

Reparations in Southern Africa

by

Warren Buford & Hugo van der Merwe¹



In *Cahiers d'études africaines*, Vol. 44, Issues 1-2, 2004.

Warren Buford is a former Research Assistant at the Centre for the Study of Violence and Reconciliation.

Hugo van der Merwe is a Project Manager in the [Transition and Reconciliation Programme](#) at the Centre for the Study of Violence and Reconciliation.

Introduction

This one is among the first comparative studies of reparation² in the light of transitional justice³ in Southern Africa largely unexplored, save of course for South Africa.

At the core of the South African transformation is the Truth and Reconciliation Commission (TRC) considered by some to be "the most far-reaching and the most effective of its genre".⁴ Similarly, South Africa's Reparation and Rehabilitation Committee of the TRC is the source of scholarly and policy debates in transitional justice circles worldwide. Yet, despite its popularity, South Africa's transitional process merits critical examination especially needed with the reparation issue which generated controversy and acrimony.

This study seeks to add to the growing literature on reparations to victims of human rights abuses in the context of a political transition, by examining the experiences of South Africa, Malawi, Zimbabwe, Namibia, and Mozambique in developing official, non-judicial reparation programmes for victims/survivors⁵ of human rights abuses.

For each country, the study explores: the nature of the political transition; the nature of the human rights violations or political atrocities that took place; the identifiable needs arising as consequences from human rights violations; programmes (if any) aimed at providing "reparation" and their targeted beneficiaries; factors accounting for the development (or non-development) of these programmes; and the consequences of the reparation programmes.

Any debate on overcoming an unjust past ultimately has to deal with the issue of reparation, which should not be confused with reconstruction or reconciliation. Within the field of transitional justice, scholars and practitioners have struggled to locate the contribution of reparation programmes to the process of seeking justice, promoting reconciliation or facilitating healing because "If we fail to confront what happened to [victims], in a sense we argue that those people do not matter".⁶ Providing reparation is regarded as the only truly victim-centred approach. Nevertheless, scholars caution against over-reliance on reparation to meet the needs of victims. A comprehensive reparation programme may include restitution and compensation, but it will not repay the damages caused by human rights abuses or bring back loved ones. For justice to be served in a transitional context and

for reconciliation and moral reconstruction to be realised there is a recognised need to acknowledge victim suffering and to implement programmes designed for individual and collective healing, achieved inter alia through rehabilitation, compensation and restitution.

International humanitarian law affirms reparation as a right. Today, it is generally accepted that "when an unlawful act is attributable to the State, international responsibility emerges immediately from this act as a consequence of the violation of international law and, attached to it, the duty to provide reparation and to cease the consequences of such violation".⁷

Reparation goes to the very heart of human protection – it has been recognised as a vital process in the acknowledgment of the wrong to the victim, and a key component in addressing the complex needs of victims in the aftermath of violations of international human rights and humanitarian law.⁸

Reparation to victims of gross and systematic abuse, whether perpetrated through war, armed conflict or political repression, is one of the most controversial and complex issues within the field of transitional justice. It is complex because reparation has multiple meanings (e.g., it does not simply mean compensation and it is definitely not merely a financial issue⁹) and because implementation of reparation schemes is ostensibly dependent on the juxtaposition of political, cultural and historic forces specific to a given country;¹⁰ it is controversial partly because reparation entails an exchange – a give and take – of money, land or services, as well as an acknowledgment of wrongdoing, and thus, ostensibly, it produces losers and winners. Determining who gives and who takes causes friction. Determining who is wrong and who is wronged is wrought with emotion and difficulty, particularly in cases of large-scale victimisation that might result in demands for significant budgetary commitments from government.

The question of reparations is highly relevant in today's discourse on overcoming an unjust past. Over the past ten years, there has been increased interest, mainly among human rights NGOs, scholars and within the international legal community, in the conceptualisation and development of reparation schemes in the context of a political transition.¹¹ Victims, too, include "reparation" in their demands for justice in times of political transition.

The "internationalisation" of compensation tribunals and funds for victims sets an encouraging precedent for victims whose country does nothing. The 1991 UN Compensation Commission (UNCC) was "established by the Security Council to process claims and pay compensation for losses resulting from Iraq's invasion and occupation of Kuwait".¹² Vandeginste suggests that the UNCC "sets an important precedent" for setting up a system to process large number of individual claims. More importantly, it "offers inspiration" for use of standard procedures, fixed sums and the use of compensation ceilings. Furthermore, the UNCC is considered novel not just for establishing criteria for compensation but because, through it, "the international community has placed a compensation scheme within the United Nations framework ... and has created a system than can handle as many as 2.6 million claims".¹³ The drawback of this mechanism is that reparation simply means individual compensation not rehabilitation or societal reconciliation.

South Africa

Much controversy and acrimony surround the topical issue of reparation to victims of human rights abuses during the last forty years of South Africa's tormented past. In June 2003, President Thabo Mbeki announced the government's official position on reparations to a joint sitting of Parliament and The National Council of Provinces. Since the Truth and Reconciliation Commission (TRC) was mandated to offer recommendations to the President, as opposed to implement a reparation scheme itself, the future of the reparation policy depended on the President's position.

The big question was: Would the government accept the TRC's recommendation to provide upwards of R120,000¹⁴ as financial compensation to each of the 22,000 victims? Many victims had already been given Urgent Interim Reparation (UIR)¹⁵ of R2500 – R7500, paid out by the TRC through the President's Fund, a fund operated through the Department of Justice for the purpose of paying out reparation. Approximately R44million was paid out to about 14,000 victims and family members for UIR.¹⁶ 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.¹⁷ The government would also accept the TRC's recommendations for the "rehabilitation of communities" and systematic programmes to "project the symbolism and the ideal of freedom". These include erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names.

To Mbeki, "reparation" to victims is part and parcel of a comprehensive array of government initiatives. As he stated in his speech: "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".¹⁸ That this contrasts philosophically with the idea that the TRC – and more specifically, reparation – was instituted for the pursuit of justice, not social reconstruction, was not lost on the NGO community, individual victims and certain TRC Commissioners. Politicians across divides welcomed Mbeki's decision. The divergent interpretations of the TRC process by government officials on the one-hand, and by TRC commissioners and civil society on the other have brought the entire process into question.

The TRC was to be the only avenue for victims to claim redress in lieu of proceedings through the courts. The latter were nullified for all intents and purposes as a result of key amnesty provisions. As Sooka elaborated:

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.¹⁹

The South African case brings into question numerous important considerations. First, it

highlights one of the fundamental dilemmas in transitional justice – how to identify victims after a criminal system, such as apartheid, that seemingly victimised everyone. As Kritz asked: "[Is] it possible to achieve consensus as to who were the victims of a system that, by its design, affected everyone in society?"²⁰ Mbeki's contribution to this philosophical debate leaves little question as to his feelings:

All of us must feel a sense of humility in the face of such selfless heroism and attachment to principle and morality, the assertion of the nobility of the human spirit that would be demeaned, denied and degraded by any suggestion that these heroes and heroines are but mere "victims", who must receive a cash reward for being simply and deeply human.²¹

Second, the South African case questions the perceived and real importance of reparation in the process of reconciliation. Scholars, victims, and observers alike argue, in tune with journalist Antjie Krog, that reparations would "make or break" the TRC. The "credibility" of the process would ostensibly depend on how the government tackles reparations.²² The TRC Report also holds that "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation".²³ Why was it considered so important? This case also highlights the legal and moral dilemma of meeting needs of victims for the sake of justice, while striking deals with perpetrators for the sake of a peaceful transition. Many concur with Sooka, who asserts with respect to the South African case: "Victims have been magnanimous to those who wronged them".²⁴ Furthermore, as Colvin 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.²⁵

Nature of the human rights abuses

Since the inception of apartheid, resistance was met with systematic repression and large-scale abuse of human rights. As resistance became more violent, the liberation movements and their supporters also committed an increasing number of abuses. However, it was the government that was responsible for the overwhelming majority of abuses during the apartheid era.

The struggle for a "new" South Africa was not without violence, pain, suffering – and human rights abuses. In fact, political violence escalated as the negotiations took place. In the period of the formal negotiations, 1990–1994, approximately 13,000 people were killed as a result of political violence, in comparison with the figure of approximately 5,390 in the previous five years.²⁶

Individual violations of human rights need to be considered in the context of the crime of apartheid itself.²⁷ The crime of apartheid includes "inhuman acts, committed for the purpose of establishing and maintaining domination by one racial group of persons over

any other racial group of persons and systematically oppressing them".²⁸ It must be noted here that, under apartheid, the majority of people experienced repression in some form or another at the hands of minority rule, and can therefore be considered "victims".

As one component of the TRC mandate was the investigation of human rights violations occurring in South Africa from 1963–1990, the TRC Report deals extensively with the nature of human rights violations. According to the TRC Act, a "victim" was someone who had "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 for which amnesty has been granted".²⁹ The TRC Act defines "gross violation of human rights" as the violation of human rights through – the killing, abduction, torture or severe ill-treatment of any person, or any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred [to above]".³⁰

Clearly, one of the most distressing problems confronting the TRC was the limited definition of human rights violations. "What about the plight of those who were forcibly removed from their homes? Or those whose basic humanity was diminished by the tentacles of apartheid which spread through health, education, housing and employment", asks Boraine. Yet as he acknowledges, with broad parameters, the TRC could never have fulfilled its mandate in two years; it needed to work within significant limitations. Aside from the narrow definition of human rights violation, the TRC established that only those who made a statement before the TRC could be considered a "victim" and therefore claim reparation.

Much discussion also took place very early in the process over the moral and legal implications of acts of violence and human rights abuses committed by the "criminal" apartheid regime versus those perpetrated by its rival liberation forces, such as the African National Congress (ANC). In short, could the ANC be culpable of committing human rights violations if it was fighting a just war? This was the subject of fiery debates. Dullah Omar, Minister of Justice at the advent of the TRC deliberations, remarked:

it is morally and legally wrong to equate the anti-apartheid struggle for liberation and democracy with the apartheid state, its agents and operatives whose motivation was to maintain apartheid and suppress democracy. The struggle of liberation was rooted in principles of human dignity and human rights. The apartheid state and its quest to sustain itself through repression was an affront to humanity itself.³¹

Nonetheless, as Omar made clear, "we would never want to see ourselves condoning human rights violations simply because they were committed by freedom fighters".³² Tutu added: "A venerable tradition held that those who use force to overthrow or even to oppose an unjust system occupy the moral high ground over those who use force to sustain that same system This does not mean that those who hold the moral high ground have carte blanche as to the methods they use".³³

The ANC was however willing to accept, albeit reluctantly, the TRC's "even-handed" investigation. An ANC report written shortly after the publication of the TRC Report reads,

"in the case of the ANC neither it nor any of its members were ever involved in any crime against humanity. On the contrary, the ANC was involved in a just and heroic struggle. However, where during the course of that struggle violations of human rights did occur these must be acknowledged".

The Negotiation Process and TRC

In early 1990, the South African government, then under FW de Klerk and the National Party and still operating under apartheid, began negotiations with leaders of the ANC, who just months before were deemed "enemies of the State". Over the next four years, negotiators worked out a political settlement for a democratic, non-racial South Africa. In April 1994, the first democratic elections resulted in victory for the ANC. Since then, South Africa has undergone what some characterised as "probably the most publicised and celebrated post-conflict transition process undertaken in the last 50 years".³⁴

Chief among the multiple objectives on the negotiators' agenda in the constitutional negotiations was the question of amnesty. While this was a key concern for the apartheid government, it was also not irrelevant for the ANC. The Postamble of the Interim Constitution set the stage for amnesty. It reads as follows: "Amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past".³⁵ Among the practical realities of the time for negotiators was the recognition that the incumbent government negotiated from a position of power when the transitional agreements were made. Key figures in the outgoing government would indeed be playing a role in the new political dispensation and, "if threatened with retribution while still in control of the army, police, judiciary and economy, the then establishment would be more inclined to sabotage the process".³⁶ The compromise reached (guaranteeing some level of amnesty) paved the way for the creation of the Truth and Reconciliation Commission (TRC), the mechanism set up to determine amnesties.

The negotiators also dealt with the question of "special pensions" for former apartheid police and army personnel, as well as for individuals who, because of their work in the struggle for a democratic South Africa, were unable to make provision for pensions for themselves.³⁷ Those who qualify must have been engaged in a political organisation, were banned or restricted, or were imprisoned or detained for any offence committed with a political objective. As Zollie Ndindwa elaborates, the guidelines are strict:

Now people who fall under that category would be those who served not less than 5 years in prison, those who were in exile for no less than 5 years, those who were banned for 5 years or more, those who were detained and those cumulative years would come up to 5 years or more and those who are disabled, in other words who got injured as a result of their taking part in the struggle. Also those who benefit are those who died in the struggle, in other words their relatives or family will benefit from that pension.³⁸

In addition, recipients must have been 35 years or older by December 1996. Since 1996, the Special Pensions Board has adjudicated 45,000 applications, with about 90% either accepted or refused. Pensions average R40,000 per year.

According to TRC Commissioner Wendy Orr, the implementation of the special pensions bill was a significant factor influencing the TRC's Reparations and Rehabilitation Committee's (RRC) decision to recommend individual financial reparation. She writes, "We believed that Government had set a precedent with this legislation, but one that excluded thousands of people who may not have been formal members of a liberation movement or who were excluded by the stipulations of the bill ..."³⁹ Commissioner Yasmin Sooka offers this assessment:

Another popular refrain is that people did not do this for money. This is true. Nobody did it for money. At the same time, those who participated in the struggle received a special pension, many are gainfully employed and I have not heard anybody saying that they are refusing to take a salary. I have not seen that those who have been granted amnesty have lost anything other than their public image. They still have their pensions, their land, their cars, their families. Those they took away from, have nothing.⁴⁰

However, reparation to "victims" of human rights abuses did not receive much attention during the negotiation process, even though the ANC's National Executive Committee listed reparations as part of its policy framework in 1992.⁴¹ There was not the same imperative attached to reparation as there was to amnesty.

The key element in the amnesty provision is that a person to whom amnesty was granted is relieved of all criminal and civil liability. This provision effectively negated a victim's ability to pursue civil damages in the courts. This was at the heart of a Constitutional Court finding (*AZAPO v. President of South Africa*, 1996). The applicants⁴² wanted an order declaring the amnesty provision of the TRC Act, Section 20(7), unconstitutional on the grounds that it unfairly and unlawfully relieves amnesty recipients of any civil or criminal liability.⁴³

The Constitutional Court upheld the constitutionality of the amnesty provision. Its argument, presented by the deputy president of the Court Judge Ismail Mahomed and J. Didcott, in a separate concurring statement,⁴⁴ rested on four justifications: one being that the expunging of civil and criminal liability through amnesty would be sufficiently counter-balanced with the reparation provision of the TRC Act, Section 4(f).⁴⁵

However, as Hamber points out: "The judgment makes an important rejoinder to this argument, i.e., the state can take into consideration the available resources, the claims of all the victims and the competing demands of the government when deciding what reparation policies to implement."⁴⁶

The TRC thus represented a compromise model of transitional justice, in which an amalgamation of truth, conditional amnesty and reparation was favoured over retributive justice or amnesia. While not directly born out of the negotiation process, the creation of the TRC was "certainly influenced by the process".⁴⁷ There would be no "general amnesty", but perpetrators could be granted amnesty by meeting strict guidelines (i.e., crimes were political in nature, the perpetrator was acting on behalf of a political

organisation, and the perpetrator had to reveal the whole truth). There would be exposure of as complete a picture as possible of the gross human rights violations occurring under the apartheid regime (1960–1994). And the government would provide measures for reparation to victims of those human rights violations.

The TRC was mandated in the [Promotion of National Unity and Reconciliation Act](#) (TRC Act).⁴⁸ The TRC Act established three committees: the Human Rights Committee (to investigate and document human rights abuses), the Committee on Amnesty (to grant amnesty) and the Reparation and Rehabilitation Committee (RRC) (to make recommendations for providing "measures to be taken in order to grant reparation to victims of gross human rights violations"). The Act defines "reparation" broadly, as including "any form of compensation, ex gratia payment, restitution, rehabilitation or recognition".⁴⁹ Section 4 (f) of the Act charges the TRC with making recommendations to the President with regard to:

- The policy that should be followed, or measures which should be taken, with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;
- Measures that should be taken to grant urgent interim reparations to victims.

The TRC operated for 18 months. On October 29, 1998, TRC Chairperson Desmond Tutu handed over the TRC Report to President Nelson Mandela, but the final report was not tabled in Parliament until April 2003 (when the amnesty process had been finalised and legal challenges to the report had been resolved). As TRC Commissioner Richard Lyster explained after the judgment: "The settlement of the dispute will enable the TRC to address outstanding and critical issues, the most important of which is reparation for victims".⁵⁰

Recommendations of the R&R Committee

The Reparation and Rehabilitation Committee of the TRC deliberated over a period of 18 months, collecting information from a variety of sources, including victims and survivors, representatives of NGOs and community based organisations, faith communities and academic institutions. In addition, consultative workshops were held throughout the country to: "a) Establish harm suffered; b) Determine the needs and expectations of the victims; c) Establish criteria to identify victims in urgent need; and d) Develop proposals regarding long-term reparation and rehabilitation measures".⁵¹ Most of the minutes from those meetings were published on the TRC Website.⁵² In determining criteria for awarding reparation, the RRC relied on the findings of the Human Rights and Amnesty committees. While the RRC spent considerable time formulating recommendations it was also actively involved in providing support to victims on a daily basis. According to the Executive Secretary of the RRC, Barbara Watson: "The ideal aim of the Committee was to establish a sustainable support base for victims".⁵³

The RRC established the following principles for the basis of its recommendations: "Development centred", "simplicity and efficacy", "cultural appropriateness", "community-based", "capacity development", and "promoting healing and reconciliation".⁵⁴ To meet these principles, five categories of reparation were recommended:⁵⁵

- **Urgent Interim Reparation (UIR)** – To assist people in urgent need, to provide them with access to appropriate services and facilities, "it is recommended that limited financial resources be made available to facilitate this access".⁵⁶ The TRC Act maintains that UIR could include medical, emotional, educational, material and symbolic needs. UIR payments began in June 1998. After reviewing applications for UIR, the RRC would determine if the person was a "victim of gross human rights violations" and then make an assessment in order to establish how the violation affect the person, and what help he/she needs.⁵⁷ Victims were given a once-off payment ranging from R2000–R7500.
- **Community Rehabilitation Programmes** – To encourage healing and recovery of communities, these reparation measures include national demilitarisation, resettlement of displaced persons, rehabilitation for perpetrators and their families, mental health services and skills training.⁵⁸
- **Symbolic Reparation** – To restore the dignity of victims and survivors of gross human rights violations and facilitate the communal process of commemorating the pain and celebrating the victories of the past, measures include issuing of death certificates, exhumations, reburials and ceremonies, expunging of criminal records, renaming of streets and "culturally appropriate ceremonies".⁵⁹
- **Institutional Reform** – Adoption of administrative, legal and institutional steps to ensure that the human rights violations are not repeated.⁶⁰
- **Individual Reparation Grants** - The formula chosen to calculate the reparation is based on three components: an amount to acknowledge suffering; an amount to enable access to service and facilities, and an amount to subsidise daily living costs taking into account the current economic circumstances of the reparations applicant. Financial grants would range from R17 000 to R23 000 per year over a six-year period. The Final Report calculates the overall expense involved to be R477 400 000 (USD47,740,000) per year or R2 864 400 000 (USD 286,440,000) over six years (based on an estimate of 22 000 eligible victims).

Among the key issues emerging from the debate on reparations in the South African context, five stand out. First of all, should reparation be symbolic in nature or mainly financial; and if financial, should a monetary package or service package be provided? In the end, the TRC decided on a "well-structured monetary grant" instead of a service package, given that most victims indicated that they preferred monetary assistance to other forms of compensation. The grants are supposed to encourage access to essential basic services and give rise to opportunities, which would facilitate achievement of a better standard of living.

Secondly, who would pay? As mentioned above, the responsibility of the State to pay was irrefutable from early on. A President's Fund was established to administer payments. The government contributed R800 million in 2001. Some, like Sooka, remark on the irony and tragedy of the new government paying for the sins of past generations: "What is tragic is that the new government, who inherited a bankrupt structure, has to bankroll reparations for the sins committed by the past government. Those who benefited from the spoils of apartheid are still benefiting. There has been no special tax imposed, no need for any act of personal contrition, no need for an act of restitution to the victim directly, no loss of jobs or land."⁶¹

Controversial suggestions by the RRC and by the community at large targeted beneficiaries of apartheid (i.e., businesses and private persons) for obligatory contributions to a Presidents Fund through, *inter alia*, a once off wealth-tax.⁶² Much to the chagrin of some victim-support groups, and to the delight of the business community, Mbeki silenced this recommendation, instead encouraging all South Africans to contribute to the Fund. He declared in his April 15, 2003 speech,

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.⁶³

A third consideration was what the RRC's role in implementing the recommendations would be. This Committee was charged with recommending measures, but there was a prevalent feeling that the RRC should have implementation powers in order to carry out the policy expeditiously.⁶⁴ Another concern was the formulation of the list of victims. The RRC went by the list of "victims" as designated by the Human Rights Committee, which at the time of the final report had been "closed", thereby ignoring many eager applicants. Today, however, there are many who feel left out of the process because they missed the deadline or because they were ill informed about the regulations.⁶⁵ Furthermore, the TRC confronted the frustration of having trouble finding victims after statements had been made.⁶⁶

Fourth and finally, the question of how to formulate the amount of financial grant commanded great attention. Should the amount be based on the severity of the injury or financial status of victim? On moral grounds, the RRC agreed that "if reparations was an acknowledgment of the fact of the violation, anyone who has been violated should receive the same amount".⁶⁷ Pragmatically, the RRC determined that it would not be cost effective to implement "means testing" for excluding those few who were not poor since most of the people who came before the TRC were poor.

Importance of reparation

As explained above, the RRC based its recommendations on a moral, legal and political necessity for reparation. The last two factors are perhaps the most often discussed, as they refer to the need for reparation as a counter-balance to amnesty and lend credence to the efforts of civil society's pressure on government to provide individual reparations.⁶⁸ The TRC Report holds that "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation". Orr echoes this declaration in her criticism of the government's failure to act swiftly in implementing a reparation scheme: "Reparation delayed will mean healing retarded, and perhaps a deepening perception of justice denied".⁶⁹ And Hamber notes, "reparations for TRC survivors is about the responsibility of completing the TRC"⁷⁰ and thus meeting obligations set out by the government. This will ultimately promote good governance. Mbeki clarified his interpretation of the need for reparation in his recent speech: "Combined with community reparations, and assistance

through opportunities and services we have referred to earlier, we hope that these disbursements will help acknowledge the suffering that these individuals experienced, and offer some relief".⁷¹

Colvin provides insight into what victims expected: "Though some have noted (and celebrated) the fact that victims made 'exceedingly modest requests for reparations'⁷² at TRC hearings, when asked in private, most victims listed money or compensation as their first priority and need. Their second most common request was for investigations into the violations they suffered. In public, these requests were often tempered, focusing either on insignificant amounts of money or on symbolic modes of reparation like tombstones and name changes".⁷³ It is also asserted that the "idea of restitution" was seldom expressed, as "it was beyond the belief of most victims that the situation could possibly be redressed or that they could be restored to the financial position they had sacrificed".⁷⁴

Victims had lofty expectations, which were heightened by optimistic TRC Commissioners eager for more victims to come forward and testify. There is doubt over victim satisfaction about the urgent interim reparation. Crawford-Pinnerup asserts that Urgent Interim Reparations have not "made a meaningful and substantial impact on the lives of recipients and cannot, therefore, be considered a significant or even an adequate attempt at reparations".⁷⁵

It is widely acknowledged that civil society groups such as CSVR and the Institute for Justice and Reconciliation, in addition to victim support groups such as Khulumani, played an important role in the process, especially in the efforts to lobby the government to formulate a policy. Of the role played by the Western Cape Reparations Forum, in particular, Levy explained: "We worked on our own, lobbying, writing letters, we wrote letters to the cabinet, we wrote letter to members of parliament, we wrote letters to ANC branches, we always worked – kept a correspondence going in the press, and tried to get interviews, and just on the radio, to actually talk about the reparations issue" (can not find reference). These organisations also provided logistical and moral support to victims. In March 2000, a consortium of organisations was founded to "pressure" government and contemplated a lawsuit against the government for failing to deliver on promises of reparation. Known as the NGO Working Group on Reparations, the group includes Black Sash, the Institute for Healing of Memories, the Trauma Centre for Victims of Violence and Torture, CSVR, IDASA, and Catholic Justice and Peace.

Frustrated at the lack of response by the government over individual reparation grants, Khulumani, through the Jubilee South Africa Campaign, initiated a lawsuit in United States courts against businesses that "aided and abetted the apartheid regime".⁷⁶ Based on common law principles of liability and the U.S. Alien Tort Claims Act, the lawsuit is predicated on the belief that since institutional corporations and banks refused to acknowledge their complicity in the apartheid regime and seek amnesty during the TRC process, they "have opened themselves to litigation".⁷⁷ Mbeki denounced these lawsuits, asserting that the government finds it "completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country".⁷⁸ It will be interesting to examine the impact of these cases on reparation policies in South Africa. Should businesses lose the suit

or settle for amounts far exceeding the R660m doled out by the government, it is likely victims will receive the government policy with some scepticism. Furthermore, civil society groups and individual victims will be examining the implications of future prosecutions through the National Directorate of Public Prosecutions of alleged criminals who did not apply for amnesty.

The meaning of "reparation" has clearly become contested in South Africa. On the one hand, it is closely tied to individual financial payments, while on the other it has a broad interpretation, contextualised in the all-encompassing crime of apartheid. Former Minister of Justice, Dullah Omar explains:

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. If transformation does not take place, there will be no reconciliation and the step that we have taken to create reconciliation will fail, and in that context the TRC process would have failed.⁷⁹

Malawi

After seventy-three years of British rule when the country was known as Nyasaland, Malawi achieved independence in the early 1960s, marking the first political transition to multi-party democracy. The achievement of independence was followed by thirty years of abusive, totalitarian rule by Dr. Hastings Kamuzu Banda and his Malawi Congress Party (MCP), during which time hundreds of thousands of innocent civilians were victims of human rights violations.⁸⁰ In the early 1990s, a second, markedly different, political transition occurred. The second transition, beginning in 1992 and incited largely by forces inside Malawi, namely the Catholic and Protestant Churches and politically active exiles, witnessed the peaceful ousting through democratic means of Dr. Banda and the election in 1994 of former MCP Secretary General, Bakili Muluzi, leader of the main opposition party, the United Democratic Front (UDF).

With a long past of repressive governance, Malawi's political and social transformation hinges upon comprehensive measures aimed at ensuring a human rights culture and healing the wounds of victims. In "dealing with the past", Malawi opted for institutions aimed at ensuring future human rights abuses and that poor governance does not return. The new institutions include an Ombudsman's Office, a Human Rights Commission and an Anti-Corruption Bureau. The new government, along with a few civil society organisations such as the [Centre for Human Rights and Rehabilitation](#) (CHRR), also undertook initiatives to recognise and care for the many victims of human rights abuses occurring during the Banda regime. However, progress in that area has been stymied because of a lack of organisational capacity, lack of funds and government's unwillingness to "fully acknowledge and address

the plight of the victims".⁸¹

The latter two factors fuel the fires of critics of the National Compensation Tribunal (NCT), Malawi's highly ambitious and only programme to provide "reparation" (i.e. compensation) to victims of political oppression.

Nature of political repression

While violations of human rights of Malawians certainly occurred under British rule,⁸² it is the timeframe of Banda's regime, 1964 – 1994 that today dominates the debate on redress for victims and national truth telling. The Banda years are described as years of grave suffering, pervasive fear and censorship, and "dull uniformity that criminalized difference - all was contaminated by this naked, arbitrary power".⁸³ State brutality was usually enforced by any one or all of three groups: the police (including a paramilitary force and a powerful security branch with an extensive spy network), the Malawi Young Pioneers (MYP) and the MCP Youth League. Many people disappeared mysteriously and "everyone feared the dreadful fate of becoming food for the crocodiles of the Shire River".⁸⁴

Those persecuted for political or religious reasons suffered in dilapidated prisons or through coerced forfeiture of homes and property. In some cases, prison sentences upward of thirty years were imposed upon political detainees. The threat of abuse, disappearance or murder resulted in many fleeing with their families across the border or further abroad. In all, it has been estimated that 250,000–500,000 people were victimised during Banda's thirty-year rule.⁸⁵

The Political Transition and Factors Contributing to the Development of the NCT

A Presidential Committee on Dialogue (PCD) guided the transitional process. Working in collaboration with the Public Affairs Committee of the Protestant Churches (PAC), the PCD established the National Electoral Commission (NEC), the National Consultative Council (NCC) and the Constitutional Drafting Committee (CDC). These were comprised mainly of government officials and representatives of political movements, with the participation of a smattering of businessmen and traditional leaders as well. Prominent exiled business people and politicians played a role in catalysing political change. Ordinary citizens, including many of the rural poor who were victimised during the Banda years, did not contribute substantially to the transition process.⁸⁶ The NCC subcommittee charged with writing the new Constitution was primarily responsible for developing the form and function of the NCT. Foreign advisors (from the UK) shared experiences of the UK Foreign Compensation Commission and representatives of Legal Aid clarified issues important to victims.⁸⁷

Reforms taking place in South Africa, where victims were certainly on the agenda of the peace-building process, influenced Malawi's process, and one popular view was that attempts at "reparation" in Malawi should be modelled on South Africa's Truth and Reconciliation Commission (TRC). A truth commission would have given voice to victims ("the screams of tortured Malawians need to be heard", writes Ross,⁸⁸) confront national moral and criminal guilt and "bring out those aspects of the past which have to be rejected" for future Malawians.⁸⁹ Exposing the brutality of the Banda regime and grappling with it in

a public forum would ostensibly help all Malawians, particularly those suffering tangibly from the past political repression. Doing so would also help alleviate the insecurity caused by living under the political rule (even if democratic) of persons such as the current President Muluzi, who once played a prominent role in the former regime. However, the NCC rejected the idea of a truth commission, primarily out of fear that such an institution would inevitably point blame at individuals of the new political dispensation, since most of the new political parties include members of the former regime.

The following factors appear to have influenced the NCC discussion over the establishment of a state-sponsored compensation tribunal for victims of past abuse:

1. Compensation to victims of Operation Bwenzani;⁹⁰
2. Demand by the political elite for compensation to returnees and ex-detainees, heavily influenced by political affiliation;⁹¹
3. Civil cases resulting in huge payouts by government;
4. Demands from NGOs on behalf of ordinary victims wanting compensation;
5. Expectation that compensation would foster a sense of reconciliation and moving forward;
6. Events unfolding in South Africa; and,
7. The passage of the General Amnesty Act,⁹² which saw many exiled Malawians return home and thus made it "imperative" to create a constitutional body to deal with compensation for those who fell victim to the Banda regime.⁹³

Of these factors, the civil cases appear to have had major influence. In a landmark judgment in early 1993, Machipisa Munthali was awarded K4.5 million in damages through the High Court for being illegally detained by the government for 27 years. Munthali's case, along with several dozen others resulting in damages awarded from K40,000 ranging into the millions, prompted a precipitous increase in High Court cases. The number of Court cases subsided in 1995 with the adoption of the new Constitution, which mandated sole jurisdiction, to the NCT, for civil claims for victims of human rights abuses. This has led to feelings of suspicion that the exclusive jurisdiction clause was designed to prevent people from winning large settlements. Munthali, for one, revealed: "Suspicion is that the NCT was established in part to prevent others from launching a civil suit against the government, as I did".⁹⁴

The NCT derived its mandate in Chapter XII⁹⁵ of the Malawi Constitution, passed in 1995. The objectives of the NCT include:

- To acknowledge the wrongdoing of the previous government (1964 – 1994), as recognised in the Constitution as being of either a civil or criminal nature;
- To extend an apology, an olive branch to acknowledge the hardship and suffering endured by those who were wronged;
- To offer compensation in different forms – monetary, other material support, a symbolic acknowledgement of wrongdoing.⁹⁶

The Claims process

Specifically, those eligible for compensation are Malawians "who, on political grounds between 6th July 1964 and 17th of May 1994, were wrongfully imprisoned, forced into exile, personally injured, lost property or business, lost education opportunities, lost employment benefits and those who were born in exile or detention".⁹⁷ Victims or their lawyers could make a claim directly to the NCT. Each claimant received a number, which would in theory determine the order of processing and payment. While the process of making a claim was not complicated, the compensation scheme was complex, especially given the number of claimants and the weak infrastructure to process the claims. It was complex, but not necessarily scientific - and evidently for good reason. According to one observer, the Tribunal had no mathematical formula for assessing non-pecuniary loss:

The general principal was guided by precedents, economic factors and the general policy of the NCT which was that awards of compensation by the Tribunal would be lower than those given by the High Court and shall follow a tradition of condolence.⁹⁸ The reason for such a policy was because of the flexibility of the Tribunal, in that if it were to apply the strictness of the courts, most of the claims would be dismissed.⁹⁹

In theory, the claims process works in the following manner: After providing positive "proof of victimisation",¹⁰⁰ claimants are told how much compensation they could expect to receive. Compensation amount depends on the type of claim. There were more than a handful of categories of claims, each with a corresponding payment scheme. Interim payments would be made immediately (in up to two weeks) after a claim has been made, and final payments were to be made months later, once decided by the Tribunal. Categories of claims and corresponding compensation included "forced exile claims" (between K10,000 – K20,000¹⁰¹ depending on length of exile), "loss of property claims" (between K500 for loss of poultry to K50,000 for loss of a home), "wrongful imprisonment claims" (between K10,000 and K20,000, depending on the length of incarceration), and "claims of loss of life" (K20,000 payable to the dependent).¹⁰²

By constitutional mandate, the operation of the NCT will terminate in 2005, and despite complaints from victims and the NGO community, there is no indication that the NCT will continue after that date.

Victims "cry foul"

Funding is a major problem. The NCT has processed more than 23,000¹⁰³ claims since its founding, but there are "potentially thousands" more to be processed, according to Chief Administrator Hombe.¹⁰⁴ Yet only 7000 people¹⁰⁵ have been given interim payments, ranging from K10,000 to K20,000, while only 500 final payments have been made. Estimates for the total amount of compensation to be paid currently total K24 billion or several times the amount that the Government can reasonably be expected to contribute from the Treasury. The NCT is dependent entirely on the government for funds. Attempts to raise funds from donors have been successful, but only for technical and training support. Donors have not wanted to give money for direct compensation because they feel that such payments would not encourage the government to maintain a clean human rights record.

While the lack of funding is a serious problem, there are other deficiencies with the system that have left victims highly disgruntled. Criticisms generally fall into three broad categories: ineffective implementation of compensation, a skewed process, and lack of public awareness. With interim payments slow in coming and the promise of final payments merely a "mirage", there is a strong feeling that the NCT is not accomplishing what it was intended to accomplish. The administration of funds is "frustratingly slow". Claimants are known to have applied for compensation in 1995, yet have received interim payment only in 1999.¹⁰⁶ Moreover, dissatisfaction with the low monetary value of interim awards is common. As one victim lamented: "I felt that K20,000 bore absolutely no relation – interim or otherwise, to what I had gone through". Another victim adds: "If you look at the human tragedy of both detention and political exile, the reparations that have accrued are a mockery of the whole system".¹⁰⁷

Despite what promised to be a victim-friendly process (at least in comparison with the Court system), the NCT process falls short of that goal. Claims of bias in favour of political elite surfaced early as well-connected individuals benefited substantially from the NCT prior to 1997, when procedures were loosely defined. Although the system works on a first come first served basis, application numbers were often interchanged to benefit certain individuals.¹⁰⁸ Moreover, many of the victims who were ordinary Malawians and could not read or write and had no access to funds were simply unaware of the NCT. This has led to charges of corruption within the system that have been substantiated by comments from NCT insiders. A former justice disclosed: "Money had been sent to the tribunal with specific instructions to pay [a] certain ex-Minister". He refused, "as this was not [his] role". Observers implicate a correlation here with the sharp decline in funds available to the NCT over the last few years. The current NCT chairperson said: "There was a rush in the beginning, but now they are not giving us the money. They have dumped us, as if to say, we have gotten what we want and don't care anymore."¹⁰⁹

Despite being empowered with investigative duties, the NCT is hampered by a shortage of staff, and has therefore relied disproportionately on testimony of the victims as the basis for giving (or not giving) compensation. However, Victims complain of difficulty in producing the necessary evidence required to receive compensation. One claimant explained that in trying to track down records from the police and the Ombudsman, he "felt as though he was being thrown from pillar to post".¹¹⁰ Another person discussed the consequences for his parents: "My mother was detained and we never managed to get any official documentation as proof. The situation was aggravated by the fact that prison authorities are very difficult. My father-in-law was also detained but the question of getting documentation has proved elusive and he has not been compensated."¹¹¹

There are also complaints of lack of personal attention and of insensitivity to victims during the process. Victims complain of being shuffled in and out of the proceedings, where they are given "a minute or so" to explain their case. One claimant had a problem "with the manner in which the whole thing was handled ... this should not have been a routine office matter. There should have been a hearing – something that would have given me, as the victim, the right to be heard, to explain what happened, to shed tears if I so desired."¹¹²

Expectations were high that the NCT would not only provide money, but that it would also

create a forum for public discussion of the wrongdoing that occurred in the past. The structure was set up for the NCT to facilitate such discussions, but criticism over the lack of publicity, lack of public or civic education about the NCT and the refusal to list names of victims or perpetrators indicates the NCT's failure to meet those expectations. The current chairperson reveals the limited scope of the public relations campaign. Evidently, the Tribunal made names of claimants public by "pasting announcements on the bulletin outside the NCT offices ... but they had stopped doing it because of lack of logistical support."¹¹³ "There is not much publicity on the issue, so the nation really doesn't know what has been achieved in terms of reparations."¹¹⁴

The fact that many of the victims were ordinary Malawians from rural, poor and illiterate circumstances complicated the process of developing and implementing a compensation scheme. As Dr. Kanyangolo, a former detainee, explains: "The vast majority of people who were victimised were not well-known or elite but the lesser known in villages who may have said something against the government and were taken quietly in the middle of the night. Many of these people and their families may not even be aware of the fact that there is a new Constitution".¹¹⁵ Another complication lay in the difficulty differentiating between the two groups of emigrants: firstly, those who went abroad of their own volition and then became involved in the political struggle, and secondly those who went into exile because of political oppression. Consequently, there is resentment on the part of those victimised within the country towards returnees over the issue of compensation, with the former accusing the latter of "choking on the national cake without having contributed anything towards it".¹¹⁶

Reparation in the transitional process

Although the reparation in this context primarily concerns compensation or land restitution there were comments by victims about addressing the underlying problems existing in a post-Banda Malawi and facilitating a holistic approach to reparations and accountability. However, the resulting policies indicate that "reparation" was conceived as a top-down process involving the victim and the new government, not the perpetrator. The mechanism for healing was quite simply compensation, which in itself was meant to symbolise acknowledgement of wrongdoing and therefore to foster reconciliation. According to a participant in the transitional government, "the idea of reparation may have symbolized a form of reconciliation – that people can say that at least they have gotten something out of their suffering and they can start their lives fresh again."¹¹⁷ However, because what was actually delivered by the NCT fell far short of the returnees' and victims' expectations, "the attainment of reconciliation has been severely inhibited".¹¹⁸

There is disjuncture between the government's expectations for the compensation tribunal and victim aspirations in terms of reparation. Victims want compensation, but they also demand accountability, awareness, apology and some emphasis on a healing process. The inability to provide at least one of these demands gives rise to bitterness, and this bitterness appears to undermine the process of reconciliation. As Kanyanya said, "the bitterness that comes from the lack of reparations is what is preventing the whole country from being reconciled itself with the past – once people are paid then maybe things will be different."¹¹⁹ However, in Malawi, the issue is not simply financial. Many believe that the inadequacy of funding could be overcome if there was political will, and moreover that the

process of providing compensation – even if token – could have been more victim friendly. This disconnect lends credence to the popular sentiment among Malawians, here articulated by legal professor Edge Kanyangolo, that Malawi has had a "transition, not a transformation".¹²⁰

Zimbabwe

Zimbabwe is a country with a long history of state-sponsored political violence followed by impunity or amnesty.¹²¹ Over the last three decades, in particular, hundreds of thousands of Zimbabwean citizens have become survivors of human rights abuses.¹²² Stories of human rights violations are well documented and usually focus on four time periods: the War of Liberation (the 1970s), the Matabeleland and Midlands Uprisings (1983–1987), the Food Riots (1998) and the 2000 Elections. Furthermore, present-day Zimbabwe is wrought with well-publicised government abuse, most often followed by amnesty for the perpetrators.¹²³ However, survivors/victims of these decades of crimes have not been recognised and have had scant opportunities to receive reparation (i.e. compensation).

Decades of human rights abuses, violence and political repression

Independence was secured in 1980 after a fierce liberation struggle between Ian Smith's Rhodesian Front (RF) and a coalition made up of two armies from opposition political parties: ZANLA from the Zimbabwe African National Union (ZANU), and ZIPRA, from the Zimbabwe African People's Union (ZAPU). The War of Liberation lasted most of the 1970s and resulted in loss of life for probably 30,000 people.¹²⁴ The destruction and trauma of that war, both in terms of casualties and human rights violations to soldiers and civilians, are well-documented. The most comprehensive reports were published in the mid-1970s by the Catholic Commission for Justice and Peace in Zimbabwe (CCJPZ).¹²⁵

In sum, the reports reveal widespread abuse of civilians, through beatings, suspensions, electric torture, mock executions, arbitrary killings and so on. Culprits were mainly government security forces, which terrorised whole villages suspected of supporting ZANLA/ZIPRA forces by imposing curfews, restricting movement and meting out harsh punishment (e.g., rape, torture and murder). The infamous Indemnity and Compensation Act of 1975 (with retroactive application to 1972) gave security forces impunity, tragically excusing their killing and maiming sprees. Civilians and war veterans were also victimised as a result of ZANLA and ZIPRA reprisals (as well as in-fighting between the two): "Ordinary people living in the rural areas were caught in the middle of the conflict and suffered in many ways. They were punished by the Rhodesians if they helped the freedom fighters, and punished by the freedom fighters if they would not help them."¹²⁶

Extrapolating from research conducted in the Mount Darwin district, Reeler et al estimate a "very conservative" figure of 50,000 primary victims (and as many as 4 or 5 times more secondary victims) of the Liberation War alone. As mentioned earlier, victims were civilians as well as soldiers. A 1997 study details the consequences of torture and organised violence on war veterans. In short, it reveals five broad categories of "likely" victims among war veterans: war injured, torture survivors, witnesses of war injury or death and torture, families of torture survivors, and families of disappeared persons.¹²⁷

Independence brought freedom from the British, but it did not bring political stability. The ruling ZANU-PF feared destabilisation from the South African apartheid government and uprisings from an embittered opposition ZAPU and its armed wing, ZIPRA. Thus, ZANU-PF sought to put down, quickly and harshly, all attempts by alleged ZIPRA soldiers, known as "dissidents", to overthrow the Government or to undermine its support. To achieve these ends, ZANU-PF employed extreme measures carried out by government forces and a militant ZANU-PF Youth wing. South Africa complicated matters by extending its "far-reaching policy of destabilising black-ruled countries" in Southern Africa to Zimbabwe. Though South Africa intervened militarily on occasion, its efforts, in particular through use of double agents to make ZAPU and ZANU-PF suspicious of one another, were effective in exacerbating the violence. The situation eased with the signing of The Unity Accord in December 1987 by President Mugabe and the leader of ZAPU, Joshua Nkomo. In April 1988, Mugabe announced an amnesty for all dissidents, 122 of whom surrendered, and in June of the same year the amnesty was extended to include all members of the security forces who had committed human rights violations.

Due in large part to the passage of the amnesty law, there is today no substantial legal recourse for victims to claim redress for harms done. There have been at least two government-sponsored commissions of inquiry, but none of the reports has been made public. Demands for reparation for victims are joined by demands for fact-finding missions, truth-telling, national discussions aimed at reconciliation and an official apology.

In 1997, the CCJPZ and the Legal Resources Foundation (LRC) published a widely-circulated book,¹²⁸ *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands, 1980 – 1988*,¹²⁹ which details severe human rights violations resulting from the violent clashes between Government forces and "dissidents", occurring over a seven-year period in the Matabeleland and Midlands Provinces. Their report concludes that over 7,000 people were victimised during that time; five in ten adults (over the age of 18) were victims of organized violence. Approximately 1,400 died, 350 went missing, 680 lost property, 366 were tortured, 1,500 assaulted, 2,700 wrongfully detained, and 159 raped.¹³⁰ The CCJPZ and the LRC also conclude that both factions targeted civilians, but it was primarily the infamous, North Korean trained 5th Brigade employed by the Government that perpetrated by far the most human rights violations.¹³¹

The War Victims Compensation Act

Zimbabwe's attempts at compensating those injured in the War of Liberation are evidenced by the War Victims Compensation Act (1980). The Act was enacted specifically to "provide the payment of compensation in respect of injuries or death of persons caused by the war".¹³² The War Victims Compensation Act repealed the Victims of Terrorism (Compensation) Act [Chapter 340] and the Indemnity and Compensation Act (1975), both set up by the Smith government to provide complete immunity from criminal and civil liability for acts done "in good faith" to suppress "terrorism" or to maintain public order. However, the War Victims Act did coincide with the passage of the Amnesty (General Pardon) Act [Chapter 9:03], which exempted from criminal liability acts done in good faith before March 1980 by persons fighting on both sides during the liberation war. Thus it is accepted that while compensation was to be provided on a limited basis, justice (as prosecution for harms done)

would be eluded.

The War Victims Act is considered a "political compromise" emerging from the Lancaster House agreement (1979) to end hostilities between Smith's Rhodesia and Mugabe's Zimbabwe. The development of this Act should be considered in the context of the political compromises needed for a peaceful settlement of the war. Mugabe's "policy of reconciliation" between whites and blacks was necessary for ensuring both political stability and economic growth. Though the new Constitution paved the way for majority rule, it granted white Zimbabweans 20 seats out of 100 in the first parliament and, "even more important, a strict and detailed protection of commercial farmland".¹³³ The successor government assumed responsibility for compensation of war-time injuries and let perpetrators go unpunished, since holding the Rhodesian Front forces accountable would likely have destabilised the peace process. Observers note further that Zimbabwe's post-colonial policy of reconciliation was imposed from the top down by the political and economic elite. "Victims and survivors were not consulted, but rather watched powerlessly as many perpetrators of human rights violations went unpunished and even took on key roles with the Army."¹³⁴

The War Victims Compensation Act was "whacked together" in about three days, mostly by lawyers. Consequently, the drafters used similar standards for compensation as laid out already in Zimbabwe's Workmen's Compensation Act. Compensation was to be provided for physical disability or death, to civilians and soldiers; psychological trauma was not mentioned, nor was torture.¹³⁵ Reeler identifies numerous shortcomings. While "commendable", the Act is a "seriously flawed", exclusive and antiquated attempt at compensation. It has also been "so open to corruption" that the legitimate beneficiaries did not benefit.¹³⁶ The main complaints were as follows:¹³⁷

- Though the Act appears inclusive because it provides war veterans and civilians eligibility for compensation, it is exclusive because it defines the war (1972–1980) too narrowly. The war actually began in 1962, and political violence (as shown above) occurred well past 1980. Victims who suffered in the Midlands and Matabeleland uprisings are excluded.
- The assessment of injury sustained and determining factors for compensation are inadequate: firstly, there is no guideline for an assessment of psychological sequelae;¹³⁸ secondly, a claimant's compensation is determined by the degree of disability resulting from the injury with "degrees of disability" being ascribed to various injuries (loss of foot = 25% disability), thus not using the UN Commission on Compensation's categorisation system whereby compensation is based on type of human rights violation experienced.
- Compensation does not include any rehabilitative measures, aside from reimbursement of certain health care services and transportation.
- The procedure to apply for compensation is broad, vague, unstructured, gives the Commissioner total discretion - "basically the Act does not describe 'the prescribed manner'".¹³⁹ The procedure was modified in 1997 to curtail fraudulent claims, but the current system is unfair since it requires claimants to go to a government doctor.

The doctor determines the amount of compensation, which "inappropriately gives the medical doctor power to make legal decision of compensation".¹⁴⁰

- Corruption has been rampant, especially in the mid-1990s, at a time when many people came forward to make claims. Corruption is as a result of discrimination in favour of some of the prominent war veterans. As one of the less prominent war veterans said:

"A few people got compensation, but what happened to the rest? I believe the rest did not receive their money because the money was looted. The people who were in the forefront ... like the late Hunzvi for instance, he was in the forefront because he was a leader of the war veterans association, they looted; Andrew Ndlovu, he looted, swindled money and swindled property ...".¹⁴¹

Another victim said:

"In 1994 or 1995 ... that fund was budgeted at Z\$480 million and the war veterans stole it, Z\$480m!"

In 1996, veterans of the liberation struggle made "extortionist" claims to the Government. In turn, Mugabe awarded them a lump sum of Z\$50,000, a monthly tax-free pension of Z\$2000 (subject to ongoing review – by now Z\$25000) and health and education allowances.¹⁴² It is estimated that more than 60,000 claimants benefited from this exercise. Government had to pay out an unbudgeted Z\$5.3 billion as a consequence to these demands.¹⁴³

- "The Act has not been well-advertised, so that many ordinary people didn't realise that it should have catered for them ..."¹⁴⁴ The lack of publicity contributes to why there was a surge in claims for compensation by war veterans in the mid-1990s. When "word got out" about the War Victims Act, claims increased. As Ndlovu comments: "There was no publicity to let people know they are entitled to such a benefit. People remained ignorant".¹⁴⁵
- The Act is considered merely a social welfare programme for people who had been injured, not a reparation scheme in the sense of making the perpetrators compensate the victims.¹⁴⁶
- As a welfare programme, it is limited since it did not provide for a specific fund to be set up, from which compensation would be paid. Rather, the funds were to come out of the State coffers. Some have called for a Fund which would "take action" against the perpetrators, then allocate money recovered to victims in accordance with a well-thought through scheme.¹⁴⁷
- The moral credibility of the Act has been "completely destroyed by the organised violence and torture of the 1980s, and the State's total inability to take that on board. It is an Act that was applied in 1980–83; by 1983 you can see that any notion that

they had of victims being an important issue was gone from State's thinking."¹⁴⁸

Individual versus collective reparation

The feeling in Zimbabwe now is that individual compensation for every victim is an impossible task.¹⁴⁹ Government cannot afford to compensate all primary and secondary victims individually. Abuse has been too widespread and dates back too far, and the sheer volume of victims makes the pursuit of compensation/civil damages through the courts impossible.

The director of Zimrights, an organisation set up to promote human rights in Zimbabwe, comments on the need for collective reparation:

In terms of reparations, Zimrights had thought that reparation can never be individual, because the statistics are not up to date now, it's almost twenty years but you would find that where the 5th brigade did more harm and then it would be compensated as community development, dip tanks, schools, universities, technology, agriculture and so forth. You find that certain areas are underdeveloped because that six year period meant a lot to the people, there was no proper development, up to now there are no good roads from here to Nkayi.¹⁵⁰

Reeler suggests that not opting for "reparation" (here defined by him as composed of justice, rehabilitation and compensation) has had "pernicious consequences". The legacy of choosing "reconciliation" over "reparation" after the War of Liberation created a contemporary Zimbabwean society where justice has been avoided, corruption has been institutionalised and apathy based on fear exists among the population. By "reconciliation", Reeler means, "forgiving the torturers and murderers". He writes further: "We needed to repair ourselves in 1980 but chose reconciliation rather than reparation. It was convenient to do so, and we sweetened the blow with a poor attempt at compensation."¹⁵¹ Others have suggested the "white heirs of the Rhodesian regime and the black leaders preferred to impose a shallow, cheap form of reconciliation without historic, restorative or economic justice".¹⁵² Mugabe is further blamed for failing to promote "inter-black reconciliation" across ethnic, regional and political lines. Ethnic and political conflict between the majority Shona and minority Ndebele dates back at least to 1966, while the liberation struggle witnessed political strife between political groups (i.e., ZANU versus ZAPU) based on regional and ethnic lines, with ZANU garnering support in Shona-dominated areas and ZAPU in the North and South Matabeleland (mainly Ndebele speaking areas).¹⁵³

A "failed" reconciliation has delayed the realisation of a stable democracy. It is argued: "A stable democracy in Zimbabwe will remain a distant dream as long as the sad legacy of violence and discrimination against an ethnic/regional minority is not dealt with in a genuine and thorough process of reconciliation".¹⁵⁴

Namibia

Namibian independence from South Africa in March 1990 was widely celebrated in the

Southern African region and throughout the world. Change came as a result of lengthy and complicated diplomatic negotiations dominated by the strategic interests of the two power blocs as the Cold War was fading.¹⁵⁵ But it was the freedom from a century of oppressive and racist colonial rule that fostered hope among many observers. For Melber, "ending such an intolerable anachronism of systematic violation against human rights towards the end of the twentieth century was a long overdue correction of moral injustice and in itself an achievement that marked historic progress".¹⁵⁶

For generations, Namibians were victims of internationally condemned human rights abuses; first it was at the hands of Germans (1888–1914) and then South Africa (1914–1990). Perpetrators of human rights violations were also to be found among the liberators, the South West Africa People's Organisation (SWAPO).

The demand for reparations to victims of human rights abuses in Namibia is thus multi-faceted. On one level, there are civil society organisations such as Breaking the Wall of Silence Movement (BWS), the [National Society for Human Rights](#) (NSHR) and the Legal Assistance Centre (LAC) urging the current government, which has been under SWAPO leadership since independence, to take full responsibility for human rights abuses by SWAPO in Zambia, Tanzania, Angola and elsewhere in the late 1970s through the 1980s. On a second level, in addition to pursuing an official reparation programme from the government (as well as the establishment of a truth and reconciliation commission), these organisations have threatened lawsuits against the governments of Tanzania and Zambia. It is alleged these governments, in aiding SWAPO, "committed serious internationally prohibited human rights abuses against SWAPO dissidents in the late sixties through to the late eighties".¹⁵⁷ These violations include arbitrary arrest and detention, torture, and summary executions.

Yet a third level on which demands for reparations are occurring concerns gross violations of human rights on the Herero and Nama people caused by German colonialists at the turn of the 20th century. The Herero Reparation Group (HRG) and the Hosea Kutako Foundation (HKF) have initiated a multi-billion dollar court case in the United States on behalf of the Herero community. Between 1907 and 1915, Germans were responsible for wide-scale political repression and violation of basic human rights.¹⁵⁸ More than 100,000 Africans (mostly Hereros and Namas) were killed between 1904 and 1908, after the Germans issued an extermination order against the African resistors. "The genocidal campaigns against the Herero and Nama", writes Cooper, "[were] among the most inhumane actions of the colonial era".¹⁵⁹

Questioning the culpability of former colonial powers is also the pretext for demands for reparation (i.e., compensation) from South Africa, which assumed control of Namibia (then South West Africa) after the defeat of Germany in World War I. By the 1950s, South West Africa, as an extension of apartheid South Africa, was a *de facto* South African colony. One consequence of this was that about sixty political prisoners from South West Africa were imprisoned on Robben Island. One such person is the current Namibian Prisons Minister, Andimba Toivo Ya Toivo. He served 16 years on the island prison. Ya Toivo has recently accused the ANC-led South African government of "betraying" their former comrades from Namibia by not including them in the provision of monies to former political prisoners. He is demanding a share of money and services raised by the Makana Trust, a Trust set-up in

1995 by President Mandela to provide pensions for former political prisoners. In a letter to fellow Robben Island inmate and founder of the Makana Trust, Ahmed Kathrada, Ya Toivo wrote: "Now our South African brothers in the struggle, our comrades, seem to have forgotten that we were a family that stood and suffered together in the same trenches."¹⁶⁰

The Namibian government prefers to keep the subject of reparations and truth commissions muted. The government is "unwilling to participate" in a reparation programme and there is "nothing in the pipeline that relates to it", said an official in the Ministry of Justice.¹⁶¹ Why? The answer lies partly at the heart of this comment: "It is better for the Government not to initiate any such programme or policy for reparation because fingers will show in their direction."¹⁶² The following rhetorical question also offers clues into government unwillingness: "How can you initiate such programmes or even a policy if you know very well that the first people who will knock at your door are those people who were victims at your own hands?"¹⁶³ While, on the one hand, the government appears to be in a state of denial, essentially adopting a forget and move on approach to the politics of memory and reparation, it is, on the other hand, influenced by certain political and social constraints that complicate the process.

The nature of the political transition was such that SWAPO favoured "reconciliation" over prosecution. However, many believe that reconciliation through denial will not heal the wounds caused by war. As Dicker wrote: "For victims, their families and friends, it is not possible to simply forget".¹⁶⁴ He quotes a victim as asking: "How can there be reconciliation when so many disappeared? It is necessary to follow up against the South Africans with claims for property and crops destroyed. To heal, something has to be done in the form of compensation. But nothing has been done."¹⁶⁵ Victims do not buy the argument that human rights abuses were inevitable or justified consequences of the war. As this victim argued:

In response to the argument that the South Africans did it too, we cannot equate South African colonial rule with SWAPO. The organisation has always been seen as being different from the enemy. It's ridiculous to equate ourselves with the South Africans. We've never been the same. While the South Africans have tortured our people ... SWAPO has tortured its own people. Many people will say that it was the war and that these things happen during a war. My view is that no amount of wrongs ever make a right. You can't use the war as an excuse to cover things over, to hide them under the carpet.¹⁶⁶

The hope among civil society organisations is that a successful ruling in the Herero case will have an impact on the push for reparation programmes for victims of SWAPO abuses. A [National Society for Human Rights](#) press release opines: "The government does not have any policy on reparation and when [the Herero] case succeeds it will force them to go in that direction".¹⁶⁷ The case may indeed provoke more lawsuits, either against the Namibian government, the South African government and businesses, and may reinforce the threat of lawsuits against other African governments that aided SWAPO. Such lawsuits may, in turn, provoke government action, though considerable doubt will persist since, as Parlevliet predicts: "With regard to the future, it is clear that as long as SWAPO remains in control of the government past abuses will not be addressed. Only if a transfer of political power to

the opposition were to occur will there be a possibility of tackling the legacy of the past".
[168](#)

The Namibian transition was a "necessary prelude to changes in South Africa".[169](#) Therefore, as Melber notes: "Namibia was the laboratory for testing the scope of controlled change for South Africa too".[170](#) As such, all eyes of the West and of South Africa were on SWAPO, which won a majority of the 72 seats in the constituent assembly in the 1989 elections. Embittered by the negotiation process, but incredibly eager to consolidate power in Independent Namibia, SWAPO appeased international pressure by adopting many of the recommendations put forth in the negotiations. Scholars remark that SWAPO was diplomatically astute, choosing – in the words of Dobell – "to pursue a diplomatic strategy with military underpinnings rather than one based primarily on internal struggle". If nationalism was SWAPO's primary ideology, independence was its primary objective. What action SWAPO took can be explained as a utilitarian strategy: the course it followed was the most politically prudent.

One consequence of this strategy was one of the most liberal constitutions ever written. Another consequence was that the new government adopted a policy of "national reconciliation". The new Constitution was "internationally hailed as an exemplary document for the promotion and protection of human rights"[171](#) and contains guarantees for all basic human rights, including the right to redress and or effective remedy".[172](#) Article 23 of the Constitution grants Parliament the right to enact legislation "providing indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices".[173](#) Here reference is deliberately made to apartheid.

Encompassed in the policy of national reconciliation was an adherence to UN Security Council Resolution 385 (also known as the Western Settlement Plan), requiring the release of political prisoners and a "full and unqualified, i.e., blanket, amnesty for all crimes committed for "political reasons" by SWAPO and South African security forces."[174](#) However, Namibia's policy of national reconciliation deliberately avoided dealing with past human rights violations, focusing instead "on what was postulated as building a unified nation".[175](#) Beyond the unification rhetoric lay the reality that neither SWAPO nor South Africa wanted the past history of human rights abuses investigated.

Even though both SWAPO and the South Africans released political prisoners, neither side accounted for those who disappeared or published information on the total number arrested and detained over the 23-year war. Consequently, vital details, including the number of detainees and names of disappeared, remain largely unknown.[176](#) During the election campaign for the Constituent Assembly in late 1989, parties opposed to SWAPO seized upon damning testimony against SWAPO by recently freed prisoners, in order to initiate discussions about SWAPO's human rights abuses. As Dicker noted: "Their testimony was highly damaging to SWAPO, and it became politically explosive [They] displayed their physical scars at campaign rallies and described their treatment in the SWAPO camps".[177](#) The Parents' Committee of Namibia (PCN), a human rights pressure group set up to campaign for the release and repatriation of SWAPO-held political prisoners, also pressured SWAPO to account for all those who disappeared while in their camps.[178](#) SWAPO

responded through Mr. Theo-Ben Guirab, its Foreign Secretary, who "publicly regretted the brutal treatment, adding that abusive interrogators would be held responsible for their actions (a promise the government has failed to honour), and that if the matter was not properly dealt with, the wounds of war could never heal".¹⁷⁹ Requests by the political opposition for an inquiry into human rights abuses have so far been rejected.¹⁸⁰

Human rights abuses

While the abuses of both colonial powers, Germany and South Africa, are well documented (see above), abuses by SWAPO have been the focus of more recent calls for investigation. SWAPO is accused of initiating a reign of terror against its own members, as well as against innocent Namibians, beginning as early as the mid-1960s and escalating into "wholesale" abduction and arrest in the mid-1980s.¹⁸¹ Victims, NGO groups and observers generally allude to three phases of repression and violence by SWAPO: the Kongwa Crisis in the 1960s, the Shipanga Crisis in the mid-1970s, and the SWAPO Spy-Drama, 1983–1985.¹⁸² The third of these phases is the focus of the claims for reparations by the Breaking the Wall of Silence (BWS) Movement.

Current political climate and push for reparations

There is a strong feeling that the Namibian government squandered opportunities for true reconciliation after independence. Since there has been constant denial and a failure to apologise for wrongdoing from both SWAPO and the South Africans, reconciliation is considered an "undeveloped concept", according to Ben Ulenga.¹⁸³ Notwithstanding, there have been government-sponsored initiatives since Independence aimed at reintegrating soldiers, at providing for war veterans and for war orphans, and at honouring the liberation struggle.

In 1999, the Government passed the War Veterans Subvention Act (Act 16 of 1999) to provide financial compensation, as determined by the Minister of Health and Social Services, to "war veterans" and "dependents of deceased war veterans". Human rights organisations suggest ironically that "clearly" the term war veteran does not apply to "persons, or dependants of persons, who have been detained by SWAPO in exile on accusations that they were spies for apartheid SA".¹⁸⁴ Also, since May 1996 the Government has given roughly N\$330/m to a total of 1,134 orphaned children whose parents died during the liberation struggle, while the Ministry of Lands, Resettlement and Rehabilitation has "constructed and allocated altogether 160 houses to some beneficiaries in the various regions of the country".¹⁸⁵

Attempts at honouring the liberation struggle and those who fought within it, through memorials and holidays such as Independence Day (March 21), Heroes Day (August 26) or Cassinga Day (May 4), are usually no more than political rallies aimed at glorifying SWAPO as the only true liberation party in Namibia. These events are therefore met with scepticism by human rights organisations and are considered to be politically polarising.¹⁸⁶ Together, these programmes amount to a commendable reconstruction programme, but they do not constitute "reparation" as defined earlier in this study.

The government's failure to analyse the past is based not only on the fear that liability may undermine political power, but also on paranoia that "truth-telling" would result in the return of civil war.¹⁸⁷ Exposing old wounds will undermine "reconciliation", according to the government. The government responded with vociferous admonition to the 1996 publication of the Rev. Siegfried Gorth's *Namibia: The Wall of Silence*, which details SWAPO human rights abuses. President Sam Nujoma condemned it as "false history" while other SWAPO leaders "called SWAPO supporters to battle stations, declaring war on the 'unpatriotic elements' and 'foreign remnants of fascism' threatening national reconciliation by bringing the detainee issue into the open".¹⁸⁸

By resisting the temptation to insist that crimes committed by the apartheid regime be "brought to light", SWAPO conveniently relegates its own dismal human rights record to the background.¹⁸⁹ This draws significant criticism and critical remarks about "victor's justice", by human rights organisations. Note this comment: "In a sense, SWAPO behaves in a manner the Allied Powers in WWII behaved after the defeat of Germany and Japan. That is to say, SWAPO's gross violations of human rights are downplayed, categorically denied or just blamed on apartheid SA."¹⁹⁰

Although there are provisions in the Constitution for claiming redress for human rights violations, taking the government to court is not easy. Although the judiciary and the legal profession are "still independent and human rights defenders continue to actively operate", they have "since independence been under increasing pressure from the [government] and/or its supporters".¹⁹¹ "Political maturity in Namibia is lacking and for victims to demand reparations as individuals (rather than as a group) is like a suicide attempt".¹⁹²

The push for reparations is complicated by several factors, namely:

- Namibia's restrictive political and judicial culture caused primarily by an ethnically dominant, one-party political system;
- SWAPO's "arbitrary" policy of national reconciliation, which included blanket amnesty;
- SWAPO's unwillingness to participate in a truth commission;
- Ethnically charged politics and a culture of ethnic discrimination; and,
- Relative political weakness of individual victims and civil society; and the culpability of colonial powers.

Critics also blame the government for not "recognising the competence" of the numerous international treaties and covenants that give victims of human rights abuses recourse to claims for redress.¹⁹³ We might also consider here logistical constraints, such as inability to prove wrongdoing, identify victims and perpetrators, and the fact that detentions happened more than fifteen years ago.¹⁹⁴

Civil society organisations have applied pressure on the government to ratifying and uphold international treaties,¹⁹⁵ to uphold the rule of law, promote a democratic culture, to identify and develop appropriate psychological support for war victims,¹⁹⁶ to expose the detainee and missing persons issue,¹⁹⁷ and to provide legal aid for the protection of human rights and the public interest.¹⁹⁸ However, there appears to be a lack of cohesion among victim

groups. Herero's Reparation Group advocates for Hereros, BWS advocates for ex-detainees, while the Socio-Economic Integration Programme for Ex-combatants Company (SIPE) promotes the reintegration of ex-combatants. There also appears to be a dearth of organisations that advocate for victims other than SWAPO ex-detainees, such as the San ethnic minority who continue to suffer discrimination, members of the former South West African Territorial Force (SWATF), or civilian victims from the Caprivi and Rundu areas affected by political strife in the late 1990s. As Dicker noted, the politicisation of the ex-detainee issue during the first election overshadowed legitimate claims by other groups. In other words, the ex-detainee issue has monopolised human rights discussions in post-Independent Namibia.¹⁹⁹

Reparation as acknowledgement

While compensation as reparation is certainly important in this case, interviewees indicate a broader view of reparations. Comments focus on reparation as psychological support, counselling, and services such as education and employment. In addition, aside from tangible benefits and services, victims want an apology: "We do not want to be paid money, if the SWAPO government can just apologise that will make a big difference."²⁰⁰ Another concern is memorialisation. Ex-detainees want acknowledgement of their suffering embedded in the national memory; there have also been demands for a truth and reconciliation commission since 1994. The leading advocate of a TRC, the NSHR, "firmly believes that a TRC creates a best opportunity for truth telling, acknowledgement of guilt, reparations and guarantees of non-repetition leading to genuine national reconciliation with justice".²⁰¹

Acknowledging wrongdoing and providing reparation will satisfy victims' thirst for justice. Reparation, as understood in the Namibian context, is needed not only to promote peace, justice, reconciliation and a human rights culture, but also to provide for suffering victims. Victims continue to suffer because there is an absence of effective mechanisms for victims to receive counselling and other rehabilitative services; and are left with an ongoing struggle with unresolved emotions and feelings.²⁰²

It is unrealistic to expect that people will easily forget the past and go on. It is not easy for these guys who were detained, tortured and called spies. They went through hell and have lost the most valuable gift – that is your identity – these guys have lost themselves in the whole process. Some are lucky to have strong family support structures, others are not lucky and they struggle to find their places in society.

Mozambique

For nearly 30 years, Mozambicans endured the destructive effects of war. Today Mozambique is one of the poorest countries in Africa, but enjoys relative political stability, democracy and, most importantly, peace. After independence from the Portuguese, the FRELIMO government sought to strengthen what one historian noted was a "markedly fragile entity" with heavy-handed, autocratic rule. Attempts to consolidate power and legitimacy created significant grievances among many Mozambicans, especially in the rural areas.²⁰³ A brutal, destabilising civil war ensued, pitting FRELIMO against RENAMO

guerrilla soldiers, with regional forces such as South Africa fomenting and exacerbating the conflict. With the war at a stalemate in the early 1990s, the conflict was ripe for resolution. A "General Peace Agreement", signed in Rome in 1992, guided Mozambique's transition. Most of the government-led (and UN-supported) "reconstruction" efforts are geared toward the reintegration of ex-combatants and the resettlement of refugees, although there are notable efforts underway to "heal" and "reconcile" ordinary citizens who bore the brunt of the conflict. These efforts are led largely by the Catholic Church and are concentrated at the grassroots level. To date, there has been no official policy for "reparation" to victims who suffered human rights violations as a result of political violence.

Nature and toll of the political violence

The Portuguese were ruthless colonisers. Liberation did not come easily, but after a violent nine-year struggle, Mozambique claimed independence in 1975. Six years later, a civil war broke out between Mozambican National Resistance (RENAMO) guerrilla soldiers and the forces of the Mozambique Liberation Front (FRELIMO)-led government. The war is well documented as "one of the most brutal holocausts against the human condition since the Second World War".²⁰⁴ It caused horrible suffering among individual Mozambicans and in society in general. Summerfield's depiction of the effects is staggering:

As many as 150,000 rural peasants [were] murdered in cold blood, 3 million others displaced, 200,000 children orphaned or separated from their parents, and the social fabric of large areas of the country left in tatters. Systematic use was made of public torture, often involving grotesque mutilations and execution. Family members were forced to kill each other in turn, slowly, and usually for no clear reason. Women were made to kill, maim or even eat their own infants, with witnesses left to tell the tale.²⁰⁵

In addition, "the country had more than 5,500,000 refugees and internally displaced people, a lot of villages were looted and destroyed, and almost 1,000,000 land mines planted countrywide".²⁰⁶ Outside interventions complicated and exacerbated the war. Adopting a Marxist ideology, FRELIMO ruled Mozambique in a heavy-hand manner, disregarding opposition political groups, supplanting traditional authorities in rural areas, and "re-educating" entire population groups (e.g., Jehovah's Witnesses).²⁰⁷ Fearing an upsurge in communist governance as well as other "liberation" struggles (i.e. Mugabe's in Rhodesia, ANC in South Africa) in Southern Africa, Rhodesia and later apartheid South Africa supported the RENAMO guerrillas. When the civil war became a playground of Cold War and regional animosities, "the situation changed dramatically - RENAMO's fire power was increased and from a simple destabilisation process, the country started to experience a real civil war".²⁰⁸ While both sides fought with callous disregard for the civilian population, RENAMO is blamed for the worst human rights abuses of the war.²⁰⁹

Ordinary citizens as well as ex-combatants continue to suffer psychologically and physically. The feeling is that everyone suffered: "Each person suffered differently but there is no doubt that all [of us] suffered".²¹⁰ The Mozambican government is economically depressed and unable to meet gargantuan social and economic needs. However, sentiment persists among ordinary Mozambicans that not nearly enough was done for ordinary victims after the 1992 ceasefire. Governmental focus in post-war Mozambique has been on reintegration of soldiers and on resettlement of the displaced, not on reparation to victims

who suffered from the political violence.

Although a communiqué agreed upon by the two parties reads, "The achievement of peace, democracy, and national unity based on national reconciliation is the greatest aspiration and desire of the entire Mozambican people", the word "reconciliation" is not part of the General Peace Agreement. Zunguza suggests that the two parties involved in the negotiations "refused" to talk about victimisation. "Under the law, no one was identified as a 'victim' and therefore no measures were put in place to deal with the victims."²¹¹ Furthermore, there was no talk at the negotiation table about amnesty, prosecutions or civil claims made by the parties. "According [to] the GPA, the Mozambican conflict had no victims who could be identified and be entitled to any kind of reparation or compensation and consequently there were no perpetrators who could be prosecuted or be eligible for amnesty."²¹²

The Peace Agreement also provided nothing directly for "victims" who were non-combatants. The possible exception is Protocol III (IV), which concerns the resettlement of refugees and internally displaced persons, and specifically "refugees' and displaced persons' social reintegration, preferably in their original places of residence". These persons "shall be guaranteed restitution of property owned by them".²¹³ However, it is unclear what measures have been taken to uphold this promise.

With respect to ordinary victims, the only other agreement to emerge from the peace talks is the *Declaration on the Guiding Principles for Humanitarian Assistance*. Essentially, this document outlines the responsibility of government to do "everything possible" to provide the necessary humanitarian assistance to each "affected" Mozambican. However, "humanitarian assistance" is not reparation. Since there are no provisions with regard to the specific violations committed during the war, a right to redress for injuries suffered is completely ignored.

There is no *official* policy in place to provide compensation or support services to victims of the civil war. Interviewees see a need for the state to initiate an official policy of "reparation" for the following reasons: 1) The state has responsibility for not being able to protect its citizens; 2) Recognition that victims are suffering; 3) An opportunity for government to get closer to the communities, and 4) People are poor and hungry and feel that the war is to blame for their situation. Alcinda Honwana emphasised that the "overwhelming urge for peace and reconciliation in Mozambique cannot be fulfilled unless the individual traumas and communal rifts stemming from the war are confronted and addressed".²¹⁴

Reparation in the Mozambican context does not only mean monetary compensation. In fact, some interviewees eschewed the concept of compensation, as it alone is not a healing mechanism. Interviewees point to difficulty in the government making monetary payments, "given the economic reality of the country". They talk about the prevailing need for psychological and moral support: "Look, all that is directed to comfort, it helps, but not in the sense of reward because those people the way they suffered hardly somebody can manage to heal the wounds that they bring to their body."²¹⁵ The word "comfort" arises often. "What [would] help the war victims is moral comfort and psychological support so that they can forget various traumas", said Muchanga.²¹⁶ Also, "facilitation" should be

considered rather than "reparation" because people need help in "regaining time" lost during the war. Another need is for counselling and education; in other words, "a process where everyone must learn and listen [to] others what do they think about him/her".²¹⁷

Constraining factors in the Mozambican context

There are numerous factors that constrain (and restrict) victim groups from pursuing reparation for victims of past human rights abuses from the government. These can be broadly understood as:

- Support of Donors? Foreign aid contributes 60% to the national budget; and the country is heavily reliant on donor funds for humanitarian assistance. Can donors be expected to contribute to a Reparations Fund in addition to what they are already doing?
- Where is justice? Considering that former guerrilla soldiers operate today in the mainstream of parliamentary politics, prosecuting ex-combatants or leaders would be very tricky and one doubts that there is the political will to do this. Parliament is almost equally divided between FRELIMO (still in the majority) and RENAMO.
- Constitutionality of Retroactive Justice? The 1990 Constitution inscribes individual right to "life" and to "physical integrity and may not be subjected to torture or to cruel or inhuman treatment" (Article 70) and states that "the state shall be liable for damages caused by illegal acts of its agents ..." (Article 97). However, the Constitution also states that "individual freedoms and guarantees may only be temporarily limited or suspended in the event of declaration of a state of war, a state of siege or a state of emergency" (Article 106). Victims of political violence and torture would therefore have limited rights to redress for acts committed prior to 1990 during a time of war.
- There is near-absolute reliance on civil society for advocating and implementing "reparation" for victims. For example, Honwana "argues forcefully that recognising the costs and limitations of the state and internationally-sponsored healing initiatives, rehabilitating Mozambique's ravaged social fabric will depend, to a large degree, on cultural and resourcefulness at the local level".²¹⁸

Conclusion

It is safe to suggest that none of the cases presents a completely "successful" reparation programme, insofar as there can be one. Part of the problem is that politicians prove to be generally averse to the idea of reparation programmes unless there are individual (or collective) political and economic gains to be made from pushing the reparation issue. If not completely averse to the idea, they appear hesitant and apprehensive. Brooks' assertion that "the success of any redress movement has depended more on the degree of pressure (public or private) – that is, politics – than with matters of logic, justice or culture",²¹⁹ holds great relevance in these countries. The gulf between civil society organisations (along with individual victims) and policy makers also impedes the development of reparations programmes.

These cases also demonstrate a correlation between official reparation programmes and the desired aims of transitional justice (i.e., reconciliation and restoring the dignity of the

victims). Lest there be any doubt, reparation is definitely considered an essential item "on the agenda". Victims want "reparation", though not necessarily in the form of compensation or restitution, and not merely for individual gain. A holistic formulation of "reparation" is preferred. Measures aimed at rehabilitation, symbolic memorialisation and collective healing figure prominently in the discourse on reparations in these five countries. Acknowledgement is of paramount importance in terms of reparation to victims of human rights abuses, as evidenced in Zimbabwe, Namibia, Malawi and Mozambique. Hamber's belief that "reparations and truth recovery must be linked"²²⁰ and Vandeginste's contention that reparation "should be solidly integrated into a wider approach to truth, justice and reconciliation"²²¹ are affirmed in the case studies. In the southern African context, reparation is indeed an essential tool in the reconciliation and transformation process.

There is a correlation between the engagement of civil society and victim groups and the development of reparation programmes or, at the very least, the presence of the issue on the agenda. We can also conclude, albeit liberally, that the greater the involvement of civil society, the more effective – or at least holistic – the reparation programme. This element would appear to distinguish South Africa's end-result from Zimbabwe's, as civil society organisations were granted a significantly greater role in the South African transitional process than in Zimbabwe's. The TRC relied heavily on statements from civil society organisations in their development of the RRC's recommendations. Civil society organisations continue to engage the South African government, whereas in Zimbabwe these organisations operate in fear of the government.

However, civil society does not have an automatic say in the process nor do they necessarily need to be involved in the process for a reparation programme to be developed. This is evidenced in Malawi. The Political Affairs Committee of the Catholic Churches influenced the process, but the National Compensation Tribunal originated from a desire by opposition politicians that there be some level of compensation to returnees. Government action was soon forthcoming, after a spate of lawsuits that resulted in payment of substantial damages and foreshadowed economic and political strain on the successor regime. As Cammack suggested, mechanisms to deal with the past such as a history project or a truth commission never saw the light of day, "mostly because no political party, donor group or government agency was willing to promote or fund the proposal".²²² Greater civil society involvement in future processes can ensure that "reparation" becomes part of the discussion. Furthermore, the form that "reparation" takes, be it compensation, symbolic measures or rehabilitation, will more accurately reflect the desires of the individuals whose suffering must be redressed if civil society organisations and victims support groups play an active role in the process. When the political transition unfolded, victims and their families were left to suffer while the politically connected enjoyed the fruits of the negotiations. It is no wonder that civil society and victim support groups are essential in pushing the reparation issue given the relative weakness of this sector of the population.

Do programmes aimed at "reparation" (i.e. compensation) assume greater prominence in the transition in cases where potential beneficiaries are among the political elite? While there are some instances where financial self-interest seems to have played some role, this seems to be more apparent in the allocation of resources for a fund (in the early stages of the Malawian National Compensation Tribunal), and the way in which these resources are allocated (as evidenced by attempts by government members to steer payments to particular

individuals). Concerns are not just about allocating reparations payments simply to government elites, but also about using these payments to pacify or garner support from particular political pressure groups (e.g. the veterans in Zimbabwe).

In South Africa, the contrary seems to be true. Many members of the new political elites may well benefit from a reparations programme, they have not championed substantial individual grants. While the context would probably not allow a manipulation of the process to benefit elites or certain political groups, a cynical view of reparations as a form of victors' restorative justice is not supported. Marginalised victims still view the new political elite as living a life of luxury while most victims have not shared in the fruits of liberation.

Rather than examining the question of reparations versus no reparations, the role of political elites may be more determining in the way that victims are defined and classified. South Africa opted for a narrow definition of victim of gross human rights violations (thus reducing state financial obligations), whereas in Malawi those eligible to make a claim to the NCT fell into much broader groupings, i.e., individuals "who were subjected to wrongful imprisonment, forced exile, personal injury, lost property or business, lost education opportunities and/or employment benefits. Also eligible are persons who were born in exile or detention." This may explain more adequately the reason why members of the political elite rushed to the NCT upon return to Malawi.

The nature of the political transition and the events that unfold during the process have a significant impact on the decision to develop and implement a reparation programme. Zalaquett's position²²³ that reconciling ethical requirements with political constraints is a difficult reality in any transition rings true in these cases. Where peace is the ultimate goal, justice often takes a backseat. Though each case is slightly different, the nature of each transition can be broadly characterised by Huntington's transplacement paradigm.²²⁴ In a transplacement, negotiations between the current regime and the opposition result in a new political dispensation usually involving components of each side. Compromises and pragmatic ways to cooperate are inevitable.²²⁵

Malawi changed from a totalitarian dictatorship to a multi-party democracy after a two-year negotiation that culminated in an election in which a former member of the authoritarian regime assumed power. Members of the governing elite wanted to avoid truth recovery and prosecution, while opposition parties, comprised mostly of exiles, were keen for compensation programmes. It was clear some programme aimed at compensation would be necessary to placate needy victims, to offset court cases, and appease political opposition. But the development of that programme would be influenced heavily (or undermined) by the political reality that assuaging pressure and responsibility of MCP leaders and members of the former regime was vital for a stable transition.

In Zimbabwe, the quest for independence from years of British rule, and political power over opposition, overrode ethical requirements to institute comprehensive reparation programmes for secondary war victims. The War Victims Act is considered a "political compromise" emerging from the Lancaster House Agreement (1979) to end hostilities between Smith's Rhodesia and Mugabe's Zimbabwe. Moreover, the form and function of the War Victims Act is clearly limited because of the hasty work of lawyers and politicians

eager for quick settlement.

The negotiation process in Namibia was not dissimilar to that in Zimbabwe. As in Zimbabwe, a collection of interested parties (including foreign countries and the United Nations) interested in the ramifications for the region rather than in the consequences for the population, brokered Namibian independence. As Melber noted, it was a "controlled" change, managed from outside as a potential litmus test for a post-apartheid South Africa. Like Zimbabwe, independent-Namibia was initially a government of national unity and like Zimbabwe, a general amnesty was granted for crimes committed "for political reasons" to Namibian political and military leaders as well as to members of the South African security forces. Like ZANU, SWAPO pursued a policy of national reconciliation aimed at building a "unified country" by putting the past behind. And finally, like ZANU, SWAPO has refused to officially acknowledge wrongdoing during the struggle. Yet Namibia did not institute any compensation programme whereas Zimbabwe did. A rudimentary explanation is that, in the Namibian case as opposed to the case of Zimbabwe, there were not direct negotiations between SWAPO and South Africa.

South Africa's reparation debate was also born out of political compromises; the reparation policies were shaped by philosophical and political concerns. Though the discourse surrounding reparations in South Africa seems more genuine (that is, ethically motivated) than in any of the other cases, there is a strong feeling that reparations to victims represented a *quid pro quo* for amnesty for perpetrators. It is telling, therefore, that the negotiators who hammered out the TRC Act ensured that the ultimate responsibility for reparations lay in the hands of the new government, whereas an independent body would grant amnesty. As observers noted, the Kempton Park negotiations focused far more on amnesty to perpetrators and special pensions to former political prisoners than on reparations to ordinary victims.

The Mozambique case brings into question the absence of formal reparation policies after an internationally brokered peace agreement. The dynamics are obviously different from a negotiated settlement brokered inside the country such as occurred in South Africa and Malawi. First of all, there was no clear winner or loser, and arguably neither FRELIMO nor RENAMO negotiated from a position of overwhelming strength. Secondly, the focus of the negotiation process was to create an environment for peace, using any means necessary. Unlike in South Africa, where reconciliation was of utmost concern, or in Namibia where independence was the goal, in Mozambique "negative peace" (absence of violence) was the objective of the negotiation process.

The goal in Mozambique was short-term stability. Redressing the affects of war that took its toll on the entire population is also extremely difficult. The magnitude of victims from human rights abuses on both sides is staggering. Attempts at "reconciliation" pertained to soldiers rather than to collectivities such as blacks and whites or ethnic groups, and this created a need to pursue reintegration programmes rather than "reparations". This is not to say or conclude that both could not have occurred simultaneously as in the case of South Africa, but that the negotiators were obviously influenced by the refusal by both RENAMO and FRELIMO to accept any responsibility for wrongdoing. "According [to] the GPA, the Mozambican conflict had no victims who could be identified and be entitled to any kind of reparation or compensation and consequently there were no perpetrators who could be

prosecuted or be eligible for amnesty."²²⁶

Certain political forces operating after the transition undermine the formulation, development or implementation of reparation policies. This is evident across the cases. The most glaring force undermining the development of policies of reparation is a dominant, one-party system, cited as a prime reason for a "false reconciliation" in Namibia and a lack of attention to rights violated by ZANU in the early 1980s in Zimbabwe. Political opposition is simply not strong enough to bolster the relatively weak voices of civil society organisations and individual victims. Furthermore, political repression in those countries breeds a culture of fear that permeates all levels of society, and in particular institutions such as the judiciary that normally provide forums for the reparation discussion. Similarly, the function of the NCT in Malawi is ostensibly tainted by the regression back to single-party, authoritarian rule by Muluzi's UDF. Ross and Phiri's "many weeds threatening to choke the freshly sprung democracy before it has sunk its roots"²²⁷ appear to be catching hold of the NCT.

It is ironic that, as observers in Mozambique note, discussions of reparations in Mozambique are diluted because the parliament is nearly equally divided between the two former warring parties, RENAMO and FRELIMO. With former guerrilla soldiers operating in the mainstream of parliamentary politics, prosecuting ex-combatants is considered very tricky, and there is doubt that political will exists to point fingers and identify victims.

While this is not the space to elaborate on a discussion of democracy and reparations, it is worth mentioning an evident correlation between official policies of redress and democratic, transparent governance. As suggested in IDEA's *Reconciliation after Violence: A Handbook* suggests, "A functioning democracy ... is built on a dual foundation: a set of fair procedures for peacefully handling the issues that divide a society (the political and social structures of governance) and a set of working relationships between the groups involved".²²⁸

Another political dynamic that seems to complicate the reparations process is the re-emergence of ethnic divisions. It appears that the ethnic identity of victims has an impact on the development and implementation of some reparation programmes. Victim support groups in Namibia and Zimbabwe complain that ethnic discrimination on the part of the government interferes with the demand for accountability and reparation. In those cases, the current government appears to have little regard for victims in population groups, such as the Ndebele in Zimbabwe and the San in Namibia, that have not traditionally supported, and do not currently support, the administration. Considering the ethnic divisions that characterised some of the violent conflicts and the human rights abuses perpetrated by the government, it is no surprise that reparation for those victims, and acknowledgment of government wrongdoing, remain off the agenda. Reparation in the context of a political transition is grounded in the field of transitional justice. The development of reparation programmes should therefore be considered in light of the decisions that a successor government makes in creating mechanisms aimed at promoting justice in times of transition. Not discounting the political forces at play in each country, it is evident in these cases that the country's decisions vis-à-vis transitional justice impact (both positively and negatively) on the eventual development (or non-development) of reparation programmes.

The fact that South Africa's reparation programme is arguably the most ingenious and holistic of the five cases is partly explained by South Africa's pursuit of the most ingenious, holistic and genuine programme to meet the aims of transitional justice. In the South Africa case, amnesty was a political compromise but, unlike the other countries, this did not, as Sooka explained, "take place against a background of amnesia". "The process of gaining amnesty," she writes, "demanded accountability, truth-telling, acknowledgement of victims and a proper process of reparation."²²⁹

A constant theme running through the cases is that reparation holds little meaning without accountability and acknowledgment – twin aims of transitional justice. While a component of a broader transitional justice process, a more holistic reparations programme is, one might argue, facilitated by programmes that address truth, justice and accountability. These processes create a momentum and social awareness of abuses that push the demand for reparations into the public arena.

These cases suggest that "reparation" in the context of a political transition and in the broader arena of transitional justice has a much more profound meaning than "reparation" in the legal environment. However, in the cases such as Namibia where reparation as a component of transitional justice is not a viable option, legal recourse assumes an important role.

Notes:

¹ Warren Buford was responsible for the detailed analysis of results presented in this report, while Hugo van der Merwe designed and managed the research and provided analytical and editing guidance. The research is part of a study "Southern Africa Reconciliation Project" funded by the [International Development Research Centre](#). It was a collaborative project involving CSVR (South Africa), the [Centre for Human Rights and Rehabilitation](#) (Malawi), the [National Society for Human Rights](#) (Namibia), [Amani Trust](#) (Zimbabwe) and JustaPaz (Mozambique).

² "Reparation is a general term that encompasses a variety of redress, including restitution, compensation, rehabilitation, satisfactions and guarantees of non-repetition. Restitution aims to re-establish to the extent possible the situation that existed before the violation took place; compensation relates to any economically assessable damage resulting from the violations; rehabilitation includes legal, medical, psychological and other care; while satisfaction and guarantees of non-repetition relate to measures to acknowledge the violations and prevent their recurrence in the future", P. Hayner, "Reparations for State Crimes", in [Unspeakable Truths](#) (2001), p. 171

³ "Transitional justice can be summarized as how to deal with the past and how to remake a damaged political and social culture through utilizing judicial and quasi-judicial methods." See T. Rosenberg, "Afterword: Confronting the Painful Past", in *Coming to Terms: South Africa's Search for Truth*, 1999, pp. 327–370.

⁴ This according to H. Adam, in Rotberg and Thompson, 2000, p. 19.

⁵ The terms "victim" and "survivor" are used interchangeably in this research.

⁶ Cited in A. Boraine, J. Levy, and R. Scheffer (eds.), *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town: IDASA, 1995), p. 2.

⁷ See NGO Position Paper on "Reparation for Violations of Human Rights and Humanitarian Law: The Right to Remedy and Reparations under International Law", published by Amnesty International, REDRESS, IRCT, et al, March, 2003.

⁸ See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, UN Commission on Human Rights, E/CN.4/Sub.2/1993/8 and a later version E/CN.4/1997/104. This document was commissioned by the Sub-Commission on Human Rights to consider the right to restitution, compensation and rehabilitation, and was written by Professor Theo van Boven.

⁹ See, for instance, B. Hamber and K. Rasmussen, "[Financing a Reparations Scheme for Victims of Political Violence](#)" in B. Hamber and T. Mofokeng, *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence*, Centre for the Study of Violence and Reconciliation, October 2000).

¹⁰ See L. Huysse, "Reparation as a Dimension of Transitional Justice", in *Report on the Expert Seminar on Reparation for Victims of Gross and Systematic Human Rights Violations in the Context of Political Transitions* (Catholic University of Leuven, March 10, 2002), p. 54.

¹¹ Notable recent developments include: Expert Seminars on Reparation for Victims of Gross and Systematic Human Rights Violations in the Context of Political Transitions (Leuven, March 2002 and September 2002), a Chapter on "Reparation" in *Democracy and Reconciliation in Post-Conflict States: A Handbook* (International IDEA, 2003), and much work in the United Nations. In addition, REDRESS has just published its *Audit Study: Detailed Analysis of the Law and Practice on Reparation for Torture in 30 Countries*, arguably the most detailed empirical study to date of reparation to survivors of torture.

¹² See [The United Nations Compensation Commission](#) (UNCC Secretariat, Genva, 1991).

¹³ See N. Wuhler, "The United Compensation Commission", in A. Randelzhofer and C. Tomuchat (Eds.) (1999), p. 229. For this comment, Wuhler references J.R. Crook, "The United Nations Compensation Commission: A New Structure to Enforce State Responsibility", *AJIL* 87 (1993), p. 144, and C. Whelton, "The United Nations Compensation Commission and International Claims Law: A Fresh Approach", *Ottawa Law Review* 25 (1993), p. 607.

¹⁴ Most recent exchange rate (June 16, 2003): US\$1: R7.82. Found online at <http://www.xe.com/ucc/convert.cgi>.

¹⁵ Those eligible included victims not expected to outlive the Commission as well as those who had "urgent medical, emotional, educational, material and/or symbolic needs". See

TRC Report, 1998, Vol. 5, Chap. 5, para. 56.

¹⁶ See C. Colvin, "Overview of the Reparations Programme in South Africa," CSV Report commissioned by the International Center for Transitional Justice (2003).

¹⁷ *Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation*, on the occasion of the tabling of the Report of the Truth and Reconciliation Commission, Cape Town, 15 April 2003, found online at <http://www.gov.za/speeches/index.html>.

¹⁸ Ibid.

¹⁹ See Y. Sooka, "Peace with accountability and respect for human rights: Ensuring sustainable dividends for the future", *Track Two* (Cape Town: Centre for Conflict Resolution, Vol.11, No.1, March 2002), p. 3.

²⁰ See N. Kritz, "Dilemmas of Transitional Justice", United States Institute of Peace (February 20, 2003).

²¹ See *Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation*, on the occasion of the tabling of the Report of the Truth and Reconciliation Commission, Cape Town, 15 April 2003, found online at <http://www.gov.za/speeches/index.html>.

²² See Interview with Ms. Hlengiwe Mkhize, Chairperson, Reparation and Rehabilitation Committee, in *Truth Talk: The Official Newsletter of the Truth and Reconciliation Commission* (Vol. 4, No. 1, 1998).

²³ See TRC Report, Vol. 5, Chapter 5, Section 2.

²⁴ See Y. Sooka, *Keynote Address* (Report on the Khulumani Reparations Indaba, Cape Town, April 25 – 26, 2001).

²⁵ See C. Colvin, "Overview of the Reparations Programme in South Africa," CSV Report commissioned by ICTJ (2003).

²⁶ South African Institute of Race Relations, *Fast Facts* (March 1996), cited in Ball (1997), p. 67.

²⁷ The "system" of apartheid was deemed a "crime against humanity" by the United Nations in 1973.

²⁸ See Article 2, [International Convention on the Suppression and Punishment of the Crime of Apartheid](#), United Nations, November 30, 1973.

²⁹ [Promotion of National Unity Act, 1995, Sect. 1\(1\)\(xix\)\(a\)](#).

³⁰ Ibid., Sect. 1(1)(ix).

³¹ Cited in A. Boraine, *A Country Unmasked* (Oxford: Oxford University Press, 2000). p. 69.

³² Ibid.

³³ See *TRC Final Report, Executive Summary*, (June 11, 2003).

³⁴ See C. Colvin, "Overview of the Reparations Programme in South Africa," CSV Report commissioned by ICTJ (2003).

³⁵ *Interim Constitution*, (Pretoria: Republic of South Africa, 1993), *Postamble*, (June 11, 2003).

³⁶ See Oupa Malakamela "SARP Country Report on South Africa", unpublished CSV report, 2003.

³⁷ See Section 189 of the Constitution (Pretoria: The Republic of South Africa, 1996), found online at <http://www.polity.org.za>.

³⁸ Interview with Zollie "Ghost" Ndindwa, Special Pensions Fund Officer conducted by Oupa Makhalemele (Cape Town, January 21, 2002).

³⁹ See W. Orr, "Reparations delayed is healing retarded", in M. Meredith, *Coming to Terms: South Africa's Search for Truth* (New York: Public Affairs, 1999), p. 247.

⁴⁰ See A. Krog, *Country of My Skull* (Johannesburg: Random House, 2002), p. 280.

⁴¹ See C. Colvin, "Overview of the Reparations Programme in South Africa," CSV Report commissioned by ICTJ (2003). Colvin cites A. Boraine, J. Levy & R. Scheffer (eds.) *Dealing with the Past: Truth and Reconciliation in South Africa*. (Cape Town: Institute for Democracy in South Africa, 1994). pp. 138-9.

⁴² The applicants were Azanian People's Organisation (AZAPO); Nontsikelelo (Ntsiki) Biko, widow of slain ANC-leader, Steve Biko; Churchill Mhleli (Mbasa) Mxenge, brother of Griffiths Mxengethe, an activist who was brutally murdered by security forces; and Chris Rebeiro, whose parents, Fabian and Florence, had been assassinated on the instructions of the security police.

⁴³ As Boraine reported, "the [TRC Act] goes even further and lays down that neither the state nor any other body, organisation, or person (and this would include political parties) that would ordinarily have been vicariously liable for such an act could be liable in law".

⁴⁴ See summary of Constitutional Court Judgment of 25 July 1996 involving AZAPO et al. See also the full text of the Constitutional Court Judgment of 26 July 1996 involving

AZAPO *et al.*

⁴⁵ The other justifications were that: amnesty for criminal liability was allowed by the Postamble of the Interim Constitution on the premise that without it there would be less incentive for much-needed truth-telling; amnesty was a political decision, not a legal or human rights decision, made during the negotiated settlement that resulted in the new democratic government; such a policy is in compliance with international law.

⁴⁶ Hamber, "[Repairing the Irreparable: Dealing with the Double Binds of Making Reparations for Crimes of the Past](#)", in *Ethnicity and Health* (Vol. 5, No. 3 and 4, pp. 215–226, 2000).

⁴⁷ See A. Boraine, [A Country Unmasked](#) (Oxford: Oxford University Press, 2000), p. 9.

⁴⁸ See [Promotion of National Unity and Reconciliation Act, No. 34 of 1995](#), 26 July 1995, Cape Town.

⁴⁹ *Ibid.*, Chapter 1 (xiv).

⁵⁰ See Cape Times, January 30, 2003.

⁵¹ See C. Colvin, "Overview of the Reparations Programme in South Africa," CSV Report commissioned by ICTJ (2003), p. 16.; and Interview with Ms. Hlengiwe Mkhize, TRC Commissioner (1998).

⁵² Unfortunately they are no longer available online.

⁵³ See Interview with Barbara Watson, Executive Secretary of the RRC (February 12, 2003) conducted by Oupa Makhahamele.

⁵⁴ See TRC Report, Vol. 5, Chapter 5, Sections 46 – 53.

⁵⁵ *Ibid.*, Sections 25 - 32.

⁵⁶ *Ibid.*

⁵⁷ See Interim Reparation Notification, Department of Justice. See also "[Policy Framework for Urgent Interim Reparation Measures](#)", section E. "Operational Issues", "A person will only be considered for UIR once the person has been formally found to be a victim of gross human rights violation as defined by the [TRC Act] and referred to the RRC by either Amnesty or Human Rights Violations Committee".

⁵⁸ See *TRC Report*, Vol. 5, Chapter 5, Sections 94 - 115.

⁵⁹ *Ibid.*, Sections 78 - 93.

⁶⁰ Ibid., Sections 114 – 115.

⁶¹ See *Report of the Conference on Reparation and Memorialisation: The Unfinished Business of the TRC*, printed in Independent Newspapers, circa 1997.

⁶² See S. Gutto, "[Constitutional, International and Comparative Law: Perspectives on Reparation](#)" in *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa* (Johannesburg: Centre for the Study of Violence and Reconciliation, 2000).

⁶³ *Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation* on the occasion of the tabling of the Report of the Truth and Reconciliation Commission, Cape Town, 15 April 2003, found online at <http://www.gov.za/speeches/index.html>.

⁶⁴ See, for example, W. Orr, "Reparations delayed is healing retarded", in M. Meredith, *Coming to Terms: South Africa's Search for Truth* (New York: Public Affairs, 1999), p. 242. She writes: "We were not implementers – we were proposers. But victims found it (understandably) difficult to make this differentiation This delay in delivery of reparation, particularly contrasted with the 'immediate delivery' of amnesty, was perhaps the most distressing issue for victims and organisations representing victims."

⁶⁵ See "HRV Committee turns away late applications" in *Truth Talk: The Official Newsletter of the Truth and Reconciliation Committee* (Vol. 4, No. 1, 1998); and *Report on the Khulumani Reparations Indaba*, Cape Town, April 25 – 26, 2001, p. 3; see also Interview with Lorna Levy, Programme Coordinator CSVr (December 5, 2001), provided to the author by CSVr.

⁶⁶ See "HRV Committee turns away late applications" in *Truth Talk: The Official Newsletter of the Truth and Reconciliation Committee* (Vol. 4, No. 1, 1998). Human Rights Violations Committee member, Joyce Seroke, said: "One of the most frustrating aspects is that quite a number of victims who made statements now cannot be traced. People have changed their addresses, especially those who lived in shacks and informal settlements."

⁶⁷ See W. Orr, "Reparations delayed is healing retarded", in M. Meredith, *Coming to Terms: South Africa's Search for Truth* (New York: Public Affairs, 1999), p. 247.

⁶⁸ See TRC Report, Vol. 5, Chapter 5, Section 2, found online at See *TRC Report*, Vol. 5, Chapter 5, Sections 94-115.

⁶⁹ See W. Orr, "Reparations delayed is healing retarded", in M. Meredith, *Coming to Terms: South Africa's Search for Truth*, p. 247.

⁷⁰ See B. Hamber and T. Mofokeng (eds), *Preface*, *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa*, (CSVr Booklet, 2000).

⁷¹ *Statement by President Thabo Mbeki to the National Houses of Parliament and the Nation* on the occasion of the tabling of the Report of the Truth and Reconciliation Commission, Cape Town, 15 April 2003, found online at <http://www.gov.za/speeches/index.html>.

⁷² Colvin cites M. Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998), p. 103.

⁷³ See Colvin, page 20.

⁷⁴ See "Making Reparations a Reality: Challenges for Civil Society and Government", published by Khulumani Support Group, October 31, 2001.

⁷⁵ See A. Crawford-Pinnerup, "[An Assessment of the impact of Urgent Interim Reparations](#)", in B. Hamber & T. Mofokeng (Eds.), *From Rhetoric to Responsibility: Making Reparations to the Survivors of Past Political Violence in South Africa*. (pp. 40-51). CSV, 2002, p. 9.

⁷⁶ See *Khulumani et al. v. Barclays et al.* (Cohen, Milstein, Hansfield and Toll, P.L.L.C.); See also "Briefing on the Reparation Lawsuit facilitated by the Apartheid Debt and Reparations Campaign of Jubilee South Africa", Press Release Jubilee South Africa Campaign, February 21, 2003.

⁷⁷ Ibid.

⁷⁸ See Mbeki speech, April 15, 2003.

⁷⁹ Interview with Minister Dullah Omar, ex-Minister of Justice by Oupa Makhhalamele (Cape Town, April 26, 2002).

⁸⁰ Estimates place the number of victims of human rights abuses, including, but not limited to disappearances, unlawful detention, religious and political persecution, and torture, at 250,000 at the height of Banda's "reign of terror". See *SARP Malawi Country Report: The Process of Transition and Reconciliation*, [Centre for Human Rights and Rehabilitation](#), Lilongwe, p. 17.

⁸¹ For an excellent, though biased, overview, see *Case Study: Centre for Human Rights and Rehabilitation – Torture Victim Project*, Lilongwe, pp. 2–4.

⁸² For example, in March 1959, the British Governor of Malawi Sir Robert Armitage, felt so threatened by the liberation struggle that he declared a state of emergency, banned the African Nyasaland Congress and detained more than 1000 Party Leaders including Dr. Banda. See *SARP Country Report on Malawi* (Centre for Human Rights and Rehabilitation, Lilongwe, February 2003), p. 12.

⁸³ From P.T. Zeleza, "Totalitarian Power and Censorship in Malawi", *Southern African*

Political and Economic Monthly (Vol. 8 No. 11, August 1995), p. 33, quoted in *SARP Country Report on Malawi* (unpublished, CHRR, Lilongwe, February 2003), p. 4.

⁸⁴ See *SARP Country Report on Malawi* (unpublished, CHRR, Lilongwe, February 2003), p. 15.

⁸⁵ See K. Ross, "Does Malawi still need a Truth Commission", in M. Ott, K. Phiri, K. Ross (eds.), *Democratisation in Malawi: A Stocktaking*, (Limbe, Malawi: Christian Literature Association in Malawi, pp. 336–354, 1998), p. 336. He cites a March 19, 1996 session of Parliament when Mr. Y.A. Lambat, MP for Blantyre Rural East, made the claim, "speaking on the authority of Amnesty International".

⁸⁶ Interview with George Kanyana, exiled during the Banda years and then elected Minister in the Ministry of Relief and Disaster Preparedness, June 2002. Provided to the author by CSVR.

⁸⁷ See *Cammack*, p. 13.

⁸⁸ Cited in K. Ross, "Does Malawi still need a Truth Commission", in M. Ott, K. Phiri and K. Ross (eds.), *Democratisation in Malawi: A Stocktaking*, (Limbe, Malawi: Christian Literature Association in Malawi, pp. 336–354, 1998), p. 336.

⁸⁹ *Ibid.* p. 347.

⁹⁰ *Operation Bwezani* represented a good-faith effort by the new government to rid Malawi of the Malawi Youth League (MYP). The three-day, victorious assault on the MYP in early December 1993 immobilised the country and resulted in numerous injuries and 31 dead.

⁹¹ See D. Cammack and C. Mwale, "Reparations in Malawi, 1992 – 2001" (*unpublished ICTJ report*).

⁹² General Amnesty Bill no. 16 of 1993, passed 23rd June 1993. An early amendment to the General Amnesty Act obligated the government to "establish and examine arrangements for the return, reception, resettlement and, as necessary, rehabilitation of returnees" (See General Amnesty Amendment Act No. 26 of 1993, Section 9). The idea of a compensation tribunal to be administered through the Department of Relief and Rehabilitation was born out of this governmental obligation. See *SARP Country Report*, CHRR, p. 25.

⁹³ See *SARP Country Report on Malawi* (unpublished, CHRR, February 2003), p. 12.

⁹⁴ Interview with Matchipisa Munthali conducted by Jewel Amoah and Martin Nkuna (3 May 2002, Rumphu).

⁹⁵ See Constitution of the Republic of Malawi.

⁹⁶ See *SARP Malawi Case Study: The National Compensation Tribunal*, CHRR, Lilongwe,

p. 4.

⁹⁷ Ibid.

⁹⁸ In the tradition of condolence in Malawi, money is given as a symbolic gesture that someone is sorry. In the spirit of "the thought that counts", the amount does not matter as much as the gesture. See *SARP Case Study*, p. 10.

⁹⁹ Ibid.

¹⁰⁰ Acceptable proof included: detention order, letter from the police, letter from the prison, dismissal letter from employer, dismissal letter from school, refugee identity card, letter from UNHCR, cash sale receipt, vehicle registration book, letter from Ministry of Relief and Rehabilitation, medical report, prison discharge certificate, and so forth. See *SARP Case Study*, pp. 5–6.

¹⁰¹ Most recent exchange rate (June 16, 2003): \$1: K88.5 (US\$:Kwacha). Found online at <http://www.xe.com/ucc/convert.cgi>.

¹⁰² These statistics were drawn from *Understanding the Past to Safeguard the Future*, pp. 35-36; *Minutes of the 5th Roundtable Meeting*, National Compensation Tribunal; 'Workshop No. 4: Paper Guidelines and Recommendations', 29 Sept 2000; UNHHR, 'Report of the Barker Mission', 1 May 1997; and GOM/European Development Fund, Promotion of the Rule of Law and Improvement of Justice Programme. *Annual Report 2001: NCT Track Record*.

¹⁰³ Interview with NCT Chief Administrator, Mr. HS Khombe by authors 25 (February 2002, Cape Town).

¹⁰⁴ Ibid.

¹⁰⁵ Newspaper reports indicate that only 7000 (35%) of the 23,600 people who registered with the NCT have benefited. See *The Nation*, Friday, June 13, 2002, p. 3.

¹⁰⁶ Interview with John Soo Phiri conducted by Jewel Amoah and Martin Nkuna (6 June 2002, Lilongwe).

¹⁰⁷ Interview with Mr. Kapote Mwakasungula conducted by Jewel Amoah and Martin Nkuna (May 1, 2002, Karonga).

¹⁰⁸ Interview with NCT Chairperson, Justice Isaac Mtambo by authors (25 February 2002, Cape Town).

¹⁰⁹ Ibid.

¹¹⁰ Interview with Dr. Edge Kanyangolo by Jewel Amoah and Martin Nkuna (15 February

2002, Zomba).

¹¹¹ Interview with Mr. Kapote Mwakasungula conducted by Jewel Amoah and Martin Nkuna (May 1, 2002, Karonga).

¹¹² Interview with Dr. Edge Kanyangolo by Jewel Amoah and Martin Nkuna (15 February 2002, Zomba).

¹¹³ Interview with NCT Chairperson, Justice Isaac Mtambo, by the authors (25 February 2002, Cape Town).

¹¹⁴ Ibid.

¹¹⁵ Interview with Dr. Edge Kanyangolo by Jewel Amoah and Martin Nkuna (15 February 2002, Zomba).

¹¹⁶ Interview with Mr. Kapote Mwakasungula, former Secretary of United Front for Multi-Party Democracy (UFMD) and member to the NCC (May 1, 2002). Provided to the author by CSV.

¹¹⁷ Interview with George Kanyana by Jewel Amoah and Martin Nkuna (25 June 2002, Lilongwe).

¹¹⁸ See *SARP Country Report on Malawi*, p. 26.

¹¹⁹ Interview with George Kanyana by Jewel Amoah and Martin Nkuna (25 June 2002, Lilongwe).

¹²⁰ Interview with Dr. Edge Kanyangolo by Jewel Amoah and Martin Nkuna (15 February 2002, Zomba).

¹²¹ See *SARP Country Report on Zimbabwe: Overview of Human Rights Situation* (February 2002); and A.P. Reeler, "Can you have a reparations policy without justice", *VIIIth International Symposium on Torture* (New Delhi, Sept. 1999), p. 1.

¹²² "Reparation: Every Torture Survivor's Right: Invitation to a Workshop", AMANI Trust (date unknown).

¹²³ One of the most "unfortunate" individual cases, according to Mike Auret, former director of the Catholic Commission for Justice and Peace in Zimbabwe (CCJPZ) and now an opposition MP, "was Kombayi who was shot by government and party officials. It took five years to get them to court, they were sentenced to seven years, granted a presidential pardon and one of those men is now occupying a farm, threatening the owner and saying 'I shot Kombayi several times, I do not mind shooting you, I will get a presidential pardon'. Interview with Mike Auret by Richard Bischoff (2002).

¹²⁴ See "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands, 1980 – 1988: Summary Report" (Harare: CCJPZ and The Legal Resources Foundation, April 1999), p. 1.

¹²⁵ Two examples of their publications are *Man in the Middle* (1975) and *The Civil War in Rhodesia* (1976).

¹²⁶ See "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands, 1980 – 1988: Summary Report" (Harare: CCJPZ and The Legal Resources Foundation, April 1999), p. 1.

¹²⁷ See AMANI Trust (1997), Report on Psychological Disorders in Clinics and Hospitals in Mount Darwin District, Mashonaland Central Province, Harare: AMANI.

¹²⁸ A copy was even sent to President Mugabe, but as of April 1999, there has been no official comment about the report from the President or from the Government.

¹²⁹ See *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands, 1980 – 1988* (Harare: CCJPZ and The Legal Resources Foundation, 1997).

¹³⁰ See "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands, 1980 – 1988: Summary Report" (Harare: CCJPZ and The Legal Resources Foundation, April 1999), p. 31.

¹³¹ Ibid, p. 9. "The 5th Brigade behaved in a way that shows it had clearly been trained to target civilians. Wherever troops went, they would routinely round up dozens, or even hundreds, of civilians and march them at gunpoint to a central place, like a school or borehole. There they would be forced to sing Shona songs praising ZANU-PF, at the same time being beaten with sticks. These gatherings usually ended with public executions. Those killed could be ex-ZIPRAs, ZAPU officials, or anybody chosen at random, including women".

¹³² See A. Reeler, "Compensation for Gross Human Rights Violations: Torture and the War Victims Compensation Act", *Legal Forum* (Vol. 10, No. 2, 1998), p. 15.

¹³³ See "Zimbabwe: Why Reconciliation Failed", in D. Bloomfield, T. Barnes and L. Huyse (eds.), *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International IDEA, pp. 34–39, 2003), p. 35.

¹³⁴ Ibid., p. 37.

¹³⁵ Observers note the absence of psychological trauma as an injury is excusable given that findings on Post Traumatic-Stress Syndrome did not come out until after 1980. The Director of [Amani Trust](#) admits: "It wasn't a terribly good piece of legislation but with justified grounds". Interview with the Director, provided to the author by CSV.R.

¹³⁶ See A. Reeler, "Compensation for Gross Human Rights Violations: Torture and the War Victims Compensation Act", *Legal Forum* (Vol. 10, No. 2, 1998), 1998.

¹³⁷ The first four points come from Reeler, the other points from various interviews conducted by the SARP researchers in Zimbabwe.

¹³⁸ See A. Reeler, "Can you have reparations policy without justice?", *VIIIth International Symposium on Torture: Torture as a Challenge to the Health, Legal and Other Professions*, (New Delhi, India, 22 – 25 September 1999), p. 17.

¹³⁹ *Ibid.*, p. 18.

¹⁴⁰ *Ibid.*

¹⁴¹ Interview with M., war veteran, and now opposition MP, conducted by Paul Chizuze (2002).

¹⁴² Interview with J.D., ex-ZIPRA Commander, member of War Veterans Association, by Paul Chizuze (2002).

¹⁴³ See *SARP Country Report on Zimbabwe*, Amani Trust, Bulawayo, p. 3.

¹⁴⁴ Interview with Tony Reeler, [AMANI Trust](#) conducted by Richard Bischoff (2002).

¹⁴⁵ Interview with Ndlovu conducted by Paul Chizuze (16 April 2002).

¹⁴⁶ Interview with Brian C. by Richard Bischoff (2002).

¹⁴⁷ *Ibid.*

¹⁴⁸ Interview with Tony Reeler, AMANI Trust conducted by Richard Bischoff (2002).

¹⁴⁹ See "Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands, 1980 – 1988: Summary Report" (Harare: CCJPZ and The Legal Resources Foundation, April 1999), p. 29.

¹⁵⁰ Interview with F by Paul Chizuze (2002).

¹⁵¹ See A. Reeler, "Can you have reparations policy without justice?", *VIIIth International Symposium on Torture: Torture as a Challenge to the Health, Legal and Other Professions*, (New Delhi, India, 22 – 25 September 1999), p. 8.

¹⁵² See "Zimbabwe: Why Reconciliation Failed", in D. Bloomfield, T. Barnes and L. Huyse (eds.), *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International IDEA, 2003), p. 39.

¹⁵³ Ibid., pp. 35 & 37.

¹⁵⁴ Ibid.

¹⁵⁵ See Henning Melber, "Liberation and Democracy in Southern Africa: The Case of Namibia", in Henning Melber and Christopher Saunders, *Transition in Southern Africa – Comparative Aspects: Two Lectures (Nordiska Afrikainstitutet Discussion Paper 10*, Uppsala, 2001), p. 21.

¹⁵⁶ Ibid., p. 20.

¹⁵⁷ See Phil ya Nangoloh, Executive Director of the [National Society for Human Rights](#), "Namibians to Sue African Governments", *Press Release*, February 22, 2001.

¹⁵⁸ For a detailed account, see Cooper, Allan D., 2001, *Ovambo Politics in the Twentieth Century*, Lanham: University Press of America, and *SARP Country Report on Namibia* (2003), pp. 13-14.

¹⁵⁹ See Cooper, Allan D., 2001, *Ovambo Politics in the Twentieth Century*, Lanham: University Press of America, p. 9.

¹⁶⁰ See Gill Moodie, "[Our SA Comrades Have Cheated Us](#)", *Sunday Times*, March 16, 2003.

¹⁶¹ Interview with Hezekiel Awaseb, Ministry of Justice, conducted by E. Muinjangué (May 2002).

¹⁶² Interview with Toussy Namiseb, Office of the Ombudsman, conducted by E. Muinjangué (June 2002).

¹⁶³ Interview with Clement Daniels, Director of LAC, conducted by E. Muinjangué (June 2002).

¹⁶⁴ Richard Dicker, *Accountability in Namibia: An Africa Watch Report* (Human Rights Watch, 1992), p. 4.

¹⁶⁵ Ibid., p. 5.

¹⁶⁶ Cited in Dicker (1992), p. 6. The victim is not named.

¹⁶⁷ See "Namibians to Sue African Governments", *Press Release* by [National Society for Human Rights](#), Feb. 22, 2001.

¹⁶⁸ See Michelle Parlevliet, "Truth Commissions in Africa: the Non-Case of Namibia and the Emerging Case of Sierra Leone" (*International Law Forum* 2:98-111, 2000) p. 105.

¹⁶⁹ See Christopher Saunders, "From Apartheid to Democracy in Namibia and South Africa: Some Comparisons", in Hennin Melber and Christopher Saunders, *Transition in Southern Africa – Comparative Aspects: Two Lectures, Nordiska Afrikainstitutet Discussion Paper 10*, Uppsala 2001, p. 21. Rotberg also writes that SWAPO was too weak militarily to "mortgage South Africa's hold on Namibia". See Rotberg (2002), p. 125.

¹⁷⁰ See Melber, p. 21 (our emphasis).

¹⁷¹ See *SARP Country Report on Namibia*, [National Society for Human Rights](#), (2003), p. 21.

¹⁷² See Constitution of The Republic of Namibia, Articles 18 and 23.

¹⁷³ See Constitution of The Republic of Namibia, Articles 23 (2).

¹⁷⁴ See *SARP Country Report on Namibia* (2003), NSHR, pp. 18 & 48. The Report cites the following as additional sources to its claim, see footnote 104: "Lists of Missing Persons", National Society for Human Rights, Windhoek, Namibia, 1989; "Nico Basson and Ben Motinga, "Call them spies: The Namibian spy drama", *African Communication Projects*, Windhoek and Johannesburg, October 1989; "A critical Analysis: SWAPO's 'Book of the Dead'", National Society for Human Rights, Windhoek, Namibia, 1996; "A Report to the Namibian People: Historical Account of the SWAPO-spy-drama", Breaking the Wall of Silence Movement (BWS), Windhoek, Namibia, 1997.

¹⁷⁵ See Gerhard Erasmus, "The Constitution: Its Impact on Namibian Statehood and Politics", in Christiaan Keulder (ed.), *State, Society and Democracy: A Reader in Namibian Politics*, (Windhoek: Gamsberg Macmillan, 2000), p. 78.

¹⁷⁶ See Dicker (1992), *op. cit.*, p. 2.

¹⁷⁷ *Ibid.*, p. 3.

¹⁷⁸ See *SARP Country Report on Namibia* (2003), NSHR, p. 20.

¹⁷⁹ See Dicker (1992), p. 3.

¹⁸⁰ See Saunders (2001), p. 12; Parlevliet (2000), p. 101; and Dicker (1992), *op. cit.*, pp. 112-116.

¹⁸¹ See Dicker, (1992), pp. 111-116. For a more detailed account of SWAPO abuses see John Saul and Colin Leys (eds.), [Namibia's Liberation Struggle: The Two-Edged Sword](#) (Athens: Ohio University Press, 1995), pp. 40–65.

¹⁸² See "Report to the Namibian People: Historical Account of the SWAPO Spy Drama", issued by Breaking the Wall of Silence Movement, 1997, pp. 11-12.

¹⁸³ Interview with Ben Ulenga, leader of the opposition party (Congress of Democrats) and former Robben Island political prisoner, conducted by E. Muinjanque (November 2002).

¹⁸⁴ See SARP Country Report on Namibia (2003), p. 25.

¹⁸⁵ Ibid., p. 26. The Report cites, "Directorate of Resettlement and Rehabilitation", *Namibia: A Decade of Democracy and Prosperity 1990–2000*, Office of the Prime Minister, Republic of Namibia, Windhoek, March 21, 2000, p. 225.

¹⁸⁶ See *SARP Country Report on Namibia* (2003), p. 28.

¹⁸⁷ See *SWAPO Press Release*, 8 July 1999, Office of Secretary General, "It is either reconciliation or the opening of old wounds," cited in Parlevliet (2001), p. 104. The Press Release reads: "... as part of its programme of nation building and the healing of wounds of the past, the leadership of SWAPO formulated and adopted a policy of national reconciliation in 1989. The policy was intended to guard against the fact that, if the Namibian people allow themselves to engage in witch-hunting and retribution, the consequences of such a exercise will not be in the best interest of peace and stability in Namibia". Additionally, a "Media Statement by SWAPO Party on the So-Called Detainee Issue" of March 12, 1996 counters criticism Siegfried Groth, author of *Breaking the Wall of Silence*, 1996 (Wuppertal: Peter Hammer), by maintaining that SWAPO "cannot allow this country to be made ungovernable and be turned into a chaotic and lawless society by irresponsible, unpatriotic elements and foreign remnants". Cited in Melber (2001), p. 21.

¹⁸⁸ See *SARP Country Report on Namibia* (2003), NSHR, p. 57.

¹⁸⁹ Ibid.

¹⁹⁰ See *SARP Country Report on Namibia* (2003), NSHR, p. 51.

¹⁹¹ See *SARP Country Report on Namibia* (2003), NSHR, p. 51. The Report cites the following, see footnote 11: "The Judiciary Under Siege; Special report for 1995", [National Society for Human Rights](#) (NSHR), Windhoek, Namibia, January 5, 1996 and "Right to Fair Public Trial and Administration of Justice: Attacks on the Judiciary", *Namibian: Human Rights Report, 1995–2001*, National Society for Human Rights (NSHR) Windhoek, Namibia.

¹⁹² Interview with Ulenga.

¹⁹³ See *SARP Country Report on Namibia* (2003), NSHR, pp. 44–47. The Report suggests the government acceded to the following international bodies but refuses to "recognize the competence" of their mandate to consider petitions on behalf of victims: The International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Discrimination (Article 14), the Convention on the Rights of Women (Article 2 of the Optional Protocol), and the Convention against Torture (Article 22).

¹⁹⁴ Interview with Daniels.

¹⁹⁵ See *SARP Country Report on Namibia* (2003), NSHR, p. 54: "The rationale behind such campaign lies in the fact that ratification of all international human rights and humanitarian law instruments not only obliges [the government] to comply with the norms of international law, but it also puts in a better position international supervisory bodies as well as national and international civil society organisations to monitor and evaluate [the government's] compliance with such treaties."

¹⁹⁶ This is the main task of the People's Education, Assistance and Counselling for Empowerment (PEACE) Centre.

¹⁹⁷ This is the main task of the Breaking the Wall of Silence Movement (BWS).

¹⁹⁸ This is the main task of the Legal Aid Centre (LAC).

¹⁹⁹ See Dicker (1992), p. 3.

²⁰⁰ Interview with Ulenga.

²⁰¹ See *SARP Country Report on Namibia* (2003), p. 55.

²⁰² Interview with Daniels.

²⁰³ See J. Armon, D. Hendrickson and A. Vines (eds.), "[The Mozambican Peace Process in Perspective](#)", in *ACCORD* (Issue 3/1995, London: Conciliation Resources), p. 5.

²⁰⁴ See D. Summerfield, "The Social, Cultural and Political Dimensions of Contemporary War", presentation to the MEDACT Conference Understanding Violence, 27 April 1996, p. 5.

²⁰⁵ Ibid.

²⁰⁶ See *SARP Country Report on Mozambique*, JustaPaz (2003), p. 1.

²⁰⁷ Ibid., p. 5.

²⁰⁸ Ibid., p. 1.

²⁰⁹ J. Armon, D. Hendrickson and A. Vines (eds.), "[The Mozambican Peace Process in Perspective](#)", in *ACCORD* (Issue 3/1995, London: Conciliation Resources), p. 13.

²¹⁰ Interview with Mario Gonzaga Jeque, consultant for Confederation of Economic Association of Mozambique (conducted by Boaventura Zita and Alexandre Chivuri).

- ²¹¹ See *SARP Country Report on Mozambique* (2003), JustaPaz, p. 8.
- ²¹² *Ibid.*, p. 9.
- ²¹³ See J. Armon, D. Hendrickson and A. Vines (eds.), "[The Mozambican Peace Process in Perspective](#)", in *ACCORD* (Issue 3/1995, London: Conciliation Resources).
- ²¹⁴ See A. Honwana, "Sealing the Past, Facing the Future", in *ACCORD* ([Issue 3/1995](#), London: Conciliation Resources).
- ²¹⁵ See Interview with Alvarito De Carvalho, Journalist for Savana, weekly newspaper (conducted by Boanvetura Zita and Alexandre Chivuri, Mozambique).
- ²¹⁶ See Interview with S. Muchanga, Deputy President Youth National Council, conducted by B. Zita and A. Chivuri.
- ²¹⁷ Interview with Reverend Arlindo Chingo, Pastor and Psychologist, Mozambique conducted by B. Zita and A. Chivuri.
- ²¹⁸ See A. Honwana, "Sealing the Past, Facing the Future", in *ACCORD* (Issue 3/1995, London: Conciliation Resources), p. 33.
- ²¹⁹ See Brooks, p. 6.
- ²²⁰ Hamber, "[Repairing the Irreparable: Dealing with the Double Binds of making Reparations for crimes of the past](#)", in *Ethnicity and Health* (Vol. 5, No. 3 & 4, pp. 215–226, 2000).
- ²²¹ Vandeginste, Chapter 9 in D. Bloomfield, T. Barnes and L. Huyse (eds.), *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International IDEA, 2003).
- ²²² Cammack (2003), p. 12.
- ²²³ Cited in A. Boraine, J. Levy, and R. Scheffer (eds.), *Dealing with the Past: Truth and Reconciliation in South Africa* (Cape Town: IDASA, 1995), p. 10.
- ²²⁴ See S. Huntington, The Third Wave Democratization in the Late Twentieth Century, found in N. Kritz (ed.), *Transitional Justice*, Vol 1 (1995), p. 66, excerpted from S. Huntington, [The Third Wave: Democratization in the Late Twentieth Century](#) (Oklahoma City: University of Oklahoma Press, 1991), pp. 124–125, 142, 151, 211–231.
- ²²⁵ See also *Reconciliation after Violence: A Handbook* (IDEA, 2003), p. 15.
- ²²⁶ See *SARP Country Report on Mozambique* (2003), JustaPaz p. 9.

²²⁷ K. Phiri and K. Ross, "Introduction: From Totalitarianism to Democracy in Malawi", in M. Ott, K. Phiri, K. Ross (eds.), *Democratisation in Malawi: A Stocktaking*, (Limbe, Malawi: Christian Literature Association in Malawi, 1998), p 16.

²²⁸ *Handbook*, p. 10.

²²⁹ Y. Sooka, "Peace with accountability and respect for human rights: Ensuring sustainable dividends for the future", Track Two (Cape Town: Centre for Conflict Resolution, Vol. 11, No.1, March 2002), p.3.