

# A draft position paper: Jubilee South Africa

## REPARATIONS A draft position paper

**Jubilee South Africa** (October 2000)

if !supportEmptyParas> endif>

Like the idea of a Marshall Aid Plan for South Africa, reparations appear to be a call whose time has come. Even more than debt cancellations, reparations evoke passions sprung from an accumulated sense of historical grievance, of injustice, oppression, exploitation and racism. The sense of outrage is experienced at a most personal level collectively no less than individually & embrace the age-old sufferings of nations, regions and continents.

The failure of the new South Africa to meet the long-suppressed, poverty induced expectations of black liberation through the democratic elections of 1994 and 1999 provide the more immediate material basis for the evocative power of calls for reparations. Reparations for past wrongs in a context of current deprivation further ignite these passions by offering the prospect of individualised payment.

An African call for reparations accordingly lends itself to demagoguery because of the near boundless scope for rhetorical manipulations of people's amassed hurts and desperate material needs. Easily made promises are guaranteed instant popularity regardless of their practicality. Populist attacks on parties, movements and individuals also come cheaply. Reparations offer a home for individuals or small sectarian groups who need only parade their militancy.

The challenge is to find the balance between the enormity of the wrongs endured and the politically practical. And to do so while always bearing in mind that what is considered to be practical, to be realistic, is itself for ever deeply political, that is to say, is heavily shaped by one's view of the world, by the priorities one gives to the myriad of competing demands. Indeed, broader political objectives might help in finding this balance for no reparations campaign or movement can occur in a vacuum.

The first questions to be addressed by a policy paper on reparations must be: Reparations for what and for whom?

## Accountability & Administration

Having established what the reparations will be used for, the final question that needs to be raised is how the proceeds will be administered. Hopefully, we are talking about a lot of money and this immediately gives rise to problems. Two obvious dangers need to be addressed: that politicians - particularly in countries where democratic accountability is weak if not non-existent - have shown a marked proclivity to use any available money for their own enrichment and governments, even democratic ones, are predisposed to adding any unbudgeted funds to the general public fiscus or, as our government is prone to doing, to pay off its debts.

How then do we ensure that the monetary compensation will be used for legitimate RDP purposes? South African trade unions set up a Trust Fund with themselves and the

government as joint trustees to administer the Unemployment Fund they created. We can borrow this idea and set up a regional RDP Trust Fund, jointly administered by governments and representatives from civil society. The terms of the trust would need to be worked out in detail but priority would be given to full transparency and accountability.

**October 2000**

## Against Whom?

Reparations can be claimed against both internal and external agents.

### (a) Internal

The following are amongst the more obvious of the internal agents:

- The mines, banks and financial institutions, businesses and farmers whose interests defined the main socio-economic features of 19th and 20th century South Africa.
- The governments at national, provincial and local levels that introduced and enforced the above features and extended them to incorporate the characteristics more usually associated with apartheid.
- The post-Sharpeville national governments that transformed South Africa into a militarised state and sanctioned the military interventions in and economic destabilisation of the countries of Southern Africa.
- The present national government which has accepted liabilities for (some of) the crimes of the apartheid state.
- Private citizens - mainly though not exclusively 'white' - who benefited in numerous and diverse ways from apartheid.

### (b) External

External sources include

- The large corporations, banks and financial institutions responsible for much of the history of Southern Africa, from the 17th century right up to today. The imperial countries that hosted these business interests are Britain, France, Germany, Holland and Portugal. Arab slavers need also to be added to this list of early economic interests.
- The Governments that acted on behalf of the above business interests.
- The banks, financial institutions and other large corporations that directly profited from apartheid and provided a critical economic lifeline to the post Sharpeville regime. These businesses are based mainly in Britain, the US, Germany and Switzerland.
- The Governments, principally those from the four countries just mentioned, that aided, abetted and protected the apartheid regime until the very end.
- The Portuguese government and business interests need to be added to this list should it be decided that the reparations' claim is to be an inclusive Southern African one. It might also be necessary to add the German government and businesses depending on how far back in history the reparations claim covers.
- The private citizens of all the above countries who benefited in numerous and diverse ways from the exploitation and oppression of the Southern African region.

A large number of wide ranging options have been identified thus far. Are there any principles that might help in selecting the most appropriate of these options, bearing in mind that the answers additionally will help determine the vexed matter of the size of the reparations to be claimed?

## Against whom: More Information

The TRC has recommended reparations of R3-billion for the 21,000 individuals it recognised as being victims of gross human rights abuses between 1960 and 1994. The government says it can't afford the cost of this recommendation. But this is not the point. The point is that the government should not be using the people's money to pay compensation to the same people. R3-billion represents a tiny fraction of what South African business invests abroad each year. This means R3-billion represents an even tinier fraction of the profits appropriated each year by those same businesses.

A TRC reparations tax equivalent to at least R3-billion should therefore be levied against those companies that, at a time of massive and growing unemployment at home, see fit to invest abroad profit that has been made in South Africa.

Apartheid, universally condemned as a crime against humanity, was nonetheless the system of choice of those South Africans who had the right to vote; a right conferred on them exclusively by the racial dictatorship that was apartheid. From 1909 until the first democratic election in South Africa's history, South Africans deemed to be so-called 'white' overwhelmingly and unfailingly voted for the various parties of 'white' supremacy. The Democratic Party (DP) might well contest this. Since the 1990's, the DP has sought to present itself as a party implacably opposed to apartheid. Whilst it is true that that by the late 1980s, the DP was willing to extend the vote to all South Africans, it is equally true that the DP - then, as now - was intent on preserving the economic and social privileges bequeathed to its supporters by apartheid.

'White' South Africans are therefore fully liable for reparations. The easiest and most equitable form of such reparations is a graduated wealth tax to be levied on all South Africans earning above certain amounts. The various thresholds, the percentage to be paid and the duration of the tax are details that would be premature to settle now. Acceptance of the general principle is what is important at this juncture.

South Africa owes its very existence as a political entity in no small measure to the discovery of gold and diamonds. From the late nineteenth century until well into the 1980's business needs shaped labour legislation and the gamut of laws introduced to control the free movement of black South Africans. Business did more than just tolerate apartheid and uncomplainingly make large profit out of that inhuman system. Many of the main features of what came to be called apartheid would not have existed were it not for business. The forced transformation of a tribal-based peasantry into the backbone of the South African working class, the migratory labour system with its battery of pass-and influx-control laws, and the abundance of cheap and virtually unprotected labour are but examples of business's contribution to what made apartheid a crime. The major corporations are thus also liable for reparations. As with the wealth tax, it is acceptance of the principle of this proposition rather than the detail that is important for now.

The main claim for reparations, however, would be for the more than R1 trillion that is derived from use of the Doctrine of Odious Debt and the concept of apartheid-caused

economic costs to the region. Liability for this claim would be the foreign banks, financial institutions, corporations and governments that profited from and protected apartheid. Again, while the detailed specificities need additional research, the names of the principal respondents are generally already available.

Some apartheid-era politicians, officials and business people might yet also find themselves being made personally accountable for some of the foreign loans, whether outstanding or repaid. Should apartheid's foreign debt be cancelled or repaid, the creditors might hold these various individuals personally liable for the debts, in terms of the Doctrine of Odious Debt.

## **For What - A marshall plan for Southern Africa?**

The idea of a 21st century Marshall Plan - to do for Southern Africa what is supposed to have been the disinterested financial plan for the reconstruction of war-devastated Europe - is fast gaining currency. The only fundamental weakness of the idea of a regional Marshall Plan has been absence of a willing banker. The US fulfilled this role in Western Europe. The question has been who would do so in Southern Africa?

The compensation being claimed as symbolic reparations is sufficiently large to finance the reconstruction and development of the entire Southern African region. And this is precisely what we should state to be the objective of the reparations claim. South Africa already has a popularly based Reconstruction & Development Programme (RDP); and the RDP remains official government policy. The RDP is no longer part of current political discourse having been sidelined on the basis of there being no money for its funding. The reparations claim would be able to pay for the RDP several times over. Moreover, unlike the campaign to cancel apartheid's odious debts, which our government attacks, the government would find it very difficult to attack a reparations campaign to finance its own policy.

The government would also find it difficult to attack affirmative action, for it, too, is its own policy. As originally formulated and presented, affirmative action was explicitly not about privileging the few. It was not about 'counting heads' and creating a black elite but about addressing the massed material deprivations in which apartheid had deliberately imprisoned most South Africans. Affirmative action was the political redirection of resources to prioritise the multi-fronted attack on poverty. Affirmative action meant houses, schools, jobs, transport, sanitation, water, health and leisure facilities for all South Africans. The RDP was indeed affirmative action's original blue-print.

Support from the governments of the region can also be expected for they, too, would be sympathetic to their own RDPs financed by reparations conceived of as being no more than symbolic compensation for the accumulated harm done to their peoples and countries.

## **Guiding Principles**

### **GUIDING PRINCIPLES**

In mid-1999 the African World Reparations and Reparations Truth Commission based in Accra demanded \$777-trillion from Western nationals - to be paid within five years - as compensation for the slave trade. The enormity of the demand makes it easy to dismiss the claim as mere posturing, as no more than a rhetorical flourish. Seemingly far more reasonable claims have, however, not been any more successful. Consider for example the reparations claim to compensate former slave labourers under the Nazi regime. In August last year Germany itself put the claim at \$20-billion. By the time the claim had been agreed by the parties - in December last year - the reparations award was down to a mere \$5-billion, to be shared equally between the German government and German business. But even this latter amount is proving to be too much for German business, it now being reported that the business sector is reneging on the agreement. Or consider yet another example, this time much nearer to home and involving less than a 10th of the much reduced reparations for former war time slaves of the Nazi regime. Our TRC has recommended reparations of R3-billion (\$4-million). Only some R20-million of this amount has actually been paid, our government claiming that we cannot afford to pay even the exceedingly limited amount recommended by the TRC.

The point of all this is that it is not necessarily the 'reasonableness' of the size of the claim that determines whether reparations are paid. Our government's claim of not being able to afford more than R20-million is hollow when set against the R60-billion to be spent defending us against invisible enemies. Not even the \$770-trillion being claimed as reparations for the slave trade is necessarily preposterous. This admittedly unimaginably large amount is after all only the equivalent of two-year's speculation on the money markets of the world.

What does indeed make the claim totally preposterous are the currently dominant class and power relationships that determine priorities globally. Questions of reparation are not a matter of impartial, rational debate but of hard politics. And this remains so no matter how compelling the legal and moral arguments might be and regardless of the quality of the historical and factual evidence or the cogency of the presentation.

This is not to say that the reasonableness of a claim for reparations is irrelevant. Seeing that the balance of forces fundamentally determines the success or failure of a reparations claim, the ability of the claimants to mobilise public opinion is highly relevant. And this ability is directly related to the claim being seen to be reasonable in all important respects. The popular outrage at our government's treatment of the TRC's reparations beneficiaries is in no small measure due to the very modesty of the TRC's recommendation.

Integral to the perception of reasonableness is the practicality of a claim. The so-called Red Indians of North America or the Aborigines of Australia, for instance, have no difficulty establishing the abstract justice of a claim to have their stolen continent returned to them. The difficulty is that there is no way of undoing the history of imperial conquest and genocide. And this remains true even if the political will to do so is present. Reparations can never be more than a public acknowledgement - usually long after the event - of the wrongs committed and of monetary compensation for past outrages. Establishing liability for crimes committed 400 years ago - the slave trade can be mentioned by way of illustration - is a task welcomed only by lawyers. For instance, against whom, precisely, would a claim for the Southern African slave trade be lodged? Again, the morality of such a claim is not in any doubt. Nor is the popular appeal of such a claim in doubt locally. But the success of this claim would almost certainly require mobilised support internationally - and this would probably be weak because of the perceived impracticality of the claim.

It is worth reminding ourselves of the limitations inherent in reparations. Reparations can not restore justice any more than it can give back life to those hundreds of millions of people butchered, uprooted, exploited, degraded and often starved to death in the midst of plenty during even the past few centuries of world history. The lessons from history can at most lead to a greater awareness of the causes of injustice; an awareness that in turn energises a commitment to change the conditions that created the outrages. This, indeed, is the source of Jubilee's commitment to establishing a new world order that gives centre stage to the social and economic needs of ordinary people rather than the rich and privileged.

A number of principles emerge from the acceptance of these various considerations.. These include

1. That the actual size of the reparations claim is secondary to the respondents' recognition of the legitimacy of the claim.
2. That a claim for reparations can never be small enough, from the perspective of the agents against whom the claim is made. No matter how modest the claim the respondents will find it excessive. The challenge is to find the balance between the just and the realistic unless one's purpose is mere popularism or propaganda.
3. That attempts to quantify qualitative variables such as pain, suffering, psychological damage, destruction of family life, torture etc - the list is near endless and each item is suffused with the inhumanities that give rise to the claim for reparations - are of limited practical value even assuming the validity of the attempted quantifications.
4. That to delay the lodging of a claim in order to do further extensive research is inappropriate in view of the preceding three points.
5. That the more reasonable the claim (measured in terms of size and practicality) the easier it is to mobilise popular support for it principally in the countries against whom the claim will be lodged and where support is required to counter the expected opposition from the governments and businesses of the countries concerned.
6. That the campaign for reparations should, ideally, link up with other current campaigns such that each campaign simultaneously builds on and strengthens the other so that the combined campaigns exert sufficient influence for each one to be taken seriously.
7. That an objective of the reparations campaign should be to highlight the broader political context, with its vested economic interests and governments that protect those interests, and expose the hypocrisies of the people and institutions that currently exercise dominant power.

Five additional general principles may be posited. They are

8. That the TRC's recommendations regarding financial compensation to individuals must be fully implemented without further delay.
9. That the primary focus of this Policy Statement are reparations that are comprehensive in scope and therefore far beyond the narrow brief of the TRC's recommendations.
10. That reparations must not be divisive by setting one group of claimants against another.
11. That single issue claims - for dams that dislocated people and/or are responsible for ecological damage, for instance - could be supported, even though they would not be part of this general reparations claim. A qualification for this support must be that the claim itself is not divisive.

12. That the government of democratic South Africa must not be liable for the reparations. Were post-1994 governments to be responsible for paying reparations, this would be tantamount to making the victims of apartheid pay for their own suffering.

How do these principles assist in determining the amount of reparations to be claimed? Having posed many questions, the task now is to apply the guiding principles to the quest of finding the answers.

## National or Regional

### NATIONAL OR REGIONAL

Apartheid (including a migrant labour system dating back to the late 19th century) brought death, dislocation and destruction to the peoples and countries of Southern Africa not just South Africa. Reparations for Southern Africa - the 11 countries south of and including Angola, Zambia and Tanzania - rather than a narrow and exclusive focus on South Africa alone is therefore an option that needs to be considered.

If the demand for reparations is to be an inclusive one for the whole of Southern Africa, it becomes necessary to establish how far back to go into the history of each of the 10 other countries. Three general events present themselves as possible milestones for each of the countries, even though the precise dates will vary between South Africa's various neighbours. These events are:

- The first migrant workers to South Africa
- The first apartheid-caused debt
- The first military intervention by the apartheid state

All of these 10 countries also, like South Africa, experienced colonial conquests and the depredations of imperialism and some of them also suffered from slavery or forced labour. There is therefore the additional option of including these non-apartheid factors in a Southern African reparations claim.

## The Period

### THE PERIOD

A number of dates offer themselves when one goes back in history. These include

- 1652 - The arrival of Jan van Riebeeck at the Cape
- 1912 - The founding of the Union of South Africa
- 1913 - The Land Act
- 1948 - The election of the National Party Government
- 1960 - South Africa's effective expulsion from the Commonwealth
- 1973 - The United Nations' first condemnation of apartheid as a crime against humanity

Having suggested a number of possible dates with which to start the period, three dates stand out as the most appropriate options with which to end the period, should the

premise of such a cut-off date be accepted. These are

- February 1990 - The unbanning of the ANC and other political parties and the release from prison of Nelson Mandela
- November 1993 - The establishment of the Transitional Executive Council with the ANC as a significant member
- 10 May 1994 - The inauguration of Nelson Mandela as the first democratically elected President. This is the cut-off date adopted by the TRC

South Africans were not the only people to suffer apartheid. This gives rise to yet another set of questions.

## The Scope

### THE SCOPE

In order to do justice to the manifold injustices suffered it is important that no wrongdoing is excluded. Amongst the more obvious reasons for reparations are:

- Slavery
- Colonialism
- Imperialism
- Exploitation, oppression and land dispossession
- Racism
- Ecological damage
- Apartheid

Amongst the many crimes of apartheid for which reparations are due, mention could be made specifically of

- Cheap labour
- Pass laws and influx control
- Forced removals
- Migrant labour
- Destruction of families
- Industrial deaths, injuries and diseases
- Mass imprisonments
- Torture
- Bantu education
- Group Areas
- Multiple psychological damage

Both these lists can be - and should be - extended in order to be as comprehensive as the facts allow. Such an exercise is important not least as part of the 'struggle of memory against forgetting.'

A question that needs to be asked as part of this exercise is: How far back in history should one/could one go and what, if any, cut-off date/s should apply when claiming reparations?

if !supportEmptyParas> endif>

if !supportEmptyParas> endif>

if !supportEmptyParas> endif>

# The Size

## THE SIZE

### (a) Scope

The scope of the claim is the first issue that needs concrete answers. Slavery, colonialism and imperialism (including the exploitation, oppression and land dispossession that disfigure both), racism and ecological damage are all universal features with very long histories. A South African or Southern African reparations claim based on any of these considerations would therefore almost certainly not be taken seriously by the respondents because of fears of the precedents that would be set world wide. Confining the scope to apartheid, on the other hand, offers great tactical advantage This is because

- The world has already condemned apartheid as a crime against humanity;
- apartheid has a finite life;
- apartheid is geographically confined to an area small enough not to create what would otherwise be dismissed as preposterous claims because of the amount of money involved; and
- apartheid can safely be seen as a one-off system that is not likely to recur.

Democratic South Africa cannot morally seek reparations for the crimes of apartheid without extending the claim to cover all the peoples and countries that suffered those crimes. Even at a pragmatic level, including the other 10 countries of Southern Africa would lose nothing. The respondents to any exclusively South African reparations claim for the crimes of apartheid would almost certainly be mindful of the precedent that would be set for other Southern African countries to follow if a specifically South African claim were to be successful. An inclusive Southern African claim is accordingly not only morally consistent but also tactically unharmed. Such an inclusive claim, furthermore, offers an additional benefit: a reparations claim for the entire region of Southern Africa would be a major counter to the growing and alarming South African xenophobia.

### (b) Period

Confining the scope to apartheid requires the setting of dates to cover the apartheid period. At issue here is whether to set the beginning of the period at 1948, the 1960 expulsion from the Commonwealth, or the UN condemnation of apartheid in 1973. The most appropriate date would seem to be 1948. The latter 2 dates reflect changing international power relationships - not least the (formal) independence of most of the colonies and their consequent numerical dominance in the UN - rather than any change in the apartheid state itself. Recent Western sanctions against Austria following the election of a neo-nazi to a leading position in the Austrian government are instructive. The openly pro-Nazi position of leading members of the National Party Government a mere three years after the end of the Second World War was entirely ignored by the same countries that reacted with such horror to the events in Austria in February 2000.

Having now set the beginning of the apartheid era in 1948, what date, if any, closes the

period? Apartheid is still very much alive in a number of ways in the new South Africa. Cheap labour again provides a clear example. Apartheid legacies are moreover still wrecking havoc in the other 10 countries of the region. Angola is the most dramatic example of this. It would nonetheless be a tactical mistake for a reparations claim not to acknowledge the end of apartheid. The absence of such a parameter is guaranteed to provide those hostile to a reparations claim with fertile, diversionary arguments. Moreover, little would be gained practically because the precise size of what will be a more than sufficiently large claim is not the main issue.

Three events have already been offered as possible cut-off dates. February 1990 can be eliminated for its importance is essentially symbolical. May 10th 1994 has the advantage of being the date that constitutionally marked the beginning of democratic government in South Africa. The drawback is that it might lead to confusion because November 1993 - the third event - is the one used in terms of the Doctrine of Odious Debt. May 10th is, however, also the date used by the TRC and the TRC is the first official body to have considered the question of reparations for the victims of apartheid. It therefore seems most appropriate that we, too, should use May 10th as the cut-off date.

### **(c) Quantifying the claim**

Apartheid's main crimes have already been mentioned. Many of these crimes do not lend themselves to ready numerical measurements. Putting an accurate price tag on those crimes that can be measured objectively - cheap labour being an obvious example - requires colossal research input that, moreover, has still to be done. Enough is already known, however, to say that the price tag is enormous, with a number of hundreds of billions of rands being assured. Calculating the exact dimensions of this huge claim will require expensive and very time-consuming research and, as suggested by the guiding principles, is secondary to recognition of the legitimacy of a claim for reparations by those against whom the claim will be made.

This means that the dimensions of the claim are essentially symbolical when measured against the parameters that could plausibly be set. Let us remember that although the claim could cover a period of some 400 years we have elected to narrow the claim to the 45-year period 1948-93. What is more, as yet a further exclusion, we have decided not to attempt to measure a whole range of apartheid's manifest crimes. What figure do we then attach to this symbol? More importantly, how do we derive this symbolic figure if not entirely arbitrarily? This is where other campaigns can be useful.

We have already popularised the Doctrine of Odious Debt not only in South Africa but also throughout the world. We are, furthermore, engaged in a local, regional and international campaign to have apartheid debt and apartheid-caused debt cancelled. Notwithstanding the moral and legal force of the campaign, little practical progress has been made amongst the creditors, however. The creditors are, as will be seen, very much the same banks, businesses and governments against whom the reparations claim will be lodged. The Doctrine of Odious Debt allows us to attach a symbolic figure to the amount of the reparations claim that is in itself of great strategic and tactical value. Combining both claims, moreover, significantly strengthens each claim. Combining both claims means that the reparations claim will simultaneously be a claim for the cancellation of apartheid's odious debts, while the debt campaign will at the same time be a reparations campaign.

The recommendation is therefore that the claim is for reparations in the form of symbolic

compensation equivalent to the sum of

- if !supportLists> i.       endif>apartheid's outstanding foreign debt
- if !supportLists> ii.       endif>apartheid's accumulated foreign debts that had already  
                  been paid off
- if !supportLists> iii.       endif>the profit's earned during the apartheid period by and  
                  repatriated to foreign banks, financial institutions and corporations, and
- if !supportLists> iv.       endif>the total economic cost in terms of apartheid-caused debt,  
                  damage and lost opportunities to the other 10 countries of Southern Africa

An extra virtue in using and adapting the Doctrine of Odious Debt is that much of the research has already been done. We already know that the foreign debt in 1993 was at least \$25.699-billion. We also know that \$41 billion were transferred abroad in interest and dividend payments to foreign investors between 1980 to the end of 1993. Moreover, it has been estimated that the total cost of apartheid to the other countries of the region (excluding Namibia) comes to some \$78-billion. The outstanding research that would still need to be done in connection with South Africa is relatively simply and quick. The same is probably true for the region but here it would probably depend on just how exhaustive the research is intended to be. In today's rand equivalent (7.5 rands to the dollar) just the two exclusively South African figures that are already known come to more than R500-billion. For the region as a whole the figure comes to at least \$144.699-billion or R1.085-trillion.

The amount to be paid to each country as symbolic reparations should be roughly proportional to the damage sustained in terms of the agreed criteria.