

## **SOUTH AFRICA**

*by the Centre for the Study of Violence and Reconciliation (updated April 2018)*

### **Summary of Reparations Efforts and Programs**

South Africa has a reparations program to address the apartheid period (1960–1994). The truth commission, which included a committee dedicated to reparations and rehabilitation, identified victims eligible for reparations. A fund for victims contains over ZAR 1.43 billion (approximately US\$116,831,000 as of May 2018) and supplies the money for reparations, but the government has not been transparently disbursing funds to victims and appears to be redirecting the money toward social development.

### **Context**

The apartheid system in South Africa, which took effect *de jure* between 1948 and 1994, was marked by violence, exclusion, and racial discrimination. During this time, the state machinery maintained and serviced the white minority population, engendering socioeconomic injustices and inequality. Following a series of negotiations between the “warring” parties and the first multicultural, democratic elections on April 27, 1994, South Africa ushered in a true democracy and began the arduous process of repairing and fortifying the country’s social fabric. The government established transitional justice and peacebuilding initiatives, namely the Truth and Reconciliation Commission (TRC).<sup>1</sup>

While post-apartheid South Africa has put in place legislation to guarantee reparations for victims of gross human rights violations committed during apartheid, the implementation of such measures has been unsatisfactory. This has prompted calls by civil society organizations, such as the South African Coalition for Transitional Justice (SACTJ), for adequate, effective, and prompt reparations. Unfortunately, over two decades since the end of apartheid, a number of victims identified by the TRC as eligible for reparations have yet to receive anything. Thousands of victims are still waiting for adequate and meaningful reparations; many are elderly and sick, and some have even died before obtaining their duly owed reparations.<sup>2</sup>

### **Sources of Reparations**

South Africa’s reparations stem from the TRC as well as other subsequent domestic legislation and bodies.

*TRC:* The Promotion of National Unity and Reconciliation Act of 1995 established the TRC.<sup>3</sup> The TRC carried out its mandate through three committees: the Amnesty Committee, the Reparation and Rehabilitation Committee (RRC), and the Human Rights Violations (HRV) Committee.<sup>4</sup> The existence of the RRC, dedicated to reparations, indicated South Africa’s commitment to balancing the amnesty process by delivering tangible benefits to victims.<sup>5</sup> The main objective of the RRC was to take “measures aimed at the granting of reparation to, and

the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights.”<sup>6</sup>

The policy recommendations of the RRC contained five principles: redress, restitution, rehabilitation, restoration of dignity, and reassurance of non-repetition.<sup>7</sup> These principles laid the groundwork for specific recommendations on urgent interim reparations; individual reparations grants; symbolic reparations as well as legal and administrative measures; community rehabilitation programs; and institutional reform. The RRC proposed a range of symbolic, legal, and administrative measures to address remembrance, disappeared persons, and political offenses.<sup>8</sup> Due to the TRC’s lack of enforcement powers, however, it could only make recommendations to the government.<sup>9</sup> The TRC submitted its interim report to then-President Nelson Mandela in 1998, and the government’s delays in executing the recommendations on reparations have fueled public criticism, especially in light of the swift amnesty process. While victims have waited—some are still waiting—years for reparations, perpetrators received their amnesty almost immediately.<sup>10</sup> Furthermore, the Amnesty Committee continued for an additional three years after the HRV Committee ended its operations, which some have perceived as illustrative of the TRC’s favorable bias toward perpetrators.<sup>11</sup>

In 2005, in accordance with TRC recommendations, the government established a Post-TRC Unit within the Department of Justice. This unit is mandated to monitor the implementation of TRC recommendations and to regularly update Parliament on various government departments’ progress.<sup>12</sup>

*Constitution of South Africa of 1996:* This is the highest law in South Africa, adopted to heal past divisions and create a society based on democratic values, social justice, and human rights.<sup>13</sup>

*South African Human Rights Commission (SAHRC):* The Human Rights Commission Act of 1994 and the Constitution form the basis for the SAHRC. It was constituted in 1995 as an independent Chapter 9 institution, which is a state body that strengthens constitutional democracy. The SAHRC seeks to promote respect for and protection of human rights.<sup>14</sup>

### **Reparations Efforts and Programs**

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005, directs states to provide victims with five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>15</sup>

## 1. Restitution

Restitution aims to restore the victim to their situation before they had been violated. For example, enabling a victim's return to their place of residence, returning property, and restoring citizenship are acts of restitution. South Africa has a number of measures that provide restitution for victims. However, the restitution measures have experienced several failures, and many beneficiaries have seen little or no improvements to their standard of living.

### *Restoration of liberty*

On April 27, 1994, South Africa enjoyed its first fair, free, and non-racial elections.<sup>16</sup> This day marked the end of centuries of colonialism and apartheid and paved the way for constitutional democracy. This day is commemorated annually as "Freedom Day," a day to commemorate the realization of freedom, peace, and the restoration of political rights for all South Africans.<sup>17</sup> Freedom has not reached all anti-apartheid activists, and some Black political prisoners have remained in jail while presidential pardons have released white perpetrators of apartheid-era crimes.<sup>18</sup>

### *Enjoyment of human rights, identity, family life, and citizenship*

The Bill of Rights of the Constitution is a cornerstone of democracy, enshrining the rights of all South Africans and affirming the democratic values of human dignity, equality, and freedom. It protects a wide range of civil and political rights and economic and social rights.<sup>19</sup>

### *Restoration of employment*

The Broad-Based Black Economic Empowerment Act aims to encourage economic transformation, enable meaningful participation of people of color in the economy, and redress past systemic racism. It intends to achieve this by increasing the number of Black people who own, manage, control, and gain employment opportunities in South Africa's economy.<sup>20</sup>

### *Return of property*

Violence as well as oppressive laws and policies, such as the Natives Land Act of 1913 that reserved 87% of land for whites, dispossessed the indigenous people of South Africa of their land.<sup>21</sup> Although the TRC did not cover evictions and the loss of land,<sup>22</sup> other legal mechanisms exist to facilitate the restitution of land. Amended in 2014, the Restitution of Land Act of 1994 seeks to restore land rights to persons and communities who lost their land after June 1913 due to discriminatory laws or practices. It also mandated the formation of a Commission on Restitution of Land Rights and a Land Claims Court.<sup>23</sup> Via the latter mechanism, South Africans have the right to legal recourse for violations of their land rights.

The Land Claims Court, established in 1996, specializes in dealing with disputes arising out of the laws underpinning land reform. This court has the same status as a High Court and decisions may be appealed to the Supreme Court of Appeal and, if applicable, to the Constitutional Court.<sup>24</sup>

## 2. Compensation

When damage is economically assessable, states should provide compensation.

### *General compensation*

Urgent interim reparations targeted people in immediate need of assistance by delivering services, facilities, and limited monetary resources when necessary.<sup>25</sup> Compensation also took the form of individual grants to each victim, and these grants were to be paid over a period of six years. The TRC proposed around ZAR 21,700 per year—not more than ZAR 23,023 per year—for six years for each eligible victim (a total of ZAR 130,200).<sup>26</sup> While urgent interim reparations should have been distributed in 1998 upon the release of the TRC's interim report, the government delayed until 2003. At that time, the government disbursed ZAR 50 million (approximately US\$4 million as of 2018) among 16,500 victims. Due to extensive advocacy by civil society organizations, then-President Thabo Mbeki announced a one-time payment of ZAR 30,000 to the 18,000 victims who testified before the TRC. As of September 2011, the government had completed payments to 15,000 of the 16,000 surviving victims who qualified for compensation.<sup>27</sup> The National Director for the Khulumani Support Group, which spearheads the struggle for healing, memory, reparations, and active citizenship, argued that the TRC-awarded compensation disadvantaged victims who lived in rural and remote areas as well as victims who lacked access to transportation, the media, or capacity to find and approach the statement-takers who traveled the country at the time.<sup>28</sup>

The one-time ZAR 30,000 was given without any explanation. Some eligible victims merely got a reference number and are still waiting, and others died before obtaining any money. As of 2018, over ZAR 1.43 billion sits in the President's Fund.<sup>29</sup> According to the President's Fund Report for the 2015–2016 fiscal year, compensation is finalized except for 13 beneficiaries whose locations could not be determined, 9 of who are believed to be overseas. The money for the final four beneficiaries is reserved in the Fund in case they come forward to claim their share.<sup>30</sup> Regardless of the remaining funds, victims and civil society organizations have wondered if ZAR 30,000 per victim was adequate and effective, especially in light of the TRC recommendation, which was closer to ZAR 130,200 per victim.

Despite a surplus of funds and underpayment of compensation to victims, the government seems to be directing money toward social development instead of prioritizing reparations payouts.<sup>31</sup> As a result, civil society organizations have used litigation to enforce payment to apartheid victims.<sup>32</sup> For example, 25 South Africans represented by the Khulumani Support Group filed a US Alien Tort Statute lawsuit against 18 multinational banks and corporations for doing business in apartheid-era South Africa. In February 2012, as a show of good faith

and without admitting liability, General Motors Corporation settled for US\$1.5 million in General Motors shares once the company came out of bankruptcy. Unfortunately, some victims died without seeing this money. The case was dismissed in August 2013.<sup>33</sup> Notably, Mbeki opposed the lawsuit, believing it would discourage foreign investment, while his successor, Jacob Zuma, expressed support for the lawsuit in September 2009.<sup>34</sup>

*Costs required for legal or expert assistance and medical, psychological, and social services*

The President's Fund has covered the costs of medical and psychological programs as well as social services, such as education assistance, provision of housing, and the reburial of missing or disappeared persons.

The government passed regulations on May 7, 2010 to help families of missing or disappeared persons whose remains were exhumed and reburied. As of March 31, 2016, the government has assisted 75 families who had applied for financial support toward their reburial expenses. In total, the government has paid out ZAR 1,249,500 for reburials.

Furthermore, the government promulgated regulations for both Basic and Higher Education on November 3, 2014. 596 of 750 applicants were eligible for compensation, and the government ultimately refunded ZAR 3,259,648 to Basic Education and ZAR 4,307,488 to Higher Education to cover applicants' costs.<sup>35</sup>

### **3. Rehabilitation**

Rehabilitation involves redressing victims through, for instance, the provision of medical, psychosocial, and legal services.

*Medical and psychological care*

The TRC Act is still in force, and the government has accordingly promulgated regulations over the last several years. For example, on May 11, 2011, the Department of Justice and Constitutional Development gazetted the Notice 282 regulations regarding the payment of education assistance and health benefits exclusively to victims identified by the TRC.<sup>36</sup> Civil society organizations, such as the SACTJ, were skeptical of these regulations due to the lack of meaningful involvement and consultation with victims during the conceptualization and drafting process, the Department of Justice's failure to extend benefits to all victims instead of limiting them to victims identified by the TRC, and the unnecessarily complicated administrative procedures.<sup>37</sup> As of June 2017, the medical regulations have not been finalized, to the detriment of victims coping with serious injuries, including the presence of bullets in their bodies since the 1990s.

The RRC also suggested community rehabilitation programs to promote individual and community healing. This entailed psychosocial assistance as well as reintegrating and

demilitarizing participants in the armed struggle against apartheid.<sup>38</sup> As of November 2017, regulations for community rehabilitation were not finalized.<sup>39</sup>

#### *Legal and social services*

The Department of Justice and Constitutional Development gazetted the Notice 282 regulations regarding the payment of education assistance and health benefits exclusively to victims identified by the TRC.<sup>40</sup>

As of November 2017, the situation for housing regulations has been similar to the status of medical regulations, as discussed above. The Department of Justice is in the process of reconciling the list of beneficiaries with the housing database and verifying how many of them have already received houses. Regarding regulations that would facilitate the RRC-recommended community rehabilitation, the Department of Justice is finalizing a memorandum to Cabinet to assist with the decision on how to proceed with the community regulations.<sup>41</sup>

### **4. Satisfaction**

Satisfaction includes a wide range of measures, such as ceasefires, truth-seeking and documentation,<sup>42</sup> the search for missing or disappeared persons, and memorialization.

#### *Verification of the facts and full and public disclosure of the truth*

The TRC, namely through the HRV Committee, performed the function of verifying facts and disclosing the truth to the public. The HRV Committee took statements and investigated human rights violations from 1960 through the end of apartheid in 1994.<sup>43</sup> The final report of the TRC, including of the Amnesty Committee, was submitted in 2003.

#### *Search for the missing, disappeared, and killed*

The TRC recommended constituting a task team to examine about 500 unsolved cases of missing or disappeared persons. In 2004, the Missing Persons Task Team was established in the National Prosecuting Authority on account of the connections between investigations and prosecutions.<sup>44</sup> As of April 2018, the Task Team has located the remains of 138 victims murdered by apartheid forces,<sup>45</sup> such as the Mamelodi 10,<sup>46</sup> Phemelo Ntehelang,<sup>47</sup> Cyprian Bheki Hlatshwayo, and Vuyani Goniwe.<sup>48</sup>

#### *Official declaration or a judicial decision restoring victims' dignity, reputation, and rights*

The RRC proposed the expungement of criminal records for political offenses as a legal and administrative measure.<sup>49</sup> Individuals have the option of paying one of several organizations to assist with the process or completing their own application and submitting it to the Department of Justice and Constitutional Development.<sup>50</sup>

*Public apology*

The last president of the apartheid regime, F.W. de Klerk, went before the TRC on August 21, 1996 to formally and publicly apologize for the “pain and suffering” caused by the apartheid system.<sup>51</sup> However, this apology was criticized for failing to acknowledge that apartheid in and of itself was morally objectionable. In fact, on different occasions, de Klerk defended certain aspects of apartheid, espousing its “separate but equal” goal and denying the disenfranchisement of people of color by forcing them onto a mere 13% of the land.<sup>52</sup>

The TRC heard apologies for gross human rights violations by apartheid regime security forces, judges, members of the legal profession, church leaders, the apartheid-era national medical association, the Afrikaans Chamber of Commerce, and anti-apartheid activists.<sup>53</sup>

*Judicial and administrative sanctions against persons liable for the violations*

Although the amnesty process has precluded many prosecutions, there have been some positive advances. For example, civil society organizations supported the family of Nokuthula Simelane, an anti-apartheid activist who security forces abducted, tortured, and disappeared in 1983, in discovering her whereabouts and fate. Primarily concerned with the truth, the family filed an application in the Pretoria High Court in 2015 seeking a formal inquest into Simelane’s fate. Their activism resulted in the indictment of four apartheid-era police officers in 2016. As of February 2018, the trial has stalled while three of the alleged perpetrators contest the police’s refusal to pay their legal fees. The trial is unlikely to resume in the near future.<sup>54</sup>

*Commemorations and tributes to the victims*

In line with TRC recommendations on this point, the Department of Arts and Culture has implemented programs to promote academic and formal records of history, culture, and art and commemorate the anti-apartheid struggle, including by renaming sites. South Africa has numerous memory and heritage sites, such as the Apartheid Museum,<sup>55</sup> Constitution Hill,<sup>56</sup> Freedom Park,<sup>57</sup> and the Robben Island Museum.<sup>58</sup> The government also changed the names of streets,<sup>59</sup> towns and cities,<sup>60</sup> schools, and hospitals,<sup>61</sup> and other institutions to memorialize anti-apartheid figures.<sup>62</sup> From 1996 to 2010, the South African Geographical Names Council has changed the names of at least 849 residential areas, suburbs, and national geographic places.<sup>63</sup> In March 2016, the government gave schools named after apartheid proponents until the following September to voluntarily change their names or the government would do it for them.<sup>64</sup>

As of 2011, some victims have argued that the TRC-recommended community rehabilitation measures should include memorialization initiatives, such as community gardens. Previously, victims had emphasized the need for financial reparations, so the existence of US\$1 million

earmarked for collective reparations may have caused some victims to reprioritize, believing this money may be their last hope for any reparations.<sup>65</sup>

*Inclusion of an accurate account of the violations in training and educational materials*

By 2015, the government was phasing out the apartheid-era history curriculum in a process of curriculum reform that began immediately after the end of apartheid. The first process of 1994 aimed to remove the most egregious racist, sexist, and outdated content that had remained in use even after the 1994 elections.<sup>66</sup> However, there are still elements of the education system that recall the apartheid era instead of teaching positive elements about the anti-apartheid struggle.<sup>67</sup>

## **5. Guarantees of non-repetition**

Guarantees of non-repetition center on institutional reform, such as vetting and lustration processes.

*Effective civilian control of military and security forces*

Under the Constitution, the President appoints the head of police and intelligence services.<sup>68</sup> A few institutions exercise independent oversight over the police, including the SAHRC, the Civilian Secretariat for Police (CSP), and the Independent Police Investigative Directorate (IPID). The SAHRC is empowered to receive and respond to complaints of police abuse, and it has exercised this ability. It possesses only the power to make recommendations and cannot pursue civil or criminal charges. Pursuant to Section 208 of the Constitution, the CSP Act of 2011 established the CSP to monitor the police and facilitate community-based policing.<sup>69</sup> Finally, the government created the Independent Complaints Directorate (ICD) in 1997 to deal with complaints against the police, such as death by police action, custodial death, involvement of police in criminal behavior, and the failure to assist victims of domestic violence.<sup>70</sup> In 2011, the IPID replaced the ICD, which was the target of TRC recommendations.<sup>71</sup> The IPID Act enabled the body to handle the same complaints as the ICD did while allowing the IPID to undertake serious criminal investigations rather than focusing on service-related matters like the ICD did.<sup>72</sup> Unfortunately, the IPID lacks provisions on command responsibility for holding superiors accountable for their subordinates' abuses.<sup>73</sup>

*Vetting and lustration*

The TRC did not find vetting and lustration measures to be appropriate in the South African context.<sup>74</sup>



*Human rights education and training for law enforcement officials and security forces*

The TRC recommended human rights education and training for law enforcement.<sup>75</sup> The SAHRC is empowered to undertake human rights education, with one focus on law enforcement.<sup>76</sup> For example, the SAHRC has educated law enforcement on the right to protest and the responsibility of the police to refrain from using excessive force against demonstrators.<sup>77</sup>

*Mechanisms for preventing and monitoring social conflicts and their resolution*

The Constitution mandates the SAHRC to “(a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights; and (c) monitor and assess the observance of human rights in the Republic.”<sup>78</sup>

*Review and reform of laws contributing to human rights violations*

Despite the end of apartheid and the adoption of a new constitution that recognizes economic and social rights as fundamental rights, Blacks have continued to face significant socioeconomic challenges. Specific reparations regarding the economic divide were suggested but remain unimplemented. For example, the TRC proposed that the government tax and redistribute the resources of businesses to help alleviate poverty, narrow the economic divide, and promote equality, but the government has not executed this.

---

<sup>1</sup> Promotion of National Unity and Reconciliation Act 34 of 1995, pmbl. (South Africa), available at <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

<sup>2</sup> Mary-Anne Gontsana, “Apartheid Compensation Process Flawed, Says Khulumani,” GroundUp, July 4, 2016, <https://www.groundup.org.za/article/apartheid-compensation-process-flawed-says-khulumani/>; Mary-Anne Gontsana, “Over R1 Billion in Fund – Yet Apartheid Victims Still Await Compensation,” *Daily Maverick*, November 6, 2013, <https://www.dailymaverick.co.za/article/2013-11-06-over-r1-billion-in-fund-yet-apartheid-victims-still-await-compensation/#.Wthms3pubIU>.

<sup>3</sup> “Welcome to the Official Truth and Reconciliation Commission Website,” South African Truth and Reconciliation Commission (TRC), accessed May 3, 2018, <http://www.justice.gov.za/trc/>.

<sup>4</sup> “The Committees of the TRC,” TRC, accessed May 3, 2018, <http://www.justice.gov.za/trc/trccom.html>.

<sup>5</sup> Ereshnee Naidu-Silverman, “Mayibuye! Let Us Reclaim! Assessing the Role of Memorialization in Post-Conflict Rebuilding” (PhD diss., Graduate Center of the City University of New York, 2014), 40, [https://academicworks.cuny.edu/gc\\_etds/456/](https://academicworks.cuny.edu/gc_etds/456/).

<sup>6</sup> South African Truth and Reconciliation Commission (TRC), *Report of the Reparation & Rehabilitation Committee*, vol. 6, sec. 2, ¶ 3 (Cape Town: TRC, 1998), available at [http://www.justice.gov.za/trc/report/finalreport/vol6\\_s2.pdf](http://www.justice.gov.za/trc/report/finalreport/vol6_s2.pdf).

<sup>7</sup> South Africa TRC, *Report of the Reparation & Rehabilitation Committee*, vol. 6, sec. 2, ¶ 8.

<sup>8</sup> South Africa TRC, *Report of the Reparation & Rehabilitation Committee*, vol. 6, sec. 2, ¶¶ 13–15.

<sup>9</sup> Sufiya Bray, “Reparation in South Africa: the ‘Unfinished Business’ of the TRC?,” Khulumani Support Group, July 8, 2014, <https://www.khulumani.net/truth-memory/item/979-article-on-the-unfinished-business-of-reparations-in-south-africa-in-the-pan-african-reparation-perspectives-bulletin.html>; Nokuthula Ntuli, “‘Government Failed Us’ After TRC,” *Mercury*, available at <https://www.iol.co.za/news/politics/government-failed-us-after-trc-1723369>; Amnesty International (AI) and Human Rights Watch (HRW), *Truth and Justice: Unfinished Business in South Africa* (New York: AI and HRW, 2003), <https://www.hrw.org/legacy/backgrounder/africa/truthandjustice.htm>; Frank Meintjies, “The TRC and CODESA Failed South Africa: It’s Time We Reflected on This,” South African Civil Society Information Service, September 12, 2013, <http://sacsis.org.za/site/article/1783>.

- <sup>10</sup> Nahla Valji, “South Africa: No Justice Without Reparation,” *openSecurity* (blog), *openDemocracy*, July 2, 2003, [https://www.opendemocracy.net/faith-africa\\_democracy/article\\_1326.jsp](https://www.opendemocracy.net/faith-africa_democracy/article_1326.jsp).
- <sup>11</sup> Naidu-Silverman, 49.
- <sup>12</sup> Naidu-Silverman, 44.
- <sup>13</sup> “Overview,” South African Human Rights Commission (SAHRC), accessed May 3, 2018, <https://www.sahrc.org.za/index.php/about-us/about-the-sahrc>.
- <sup>14</sup> “Overview,” SAHRC; CONSTITUTION OF SOUTH AFRICA, 1996, art. 181(1)(b), available at <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.
- <sup>15</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147 (December 16, 2005), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.
- <sup>16</sup> “1994 National Election Manifesto,” African National Congress, accessed May 3, 2018, <http://www.anc.org.za/content/1994-national-elections-manifesto>; Francis X. Clines, “The South African Vote: The Overview; After 300 Years, Blacks Vote in South Africa,” *New York Times*, April 27, 1994, <https://www.nytimes.com/1994/04/27/world/the-south-african-vote-the-overview-after-300-years-blacks-vote-in-south-africa.html>.
- <sup>17</sup> “Freedom Day Is Celebrated in South Africa,” South African History Online, March 16, 2011, <http://www.sahistory.org.za/dated-event/freedom-day-celebrated-south-africa>.
- <sup>18</sup> Motsoko Pheko, “The Shame of South Africa’s Black Political Prisoners,” *Pambazuka News*, February 3, 2016, <https://www.pambazuka.org/governance/shame-south-africa%E2%80%99s-black-political-prisoners>.
- <sup>19</sup> CONSTITUTION OF SOUTH AFRICA, ch. 2.
- <sup>20</sup> Investment House, “What Is BBBEE?” *Entrepreneur*, August 23, 2016, <https://www.entrepreneurmag.co.za/advice/doing-business-in-sa/bee/what-is-bbbee/>.
- <sup>21</sup> Shaazia Ebrahim, “The Land Question Part 1: What Is Land Reform?,” *Daily Vox*, February 6, 2017, <https://www.thedailyvox.co.za/the-land-question-part-1-what-is-land-reform-shaazia-ebrahim/>.
- <sup>22</sup> Elmien Du Plessis, “No, South Africa’s Constitution Doesn’t Prevent Us From Addressing The Land Question,” *HuffPost* (blog), November 20, 2016, [https://www.huffingtonpost.co.za/elmien-du-plessis/no-south-africas-constitution-doesnt-prevent-us-from-addressi\\_a\\_21609119/?utm\\_hp\\_ref=za-homepage](https://www.huffingtonpost.co.za/elmien-du-plessis/no-south-africas-constitution-doesnt-prevent-us-from-addressi_a_21609119/?utm_hp_ref=za-homepage).
- <sup>23</sup> Restitution of Land Rights Amendment Act 22 of 1994.
- <sup>24</sup> “Welcome,” Land Claims Court of South Africa, accessed May 4, 2018, <http://www.justice.gov.za/lcc/>.
- <sup>25</sup> South Africa TRC, *Report of the Reparation & Rehabilitation Committee*, vol. 6, sec. 2, ¶ 10.
- <sup>26</sup> South Africa TRC, *Truth and Reconciliation Commission of South Africa Report*, vol. 5, ¶¶ 69, 73.
- <sup>27</sup> Naidu-Silverman, 45.
- <sup>28</sup> Farren Collins and Daniel Meyer, “Apartheid Victims in the Lurch,” *Times Live*, August 2, 2017, <https://www.timeslive.co.za/news/south-africa/2017-08-02-apartheid-victims-in-the-lurch/>.
- <sup>29</sup> Gontsana, “Over R1 Billion in Fund – Yet Apartheid Victims Still Await Compensation”; “President’s Fund,” National Government of South Africa, accessed May 3, 2018, <https://nationalgovernment.co.za/units/financial/269/president-s-fund>.
- <sup>30</sup> Department of Justice and Constitutional Development, *The Presidents’ Fund Annual Report 2015/2016* (Pretoria: Department of Justice and Constitutional Development, 2016), 6, <http://www.justice.gov.za/reportfiles/other/presfund-anr-2015-16.pdf>.
- <sup>31</sup> Simon Allison, “The President’s Fund: Where Is the Money for Apartheid Victims Actually Going?,” *Daily Maverick*, October 14, 2014, <https://www.dailymaverick.co.za/article/2014-10-14-the-presidents-fund-where-is-the-money-for-apartheid-victims-actually-going/#.WtrAFi7wZ0w>; “Save the Apartheid Victims’ Compensation Fund,” *amandla.mobi*, accessed May 3, 2017, [https://www.amandla.mobi/apartheid\\_victims\\_compensation\\_fund](https://www.amandla.mobi/apartheid_victims_compensation_fund).
- <sup>32</sup> Rebecca Davis, “General Motors Concedes to Khulumani in Apartheid Reparations Case,” *Daily Maverick*, March 1, 2012, <https://www.dailymaverick.co.za/article/2012-03-01-general-motors-concedes-to-khulumani-in-apartheid-reparations-case/#.WthnIXpubIU>; Ra’eesa Pather, “Government Stopped Apartheid Victims from Receiving Better Compensation—Ntsebeza,” *Mail & Guardian*, February 3, 2018, <https://mg.co.za/article/2018-02-03-government-stopped-apartheid-victims-from-receiving-better-compensation-ntsebeza>; Norman Reynolds, “Khulumani’s Reparations Case,” *Pambazuka News*, January 6, 2005, <https://www.pambazuka.org/governance/khulumani%E2%80%99s-reparations-case-and-future-human-rights>.
- <sup>33</sup> Naidu-Silverman, 47–48; Rebecca Davis, “US Corporations Can’t Be Sued for Apartheid, Court Rules,” *Daily Maverick*, August 22, 2013, <https://www.dailymaverick.co.za/article/2013-08-22-us-corporations-cant-be-sued-for-apartheid-court-rules/#.WuuSfaQvx0w>.
- <sup>34</sup> Naidu-Silverman, 47–48.
- <sup>35</sup> *The Presidents’ Fund Annual Report 2015/2016*, 7.

- <sup>36</sup> South African Coalition for Transitional Justice (SACTJ) to Office of Director-General: Justice and Constitutional Development, Comments on the Draft Regulations Published by the Department of Justice Dealing with Reparations for Apartheid Era Victims, June 8, 2011, available at <http://www.csvr.org.za/docs/sactjcommentsdojreparations.pdf>.
- <sup>37</sup> SACTJ to Office of Director-General: Justice and Constitutional Development.
- <sup>38</sup> South Africa TRC, *Report of the Reparation & Rehabilitation Committee*, vol. 6, sec. 2, ¶ 16.
- <sup>39</sup> Kgalema Motlanthe et al., “Accelerating Fundamental Change: The Motlanthe Report,” *Politicsweb*, November 23, 2017, <http://www.politicsweb.co.za/documents/accelerating-fundamental-change-the-motlanthe-repo>.
- <sup>40</sup> SACTJ) to Office of Director-General: Justice and Constitutional Development.
- <sup>41</sup> Motlanthe et al.
- <sup>42</sup> Documentation involves the verification of the facts, which contributes to an accurate account of violations and the disclosure of the truth.
- <sup>43</sup> “The Committees of the TRC.”
- <sup>44</sup> General Notice 1539 of 2008, sec. 2 (South Africa).
- <sup>45</sup> Shaun Smillie, “Window of Opportunity to Find Apartheid’s Missing Victims Closing Unless Old Assassins Tell All,” *Daily Maverick*, April 20, 2018, <https://www.dailymaverick.co.za/article/2018-04-20-missing-persons-window-of-opportunity-to-find-apartheids-missing-victims-closing-unless-old-assassins-tell-all/#.WujbIy7wZ0w>.
- <sup>46</sup> “Mamelodi 10’ to Rest,” *IOL News*, October 10, 2008, <https://www.iol.co.za/news/politics/mamelodi-10-to-rest-419759>.
- <sup>47</sup> Loyiso Sidimba, “‘Prime Evil’ Helps Family Find Closure,” *Sowetan Live*, December 20, 2014, <https://www.sowetanlive.co.za/news/2014-12-20-prime-evil-helps-family-find-closure/>.
- <sup>48</sup> Poloko Tau, “Discovery of Cadres’ Bodies Brings Closure 34 Years Later,” *IOL News*, July 16, 2012, <https://www.iol.co.za/the-star/discovery-of-cadres-bodies-brings-closure-34-years-later-1341681>.
- <sup>49</sup> South Africa TRC, *Report of the Reparation & Rehabilitation Committee*, vol. 6, sec. 2, ¶ 15.
- <sup>50</sup> “Expungement of a Criminal Record,” South African Police Service, accessed May 3, 2018, <https://www.saps.gov.za/faqdetail.php?fid=57>.
- <sup>51</sup> “South Africa – de Klerk Makes Apology,” *AP Archive*, August 21, 1996, video, 2:04, [https://www.youtube.com/watch?v=y\\_uuN7yhBjc](https://www.youtube.com/watch?v=y_uuN7yhBjc).
- <sup>52</sup> Aislinn Laing, “FW de Klerk: Not All Aspects of Apartheid ‘Morally Repugnant’,” *Telegraph*, May 11, 2012, <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/9260637/FW-de-Klerk-not-all-aspects-of-apartheid-morally-repugnant.html>; Lynne Duke, “de Klerk Offers Apology for Past Pain and Suffering,” *Washington Post*, August 22, 1996, [https://www.washingtonpost.com/archive/politics/1996/08/22/de-klerk-offers-apology-for-past-pain-and-suffering/30b0b2f8-7758-477e-8a35-bfaaf9c295f3/?utm\\_term=.fe48d913478e](https://www.washingtonpost.com/archive/politics/1996/08/22/de-klerk-offers-apology-for-past-pain-and-suffering/30b0b2f8-7758-477e-8a35-bfaaf9c295f3/?utm_term=.fe48d913478e).
- <sup>53</sup> South Africa TRC, *Truth and Reconciliation Commission of South Africa Report*, vol. 5, ¶ 49, 61, available at <http://www.justice.gov.za/trc/report/finalreport/Volume5.pdf>.
- <sup>54</sup> Zeldi Venter, “Trial of 4 Accused of Killing Anti-Apartheid Activist Simelane Will Not Resume Soon,” *IOL News*, February 6, 2018, <https://www.iol.co.za/pretoria-news/trial-of-4-accused-of-killing-anti-apartheid-activist-simelane-will-not-resume-soon-13131910>.
- <sup>55</sup> Apartheid Museum, accessed May 3, 2018, <https://www.apartheidmuseum.org/>.
- <sup>56</sup> Constitution Hill, accessed May 3, 2018, <https://www.constitutionhill.org.za/>.
- <sup>57</sup> Freedom Park, accessed May 3, 2018, <https://www.freedompark.co.za/>.
- <sup>58</sup> Robben Island Museum, accessed May 3, 2018, <http://www.robben-island.org.za/>.
- <sup>59</sup> “Pretoria’s New Street Names,” ShowMe, accessed May 3, 2018, <https://showme.co.za/pretoria/tourism/pretorias-new-street-names/>.
- <sup>60</sup> “Where the Hell Are We?,” *News24*, March 9, 2014, <https://www.news24.com/Archives/City-Press/Where-the-hell-are-we-20150429>.
- <sup>61</sup> “3 Gauteng Hospitals Renamed,” *News24*, September 29, 2008, <https://www.news24.com/SouthAfrica/News/3-Gauteng-hospitals-renamed-20080929>; “‘Hottentot’ Hospital Name Changed,” *IOL News*, August 21, 2007, <https://www.iol.co.za/news/south-africa/hottentot-hospital-name-changed-367262>.
- <sup>62</sup> Alistair Boddy-Evans, “New Names of Locales in South Africa,” ThoughtCo., March 8, 2017, <https://www.thoughtco.com/new-names-in-south-africa-43002>.
- <sup>63</sup> “Nearly 850 Name Changes in SA in 14 Years,” *Mail & Guardian*, October 13, 2010, <https://mg.co.za/article/2010-10-13-nearly-850-name-changes-in-sa-14-years>.
- <sup>64</sup> Naledi Shange, “Apartheid Names for Schools Must Fall – Lesufi,” *News24*, March 15, 2016, <https://www.news24.com/SouthAfrica/News/apartheid-names-for-schools-must-fall-lesufi-20160315>.

---

<sup>65</sup> Naidu-Silverman, 163–64.

<sup>66</sup> “To Understand SA’s History Curriculum Change in Democracy, Lets First Look at This Change During Transition,” *News24*, January 15, 2015, <https://www.news24.com/MyNews24/To-understand-SAs-History-Curriculum-change-in-Democracy-lets-first-look-at-this-change-during-Tra-20150114>.

<sup>67</sup> Matshepo Sehloho, “‘Elements of Apartheid Propaganda Still Taught in School History Books Today’,” *702*, April 4, 2018, <http://www.702.co.za/articles/298294/elements-of-apartheid-propaganda-still-taught-in-school-history-books-today>.

<sup>68</sup> CONSTITUTION OF SOUTH AFRICA, arts. 207, 209.

<sup>69</sup> Jo-Anne Prud’Homme et al., *Legal Study on Policing and Human Rights Standards* (Copenhagen: DIGNITY, 2017), 31–32, [https://stoptortur.dk/wp-content/uploads/publication\\_series\\_no18.pdf](https://stoptortur.dk/wp-content/uploads/publication_series_no18.pdf).

<sup>70</sup> “About the ICD,” Independent Complaints Directorate, accessed May 3, 2018, <https://web.archive.org/web/20081208174049/http://www.icd.gov.za/about/index.html>.

<sup>71</sup> South Africa TRC, *Truth and Reconciliation Commission of South Africa Report*, vol. 5, ¶ 70.

<sup>72</sup> “Ten Facts About SA’s Watch-dog – Independent Police Investigative Directorate (IPID),” Wits Justice Project, April 30, 2015, <http://www.witsjusticeproject.co.za/news-and-insights-category/ten-facts-about-sas-watch-dog-independent-police-investigative-directorate-ipid>.

<sup>73</sup> Prud’Homme et al., 32.

<sup>74</sup> South Africa TRC, *Truth and Reconciliation Commission of South Africa Report*, vol. 5, ¶ 19.

<sup>75</sup> South Africa TRC, *Truth and Reconciliation Commission of South Africa Report*, vol. 5, ¶ 21.

<sup>76</sup> “What We Do,” SAHRC, accessed May 4, 2018, <https://www.sahrc.org.za/index.php/what-we-do>; “Focus Areas,” SAHRC, accessed May 4, 2018, <https://www.sahrc.org.za/index.php/focus-areas/human-rights-and-law-enforcement-prevention-of-torture>.

<sup>77</sup> SAHRC, *Human Rights in Community Protests* (Braamfontein, South Africa: SAHRC), <https://www.sahrc.org.za/files/Human%20Rights%20in%20Community%20Protests.pdf>.

<sup>78</sup> CONSTITUTION OF SOUTH AFRICA, 184(1).