed onto the 14 percent of South Africa defined as black homelands (Natives Land Act of 1913). Thus the substantial restitution of land is possible, but under the neoliberal macroeconomic framework, "restitution should neither destroy the productive potential of the agricultural sector, nor the ability of the economy to grow" (Schneider, 2003, p.38) in that way placing economic growth over socioeconomic justice.

Similarly, Mbeki and government's interpretation of reparations "contrasts philosophically with the idea that the TRC – and more specifically, reparation – was instituted for the pursuit of justice, not social reconstruction" (Buford & van der Merwe, 2004, 4). It is also evident in the TRC's conceptualisation of reparations, emphatically stated to be for the purpose to "help victims overcome the damage that they suffered, to give them back their dignity and make sure these abuses do not happen again" (TRC, 1995). The TRC not only based its recommendations for reparations on a legal obligation or conditional on economic growth but also as a moral and political necessity (TRC, 1998). Furthermore, reparations were "as a counter-balance to amnesty and lend credence" (Buford & van der Merwe, 2004, p.10) to the process of promoting reconciliation.

The RRC's final recommendations also maintain that "without adequate reparations and rehabilitation measures, there can be no healing or reconciliation" (TRC, 1998). In going over the moral basis for reparations, the TRC stated that:

> Victims of gross human rights abuses have the right to reparations and rehabilitation because of the many different types of losses they have suffered. Victims need to be compensated in some way, because the amnesty process means they lose the right to claim damages from perpetrators who are given amnesty. The present government has accepted that it must deal with the things the previous government did and that it must therefore take responsibility for reparation. (TRC, 1995).

It is widely acknowledged besides the UIR provided for to apartheid victims and the once-off R30 000 payment, government has not meaningfully engaged the needs of victims as contented by civil organisations such as Khulumani Support Group, the Centre for the Study of violence and Reconciliation (CSVR), the Institute for Justice and Reconciliation (IJR), the International Centre for Transitional Justice (ICTJ) and other victim support organisations. These organisations have also provide logistical and moral support to victims (Buford, & van der Merwe, 2004).

Even with efforts from civil society, over two decades since the submission of the final report of the TRC many of victims are still struggling with the psychological, emotional and physical brutality from conflicts of the past. Many people have "evaluated the shortcomings of the TRC, and criticised the lack of results from the commission's ultimate inability to deliver restorative justice" (Yate, 2008). As a consequence of the legal categorisation of the victim, many have slipped through the cracks and still suffer significantly from the trauma and physical harm they suffered during apartheid (Yate, 2008).

According to the President's Fund 2017/18 annual report, besides the once-off individual grant of R30 000, government has embarked on various "systematic programmes to project academic and formal records of history, cultural and art forms, as well as erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names" (Presidency, 2017-2018). In addition, missing persons were exhumed and reburied and education, health and other social needs of victims are being addressed through various regulations. It is not known what the impact of these government's interventions are on the restoration of victims' moral worth. Ultimately, the lack of adequate individual reparations that speak to the need of victims may undermine the promotion of reconciliation and justice.

3.7 Conclusion

In this chapter, I argued the restriction in the judicialisation of the political question of the crimes of apartheid has had inevitable consequences on the kind of reparations the TRC fashioned. I maintained that because of the strict legal categories of the "victim" and the definition of "gross violations of human rights", the TRC unsurprisingly ended up with individualised legal categories of reparations and rehabilitations. These legal categories excluded various violations permissible by the system of apartheid such as land dispossession, restriction of movement through the pass laws, forced removals, limitations to education and work access, labour disputes or injuries at work and racism committed both publicly and privately against black South Africans during apartheid.

Moreover, as a result of government's failure to fully implement the recommendations of the RRC for the past 21 years, tensions between government on the one hand and civil society and victim support groups on the other have

increased. The latter have been lobbying for the immediate and effective implementation of a comprehensive reparations policy (Khulumani, 2018). Evidently, South Africa's continuing struggle with social, economic and political legacies of its apartheid past and the lack of adequate reparations by government has prompted victims and support organisations to question government's commitment to the TRC process – in particular to justice for victims.

In the following chapter I demonstrate, with first-hand experience of victims, how the judicialisation of the political question of apartheid excluded various other violations which ought to have been considered in the context of apartheid as a crime in itself. I do so by exploring victims' perceptions of the TRC, justice and the kind of history the TRC seeks to reconcile. I argue that with South Africa's increasing rates of poverty and economic inequality which manifest in patterns based on race, coupled with government's failure to implement comprehensive reparations towards victims that meaningfully engages and considers victim's needs, the promotion of reconciliation and restorative justice is significantly undermined.

CHAPTER FOUR

4. We are still struggling, with nothing to atone

> *"In a street-theatre performance sponsored by the South African Council of Churches, a black minister presents a white Afrikaans-speaking policeman to his congregation. The policeman confesses to the daughter and widow of a dead African man that he was present at the torturing and murder. The policeman says, 'I'm sorry. I was afraid. I would like to seek to reconcile with you'. The women react angrily and the mother shouts 'You are a bastard and you deserve to die.' The minister puts himself between the two parties and protects the policeman. An old man, a relative also of the deceased, enters and quotes Genesis. He says that he forgives the policeman, 'I forgive but I won't forget. I want to build a new South Africa.' The pastor extols his virtue, saying, 'You have set an example for the others'. He sends the two women to a trauma counsellor"* (Wilson, 2000, p.75).

The TRC's effort to balance the granting of amnesty and meeting the needs of victims within the context of a relatively peaceful transition, whilst promoting reconciliation through an Act of Parliament inevitably excluded various other violations which were made possible by the system of apartheid. The judicialisation of the violations committed by the apartheid state which targeted entire communities was almost exclusively reduced to violations between individual perpetrators and individual victims. Decades of white minority rule and apartheid institutionalised divisions, where at the top were whites who enjoyed unfair privileges, and in the periphery were blacks or "non-whites" who were subject to racial discrimination and domination.

Over two decades since the conclusion of the TRC and 25 years since South Africa's first multiracial and democratic election, the miscarriages in implementing an inclusive reparations programme that deals with the interconnectedness of the harms committed under apartheid seemingly manifest themselves in the socioeconomic indicators adversely affecting previously marginalised groups. According to the South African Human Rights Commission (SAHRC) equality report 2017/18, poverty has increased in South Africa in recent years, disproportionately affecting black South Africans when compared with white South Africans. In addition, a report on poverty trends by Statistics South Africa indicates that while half of South Africa's population live in poverty, 64% of those are black, 41% coloured, 6% Indian and 1% white (Stats SA, 2017). Inevitably, black South Africans' levels of education, health continue to lag behind.

In this chapter, I present stories drawn from six semi-structured interviews conducted with four victims of apartheid violations, and two key informants, on how the judicialisation of South Africa's political conflict has excluded various violations of apartheid and inevitably affects victims' perceptions of reconciliation and justice. As indicated earlier, a purposeful sampling strategy was used specifically to find three types of interviewees: two participants who were directly involved in testifying at the TRC public hearing and subsequently received the once-off R30 000 payments; two who survived apartheid human rights violations but were unable to testify at the TRC public hearing and by consequence excluded from the once-off payment; and two key informants who were directly involved with the TRC's processes.

I argue that due to South Africa's increasing racialised poverty and inequality, government's failure to provide adequate and inclusive reparations that

meaningfully engage victims' needs as well as the country's polarised race relations according to an IJR survey, perceptions of reconciliation and justice are significantly undermined. Furthermore, I demonstrate that the once-off reparations payment neither responded to victims' circumstances nor enabled victims to self-actualise.

4.1. "Ons het niks met u te doen vir jou"

The system, ideas and practices of racial division of labour extend further back in South Africa's history. In the initial days of white settlement in the Cape, a division of labour between white and black people was established (Simons & Alexander, 1959). While the racial division of labour continued with the discovery of gold mines in the Witwatersrand, substantial changes in the racial composition of the industrial labour force emerged with "new and expanding factories [which] absorbed many thousands of Africans from the rural areas, the Reserves, the Protectorates and the Rhodesias" (Hepple, p.42) creating work opportunities for all racial groups. At the insistence of white workers who claimed "unfair competition" from cheaper black workers, the NP enacted the Job Reservation Act in 1956.

Since 1948, the Nationalist Party (NP) began to enact discriminatory laws that defined and enforced racial segregation. One such legislation enacted in 1956, merely eight years after the NP won elections was the Job Reservation Act of 1956 (Hepple, 1963). The piece of legislation guaranteed "white wage earners an exclusive or preferred claim to selected occupations in industry, commerce and public services" (Simons & Alexander, 1959, p.4) establishing a dual but unequal payment system – a high wage for white workers doing the reserved jobs, and a low one for black workers. The difference in wage rates was equally reflected in bargaining power between black and white workers.

The effects of the Job Reservation Act meant that no white person could work under the guidance or supervision of a black worker, effectively keeping all black workers in perpetual subordination to white workers and relegating black workers to second-class occupational status in the workplace. The effects of South Africa's racist history of labour relations which violated black workers' human rights is plainly visible by the paralysed right arm of 66-year-old David (name has been changed), neatly kept in the pocket of his jacket as he speaks. David, like hundreds of thousands of black workers worked as a general worker for the then apartheid state-owned South African Railways and Harbours Administration which became Transnet in 1990.

David was injured in 1981 working at Denver station in Germiston. A train coach collapsed on his right arm. He recalls the day he was injured:

> "Many people got injured [at the South African Railways and Harbours Administration]: others' legs were cut off, if you were unlucky and slipped your neck would be cut off! When we got injured in 1981, we were fired almost immediately. That's the last time I had a job. You can count how many years it has been. That's when the Boers fired me. They said 'Ons het niks met u te doen vir jou'. There were ten of us who were injured that day".

The South African Railways and Harbours Administration is an example of the racialised labour relations of South Africa's past. In fact, according to South African History online, in 1912 the state-owned company made protest punishable by fine or imprisonment. Most of its black workers were migrants from homelands housed in the company's hostels. As David describes, "majority

of the people who were fired [after their injuries] had to go back to their homelands" and left with little or no compensation. Despite being skilled, black workers were considered by the company as general labourers and were paid considerably lower than white workers.

The 1994 democratic breakthrough as well as the establishment of TRC gave David some hope for an opportunity to tell of his suffering at the hands of the company and be given adequate reparations he deserves for being injured at work – so he thought. David recalls going to the TRC at "Mabel hall building in 1995, right after we voted. They said all victims must go to the TRC to submit claims. The TRC said my case was not within their work and I should go to the Human Rights Commission… Even the Human Rights Commission did not do anything for me".

All black South Africans like David who lived under apartheid suffered various human rights violations made permissible by apartheid. However, over-reliance on judicial means with a legally restrictive definition of the "victim" and "gross violations of human rights" to resolve what is in the main a political question of racial exclusion and the general disposability of black lives under apartheid inevitably excluded countless other violations like that which David suffered. When David is asked what he thinks about reconciliation, he says:

> "The Boers were heartless and evil! Mandela said we should not return evil with evil…but for someone like me it's hard to forgive and forget. I am still going through the pain, sometimes I find myself crying alone."

Reconciliation, according to David, is impossible for as long as those who were disadvantaged under apartheid remain destitute. This view on reconciliation is echoed by the SA Reconciliation Barometer Survey: 2017 Report compiled by

the IJR which found that majority of South Africans believe reconciliation is undermined by increasing racialised inequality and poverty (Potgieter, 2017). The report further states, improved race relations since 1994 have been "slow", with racism ranking the second highest divisive aspect of South Africa's society (Potgieter, 2017).

4.2 "Our husbands and children have died for the freedom of this country for nothing"

South Africa's transition to democracy, and the subsequent establishment of the TRC, brought with it a number of expectations for black people (Lephakga, 2016). This included expectations of adequate individual reparations grants for those who testified at the TRC's public hearings, their inclusion in the main economy and social assistance and reconciliation with their black selfhood, which was alienated as a result of the long, systematic institutionalised exclusion. However, these expectations were crushed – first by the miscarriages of the TRC to provide the truth and closure for many families of freedom fighters and then government's failure to provide adequate and inclusive reparations.

One example of families not getting the truth and closure they sought was that of the "Mamelodi 10". The Mamelodi 10 activists were abducted by apartheid security police officer Joe Mamasela who posed as African National Congress (ANC) military wing, Umkhonto we Sizwe recruiter. Mamasela drugged and burnt them to death in a minibus (Le Roux, 2005) in 1986. A version of their fate was made known through the TRC proceedings. According to the version of former Vlakplaas Commander brigadier Jack Cronje, the Mamelodi 10 asked Mamasela to arrange military training from the ANC in Botswana (SAPA, 1996). Cronje submitted to the Amnesty Committee that the ten activists were intoxicated in a minibus packed with explosives which was driven to former

homeland, Bophuthatswana in 1986 (SAPA, 1996). Their fate remained a mystery for almost 19 years, until exhumations of missing persons following an order by then President Mbeki to finalise missing persons' cases in 2003. Some of their remains were exhumed in Winterveld, Pretoria (Mail & Guardian, 2005).

Now 85-year-old Mrs Ntuli, who lost her son, recalls when she found what remained of her son:

> "For many years I looked for my child together with Mma Sefolo who was also looking for her husband until we found the remains at a place called Winterveld where they were exhumed."

Now 78-year-old Mrs Sefolo, whose husband was a businessman who owned a general dealer in Witbank, Mpumalanga, was abducted together with the Mamelodi 10. She was left with six children to raise on her own. She is at pains telling how she struggled to raise her children whose father was killed:

> "I feel that our husbands and children have died for the freedom of this country for nothing and it pains us. I am a single parent taking care of my children. With the few cents I earned, I did my best to help them with school but my two eldest children finished matric but they are sitting at home. They were never able to further their studies."

Both Mrs Sefolo and Mrs Ntuli are members of Khulumani Support Group which supported them to receive the once-off R30 000 payment. Although their personal circumstances differ, they received the same reparations and both feel that government has not done enough to atone for their losses. Both victims insist that the TRC process was concerned with pacifying victims and protecting perpetrators, hence government has not been committed to the reparations

programme for victims. Mrs. Ntuli objects that, “If victims are not repaired what reconciliation are we talking about? The government doesn’t even want to know the challenges of our families, we are suffering”.

Like David, Mrs Sefolo says reconciliation is impossible as long as the promises for social housing, education for their children and healthcare are not fulfilled. In addition, she says, “few whites who will agree that they have wronged us”. Despite her disappointments with the governing party’s failure to provide adequate reparations, she has a general mistrust of “white parties”. Mrs. Ntuli agrees:

> “I agree the ANC has lots of issues but I will never leave it. But this one of white people I will never! Because the pain is this there, the white people should have felt our pain so that they know never to do it again.”

4.3 “Soldiers were shooting randomly and during the chaos, I was hit”

In the latter half of 1990 there was a spiralling of violence in townships on the Gold Reef, in particular in the East Rand townships of Thokoza and Katlehong. The “Transvaal war” as it was known had claimed thousands of lives (Segal, 1991). The war still haunts one victim, 40-year-old Refiloe from Daveyton township who was shot by members of the apartheid South African Defence Force during a random chaotic shooting at Katlehong High School in 1990. Refiloe lives with permanent pellet bullet in her body which has affected her ability to work and her eyesight. She explains how she was injured:

> “I was shot at by police and soldiers during the apartheid era in Katlehong. I was studying Form-one, currently Grade 8. We were in the classroom when we saw other learners fleeing – soldiers were randomly shooting and during the chaos, I was hit.”

Since her injuries, Refiloe was never able to complete high school and has not been able to work. She lives with her pensioner mother and makes a living dropping and fetching relatives' children from day care, she says. As a member of Khulumani Support Group, Refiloe believes that the TRC short-changed victims like her who were too young to know the process to claim for reparations. Although her parents initially opened the case with the local police, nothing has come of it since.

> "There's no justice. Government should have helped the TRC to help us make claims. [TRC Commissioner] Desmond Tutu is continuing with his life; he has done nothing for us. Apartheid was terrible and left us with painful memories. I have injuries all over my body to show for it but I have no house, I can't work and can't afford my medical bills."

Reparations on their own are not meant to be the blueprint for the promotion of reconciliation. However, they are meant to afford victims a sense of moral worth, dignity and force society to conceptualise its identity and promote public trust in state institutions (Verdeja, 2008). As Swartz (2006, p.551) insists, central to the demand for reparations are issues of socio-economic justice for the majority of "historically disadvantaged citizens; a developing conception of the nature of citizenship in a country newly emerging". As demonstrated with the case of David, black people were denied citizenship under apartheid and in addition considered second-class occupational status in the workplace to be denied equal bargaining rights or compensation when injured at work. David's injuries have affected his ability to work and certainly affected his socioeconomic conditions.
The judicialisation of the violations and crimes committed under apartheid limited RRC recommendations to legal categories which excluded numerous violations which ought to have been considered to be repaired. These exclusions

are either on the basis that they do not fall into the strict legal definition of "victim" or "gross violations of human rights" as per the Act, or for some reason a victim was unable to submit their claims to the TRC, or simply that they were not committed for "political motives", as was the case with Refiloe.

Even though Mrs Ntuli and Mrs Sefolo, families of the Mamelodi 10 did have an opportunity to articulate their stories at the TRC and subsequently received the once-off R30 000 reparations payment and the re-burial of their loved ones, their perception of reconciliation and justice through the TRC reparations remains negative because of victims' poverty. Mrs. Ntuli articulates this point clearly:

> "Others [victims] have died in poverty waiting for reparations. My last child who studied with NSFAS [National Student Financial Aid Scheme] had to pay back that money when he finished, but we were promised our children would be paid for. The R30 000 did not even come close to meet our needs."

Khulumani Support group, of which all the victims interviewed in this research report are members, proposes a charter for redress for various violations that were excluded in the strict legal definition the TRC opted for. Khulumani Charter for Redress (2007) proposes an extended definition of violation to include victims who were:

- Murdered
- abducted and/or never seen again ("disappeared")
- tortured
- detained without trial
- raped
- indiscriminately shot at and/or massacred
- forcibly removed

- “banned” and/or sentenced to “house arrest”
- unjustly sentenced to death, and/or
- had their homes and possessions looted, burnt or otherwise destroyed

While Khulumani Support Group’s Charter for Redress may cater for Refiloe who was indiscriminately shot at, I maintain that violations ought to be looked at in the context of apartheid as a crime in itself which subjected entire communities to inferior education, healthcare and other social services. The legal categories would not be able to account for the families destroyed by migration and the pass laws, for instance. South Africa has undoubtedly made marked improvements in legally abolishing apartheid, however, increasing racialised poverty, inequality and uneven access to quality basic services coupled with government’s failure to provide adequate and inclusive reparations that meaningfully engage victims’ needs, mean that perceptions of reconciliation and justice are significantly undermined.

In reality, 25 years into democracy black South Africans bear the largest burden of inequality even though black people comprise 80% of the total population (Stats SA, 2017). White South Africans continue to live a considerably higher quality of life than black South Africans, according to the IRR Quality of Life Index. The Quality of Life index listed 10 indicators which are assigned a score of between 0 and 10. A score closer to 0 shows poor performance, and a score closer to 10 shows a better performance. According to the study, white people scored 8.1 compared to black people at 5.2 (IRR 2017, Quality of Life Survey). Unemployment among black South Africans stands at 39% compared to 8.3% among whites (Stats SA, 2018). According to the county’s definition of poverty as living under R620 per month, out of the 36% of the population that lives in poverty 60% are black (Stats SA, 2017). Furthermore, white people in South

Africa own 72% of privately held land, followed by coloured people at 15%, Indian people at 5% while black Africans own only 4%.

4.4 Conclusion

The TRC took a period of only two years to give investigations and establish a "complete a picture as possible of the nature, causes and extent of gross violations of human rights committed" (TRC, 1995). However due to the limitations of the TRC process including the mandate period of 1 March 1960 to the cut-off date envisioned in the Constitution, reconstructed the history it seeks to reconcile, limiting the conflict to a mere thirty-four years. Moreover, the over-reliance on a judicial process to resolve political questions of racial exclusion and domination inevitably left out various violations made permissible by the apartheid system.

The TRC's inadequacy is demonstrated using the case of David and Refiloe, who were denied the opportunity for reparations due to the strict judicialisation of the TRC process but nevertheless suffered harms due to the system of apartheid. Furthermore, I demonstrated that although Mrs Sefolo and Ntuli received the once-off R30 000 reparations payment, the payments have neither provided the victims with a sense of moral worth and dignity nor have improved their personal circumstances as initially intended. The judicialisation of South Africa's political conflicts of the past through the TRC process was therefore incapable of investigating the interconnectedness of apartheid's violations such as the homeland policy, forced removals or pass-laws and other racially discriminatory laws.

Therefore, the miscarriages of the TRC to deal with the interconnectedness of the violations committed under apartheid and colonial rule in South Africa unsurprisingly reflects in its legally restricted and exclusionary reparations

recommendations. Additionally, the TRC's failure shows in the continued socioeconomic marginalisation of previously marginalised groups, which negatively affects perceptions of reconciliation and justice. While government has largely accepted the recommendations of the RRC for the "rehabilitation of communities" and systematic programmes to "project the symbolism and the ideal of freedom", the effects remain largely insignificant for the restoration of victims' sense of justice and moral worth.

CHAPTER FIVE

5. Conclusion

This study aimed to focus and reflect on the effects of South Africa's reparations and rehabilitation process in the promotion of reconciliation and justice following the establishment of the TRC to deal with almost a century of racial discrimination and repression. There have been several issues discussed which are worth reiterating to connect with and conclude the main arguments.

The analysis was framed by an attempt to understand the sense of transitional justice, reconciliation and justice to victims of apartheid violations of human rights. While the TRC gained a reputation in the internationally as a successful facilitator premised on principles of restorative justice, its unwillingness to deal with the interconnectedness of apartheid's violations has negatively affected perceptions of reconciliation and justice particularly to previously marginalised groups. Evidently, "the Commission understood its mandate as dealing solely with those individual acts of violence which occurred in the course of political conflict" (Valji, 2004, p.1) while ignoring the everyday terrors of a system characterised by the UN as a crime against humanity.

Consequently, the TRC's weakness regarding individual versus a systemic analysis of apartheid violations of human rights is that, it did little to reveal the full effect of violations such as forced removals, which have been described as the 'Gulag' of apartheid South Africa (Mamdani, 2000, p.180). Mamdani correctly points out that;

> … the violence of apartheid was aimed less at individuals than at entire communities, and entire population groups. And this violence was not just

> political. It was not just about defending power by denying people rights. The point of torture, terror, death, was even more far-reaching: its aim was to dispossess people of means of livelihood …. [The TRC model] obscured the colonial nature of the South African context: the link between conquest and dispossession, between racialised power and racialised privilege. In a word, it obscured the link between perpetrator and beneficiary. (Mamdani, 2000, p.179).

The narrow legalistic focus of the TRC affected its recommendations for reparations and rehabilitation to focus on a minority of 'victims' and 'perpetrators' who were not on a frolic of their own. The individual perpetrators acted on behalf of the apartheid system which "created race as a mechanism for violence" (Fullard, 2004, p.3).

The "rainbow nation" vocabulary during the Nelson Mandela presidency attempted to describe a new social order, however "nation-building is premised upon a sense of belonging to a group which shares a common unifying characteristic" (Valji, 2004, p.4). This report has demonstrated the continued exclusion of previously marginalised groups from certain sections of South Africa's society – from the 'exclusion' of black people from formerly white beaches to separation of learners by colour, to the ongoing use of racial slurs like 'kaffir' to describe black people, as well as their socioeconomic exclusion undermines perceptions of restorative justice and reconciliation.

Reconciliation can be viewed to operate on a number of levels, the political, community and individual level. At the political level, reconciliation has been embodied in the compromises that led to a political peace-deal and ultimately resulting in the first successful multi-racial democratic elections in 1994 (Fullard, 2004). At a community level, historic racial and political divisions remain (IJR,

2017) and “economic divisions along racial lines created by apartheid are still in place today” (Schneider, 2003, p.23). This is evident through the high levels of residential segregation between black and white South Africans (IJR, 2017). Most recently, the alleged exclusion of black people in one of Cape Town’s formerly segregated Clifton Beach by a security company once again show a glimpse of South Africa’s troubled past. The “racial” controversy continued when a group of black activists reacted by slaughtering a sheep on the beach, prompting mostly white animal rights activists to cry foul (Politics Web, 2019).

It is clear that “the TRC has failed in its attempts to forge either a shared identity or a shared memory of the past. [as] Many whites regarded the Commission as “an ANC-led witch hunt” (Hamber, 1997; May, 2003), a sentiment echoed by veteran journalist Max du Preez. Reflecting on the white communities’ reaction to the TRC, du Preez believes that white people were not receptive to the idea of the TRC and many still believe South Africa would be much better if “we simply move on”.

Du Preez reflects on perceptions of white South Africans towards South Africa’s transition:

> “If you had an opinion survey in 1988 among white people and Afrikaans people, and asked ‘should we have a democracy, should we abolish apartheid?’ 80 to 90% would have said ‘Absolutely not!’. Should we release political prisoners? They would say ‘Absolutely not’ and to some extent many still share the same sentiments”.

While there has been public denunciation of apartheid, one in five whites people express that they would rather go back to apartheid than live in the new South Africa (The Kaiser Family Foundation, 2004). Despite a growing black working

class, the majority of black people still lead an inferior quality of life compared to whites. The judicialisation of South Africa's racist conflict deracialised the conflict, therefore limiting its focus to individualised violence. As a result, the majority of white South Africans have continued with their lives uninterrupted. For various reasons, less than a third of former beneficiaries acknowledge that they benefited from apartheid in the past or continue to benefit from it today (IJR, 2003). The structures of past privilege remain intact, while the previously disadvantaged group bear the brunt of poverty, inequality and joblessness (Stats SA, 2017).

At a personal level, perceptions of reconciliation and justice are far more complex and bound to how individuals feel in relation to the process of reconciliation. Almost all individual participant victims feel that their needs have not been met by the TRC. The effect of South Africa's racist and violent past continues to play out through racialised poverty, inequality and structural economic exclusion of previously disadvantaged groups. Coupled with government's failure to provide adequate reparations to victims, perceptions of reconciliation and justice remain negatively affected.

Finally, there is still a significant amount of research that needs to be done with regards to South Africa's reconciliation project and the effects of reparations, in particular concerning the role of private business during apartheid. Furthermore, this research report could be substantiated by additional interviews with state officials in an attempt to supplement insights on the country's reconciliation project. A more thorough engagement with victim support organisations to may be a highly interesting project. This research report hopes to begin a discussion around perceptions and experiences of formerly marginalised groups with regards to reconciliation and the ends of justice, but also begin a discussion in an attempt to restore a once deeply divided society.

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