



Volume **SIX** • Section **TWO** • Chapter **FIVE**

**Report of the Reparation &
Rehabilitation Committee**

**REPARATIONS AND THE
BUSINESS SECTOR**

Reparations and the Business Sector

■ INTRODUCTION

1. Information received from the business and labour hearings indicated that: 'Business was central to the economy that sustained the South African state during the apartheid years'.⁶⁹ The Truth and Reconciliation Commission (the Commission) noted that the degree to which business maintained the status quo varied from direct involvement in shaping government policies or engaging in activities directly associated with repressive functions to simply benefiting from operating in a racially structured society in which wages were low and workers were denied basic democratic rights.⁷⁰
2. While numerous submissions by business to the Commission argued that apartheid harmed business, sometimes resulting in reduced profits and distortions and restrictions on the labour market, the Commission noted further that such business opposition to apartheid as there was came very late in the day and was weak and indecisive.
3. The final position and finding of the Commission was that business generally benefited financially and materially from apartheid policies. Some examples illustrating this finding emanate from points made during submissions:
 - a White-owned large-scale agricultural, farming and agri-business enterprises benefited from the colonial-era restrictions on black land ownership that were maintained during apartheid, and the extremely low wages such enterprises were able to pay to the landless.
 - b Those enterprises involved in extracting and exploiting the mineral wealth of the country benefited from the provision of a relatively cheap migratory labour force, which was brought into being by land expropriation, forced removals, apartheid pass laws and influx controls.
 - c Those businesses with an industrial workforce benefited from the existence of a reserve of unemployed workers resulting from enforced landlessness.

⁶⁹ Volume Four, Chapter Two, p. 58

⁷⁰ Volume Four, Chapter Two, p. 18

They also made use of state suppression of trade union activity, which would otherwise have exerted upward pressure on wages.

- d Those enterprises involved in manufacturing processes that depend heavily on energy inputs such as electricity benefited from the relatively cheap power that was generated through the exploitation of cheap labour on the coal mines.
 - e The arms industry benefited substantially from the military requirements of the apartheid regime, which resulted from its internal repression and external destabilisation.
 - f Those banks and financial institutions that bankrolled the military-industrial complex and the minerals-energy complexes in South Africa benefited vicariously from all the above conditions.
 - g Those banks and financial institutions that lent directly to the apartheid regime during the 1980s benefited from the relatively high interest rates they were able to charge as a consequence of the difficulty Pretoria encountered in borrowing during the imposition of sanctions internationally.
 - h White residents generally benefited from the discrepancies in public investment between white towns and black townships and rural areas – in everything from health and education to water and sanitation – and from the existence of cheap domestic labour to be employed in the home.
4. Noting that the ‘huge and widening gap between the rich and poor is a disturbing legacy of the past’ and given this historic benefit enjoyed by business, the Commission made specific recommendations regarding the responsibility of business in the area of restitution ‘to those who have suffered from the effects of apartheid discrimination’.⁷¹
5. Implicit in this and other recommendations relating to business was the notion of the involvement of business in a wider project of reparation, relating not simply to those identified as victims by the Commission, but to all those South Africans whose normal development was impaired by the system of apartheid. The desirability of such involvement was reinforced by the socio-economic reality of South Africa. Although South Africa is a middle-income economy, about half of South Africa’s population lives in poverty. Half of the African population is homeless or lives in informal accommodation, such as shacks. More than half of Africans aged twenty or more have no secondary education, compared to 2 per cent of whites. As many as 42 per cent of Africans are unemployed or have given up

71 Volume Five, Chapter Eight, p. 318.

looking for employment, compared to 5 per cent of whites. The poverty of Africans in relation to whites is also reflected in the huge disparities in services: for example, three quarters of Africans lack running water in their homes, compared to 2 per cent of whites.

6. On the other side of the divide, a small section of the population, mainly from the white community, enjoys a higher standard of living than most residents of high-income developed countries. These sharp divisions in our society are evidenced in the high South African crime rate and other expressions of popular dissatisfaction. These factors militate against national unity and reconciliation and led the Commission to consider reparative measures to the very large majority who remain victims of South Africa's past.
7. It is for this reason that the Reparation and Rehabilitation Committee (the RRC) approached organised business and individual business leaders with the aim of encouraging them to contribute to the President's Fund.

THE REPARATION AND RECONCILIATION COMMITTEE AND THE BUSINESS TRUST

8. At a consultative forum between business and the Commission, business leadership referred to the Business Trust as the vehicle through which business, in agreement with government, would honour its responsibility to the victims of apartheid. Some trustees of the Business Trust expressed great concern that there seemed to be no real relationship between the objectives of the Trust and the recommendations of the Commission. Another trustee seemed concerned that, on the whole, the majority of organised business was not committed, or had not shown serious commitment, to the Trust.
9. The Business Trust, established for the purpose of reparations, has to date received a total of some R800 million from the South African private sector. This is a paltry amount when one considers the massive amount needed to repair the inequities and damage caused to entire communities. A recent fund established in Switzerland to contribute to reconstruction and development in South Africa secured a commitment of less than 0.02 per cent of the profits made by Swiss banks and investors in South Africa each year during the 1980s.⁷²

⁷² See the section on the role of Swiss banks during the apartheid years, later in this chapter.

REITERATION OF PROPOSALS

10. In these disappointing circumstances, it seems essential to restate the proposals made by the Commission for ways in which business could generate funds for this broader project of reparation and restitution. These were:
 - a a wealth tax;
 - b a once-off levy on corporate or private income;
 - c each company listed on the Johannesburg Securities Exchange to make a once-off donation of 1 per cent of its market capitalisation;
 - d a retrospective surcharge on corporate profits extending back to a date to be suggested;
 - e a surcharge on golden handshakes given to senior public servants since 1990, and
 - f the SASRIA (SA Special Risks Association) Fund (contributed to by business and individuals as insurance against material loss arising from political conflict).

11. The Commission further suggested that repayment of the former government's 'odious debt' be reconsidered and that money released from this could potentially be used to fund both reparations and programmes of reconstruction and development.

12. It was also recommended that a 'Business Reconciliation Fund' be established that 'could provide non-repayable grants, loans and/or guarantees to business-related funding for black small entrepreneurs in need of either ... skills or capital for the launching of a business'.⁷³

13. Further ways in which funding could be generated could include:
 - a a restructuring of the state pension fund to release assets for social development;
 - b a restructuring of service charges on parastatals such as the South African Energy Supply Commission (Eskom) to ensure that subsidies for white-owned large-scale businesses are replaced by subsidies for the poorest black consumers;
 - c A claim for reparations lodged against the lenders who profited illegitimately from lending to apartheid institutions during the sanctions period.

14. The Commission reiterates its finding that business benefited substantially during the apartheid era either through commission or omission and has, at the

⁷³ Volume Five, Chapter Eight, p. 319.

very least, a moral obligation to assist in the reconstruction and development of post-apartheid South Africa through active reparative measures. While individual businesses may well have contributed to individual projects falling under the general rubric of restitution or reparation, it is the Commission's view that business, possibly through the Business Trust, needs to commit itself to a far more focused programme of reparation.

SWISS BANKS AND OTHER LENDERS

15. As noted above, it is the aim of a recently established reconstruction and development fund established in Switzerland to persuade those who benefited substantially from doing business with Pretoria during the 1980s to contribute to the fund. It is estimated that the amount pledged by Swiss banks and investors currently totals less than 0.02 per cent of profits generated by Swiss banks and investors each year during the 1980s, during which period gross violations of human rights were committed on a wide scale.
16. This section examines the role of Swiss banks in South Africa during the apartheid era and the case for making a significant reparation claim against these banks.
17. The major Swiss banks were important partners of Pretoria during apartheid. Both *Credit Suisse* and the predecessor of UBS opened offices in South Africa within a few years of apartheid being institutionalised in 1948, and played a central role in marketing South African gold. They also invested in apartheid-era infrastructure in South Africa and in the homelands.
18. After the Sharpeville massacre in 1960, the chairman of the largest Swiss bank, UBS, was asked: 'Is apartheid necessary or desirable?' His response was: 'Not really necessary, but definitely desirable.'
19. In 1968, the Swiss banks formed the Zurich Gold Pool and Zurich became the most important gold market in the world. In 1969, the Swiss banks imported over 1000 tons of gold – half the world's annual production. Three quarters of this came from South Africa. The Swiss banks encouraged their customers to buy gold from South Africa and to buy shares in the gold mines.

20. After the 1976 Soweto uprising, the United Nations (UN) condemned apartheid as a crime against humanity and expelled South Africa. This was the time of the gold boom. In 1980, the gold price reached an all-time high of US\$850 an ounce, filling Pretoria's coffers. Soon afterwards, the gold price fell dramatically, the economy plunged into crisis and the apartheid government was forced to look for financial help from around the world. In 1984, President PW Botha visited Switzerland. In that year, his government took seven international loans, four of which were arranged by the Swiss banks. After the British, the Swiss banks were the most important lenders to the apartheid government at this time.

21. During the debt crisis of 1985, the Swiss banks played an especially important role. After Chase Manhattan, an American bank, cut back its lending facility, there was crisis in Pretoria. In a sudden loss of confidence, banks refused to lend money to South Africa and the government was unable to pay its debts. With pressure from the masses and internationally, there seemed no way to save apartheid. Swiss banks came to the rescue. Mr Fritz Leutwiler, former President of the Swiss National Bank, negotiated with the world's banks on behalf of South Africa and secured an agreement to give South Africa a two-year break from paying its debts and 15 years to make the repayments. Despite international pressure, he refused to use the deal to force Pretoria to dismantle apartheid. Mr Leutwiler gave the South African regime a breathing space during one of its most violent and repressive periods – the late 1980s. While many countries were imposing sanctions against apartheid gold and the United States (US) had banned the direct import of gold bars, the Swiss banks continued to import over half the gold produced in South Africa.

22. South Africa was discussed repeatedly in the Swiss Parliament. Over 100 calls for sanctions were rejected. Despite this, there was recognition that the policy of the banks was dangerous. One parliamentarian declared: 'Let's be honest. Our businessmen just want to do business in South Africa at any price. And this policy is not a sound policy for our country internationally. One of these days it's going to come back and haunt us.'

THE SWISS BANKS AND OTHER LENDERS: THE CASE FOR REPARATIONS

23. The case for reparations from the banks is based on three arguments:
- a As Pretoria's key partner in the international gold trade, Swiss banks benefited over several decades from the exploitation of the black mineworkers, whose human rights were violated by (amongst other apartheid policies) the pass laws, the migrant labour system and suppression of trade union activity.
 - b The banks ignored the call for sanctions against Pretoria initiated by the UN and continued to enrich themselves through the gold trade and lending.
 - c The banks played an instrumental role in prolonging apartheid from the time of the debt crisis in 1985 onwards.
24. It can be argued that there are legal grounds for instituting a claim for reparation. The law governing the enforcement of contracts such as bank loans is heavily influenced by public policy considerations. The common thread is that contracts concluded contrary to public policy are unenforceable. In South African contract law, these agreements may fall into one of two possible categories – those that are tainted with criminality or those that are *per se* immoral.
25. Hence a contract that is contrary to the community's sense of justice is not capable of being enforced in a court of law. A significant date in this regard is 18 July 1976, the date on which the UN Apartheid Convention came into effect. Article 1 of the Convention reads:
1. *The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.*
 2. *The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid.*
26. According to this, any credit institution or private money-lending corporation that financed the apartheid state ought to be targeted as a profiteer of an immoral and illegal system. It is also possible to argue that banks that gave

financial support to the apartheid state were accomplices to a criminal government that consistently violated international law.

27. Arguments also exist based on the doctrine of 'odious debt'. The principle is that debts incurred for illegitimate purposes by illegitimate parties are unenforceable. Debts incurred in the furtherance of apartheid would fall under the principle. The fact that the General Assembly of the UN did not recognise the apartheid government's delegation as the legitimate representatives of the state of South Africa from 1965 onwards lends even more credibility to the argument. There are several precedents for the doctrine, including a 1923 arbitration case between the Costa Rican government and the Royal Bank of Canada. In this case, the US repudiated a debt incurred by Cuba and owed to Spain in its peace treaty after the US had taken sovereign control of Cuba at the end of the Spanish–American war. Similarly, the Soviet government repudiated the debts incurred by the Tsar in the previous Russian regime. An article in a professional journal written by lawyers at the First National Bank of Chicago in 1982 warns lenders of the potential risks of making loans that infringe the doctrine.
28. Swiss banks are not the only lenders whose support for and enrichment under apartheid may provide grounds for reparations. British, German, French and North American banks are amongst those that financed Pretoria during the 1970s and 1980s. In addition, in 1976 and 1977 the IMF granted South Africa balance of payment loans totalling US\$464 million, which helped to cover the increased expenses needed for the South African Defence Force (SADF) and were used to fuel the apartheid machine. More research is required on these matters.

THE CASE OF THE PARASTATALS

29. The parastatal sector sheds further light on the role and responsibility of business in the apartheid era, particularly in view of the way the apartheid government used the parastatals to further its own objectives. Eskom is used here as an example without prejudice. In using this example, we need to acknowledge the many changes Eskom has made in the last decade in relation to the racial identity of its employees and the pioneering role it has played among South African industrial giants in investing in building infrastructure in poor black neighbourhoods. This does not, of course, dilute the critique of its apartheid-era practices and its deep collusion with the political and economic structures of apartheid.

30. Between 1950 and 1980, international financial institutions and foreign private banks granted loans to Eskom amounting to at least US\$7.5 billion. British banks contributed 26 per cent, banks in France almost 24 per cent, West Germany about 17 per cent and Switzerland more than 12 per cent. Substantial amounts were also granted by the World Bank, public export credit agencies and parastatal banks. Loans to public sector corporations and business enterprises were the economic lifelines of the apartheid economy. This point is reinforced by correspondence between Swiss banks and the Finance Ministry in Pretoria: foreign banks would grant loans to Eskom only on condition that central government signed a declaration of guarantee or a warrant to the creditor banks.
31. During the sanctions years (1986 to 1989), foreign debt represented between 44 and 56 per cent of Eskom's total net debts. During the 1980s, Eskom's capital investments at current prices amounted to R35 billion. A fairly large part of these investments involved the importation of capital goods and services. The South African Reserve Bank provided long-term forward cover, especially in the US\$/Rand market. From April 1981 to the end of January 1998, a total loss of R26.4 billion was recorded on the Forward Exchange Contracts Adjustment Account. Of this amount, R19.1 billion was directly attributable to long-term forward cover granted directly to the erstwhile parastatals, primarily Eskom, in the late 1970s and early 1980s. Such losses had to be paid for by the taxpayer.
32. As a parastatal within the apartheid system, Eskom produced extremely cheap energy, making the exploitation of the rich mineral endowment the foremost 'comparative advantage' in South Africa's relations with global markets.
33. At least until the mid-1980s, the minerals–energy complex produced more value added per worker employed than any other economic sector. It was here that most capital accumulation took place, where most of South Africa's exports and a sizeable part of its gross domestic product were produced. Historically, the production of electrical energy served mainly the needs of the mining industry.
34. Like mine workers, black electricity workers were mainly migrants, housed in the same controlled single-sex compounds and receiving the same low wages (which disregarded the needs of the workers' families back in the labour reserves). For the 58 years between 1911 and 1969 there was no increase in the real wages of black miners and electricity workers.

35. Eskom also had to promote the political objectives of the ruling National Party. Since the Broederbond⁷⁴ influenced the selection of Eskom's chief executive officers, there was seldom a conflict of interests. Thus, Eskom:
- a offered preferential employment to poor whites as guard labour;
 - b did not recognise independent, non-racial trade unions until 1987;
 - c replaced the racial job colour bar with security concerns in the 1980s, requiring black employees to get clearance from the security police;
 - d offered long-term supplier contracts to Afrikaner coal mining companies;
 - e used Afrikaner financial institutions to issue and market Eskom public bonds in the domestic market, to procure foreign exchange on its behalf and administer its bank accounts;
 - f supported the implementation of apartheid's Bantustan policy by offering extra cheap tariffs for industries settling in 'border areas', like Alusaf in Richards Bay;
 - g buttressed the state's claim to regional hegemony by controlling the development of electricity generation and distribution in occupied Namibia;
 - h propped up the colonial empire of Portugal in Angola and Mozambique by supporting the building of the Cahora Bassa and the Gove and Calueque dams, as well as the hydro-electric power stations at Ruacana in the Cunene river basin and at Cahora Bassa on the Zambezi, and
 - i followed the state's guidelines in response to the threat of economic sanctions by establishing a mammoth oversupply capacity of electricity generation.
36. Because of its strategic importance, Eskom, its power stations, substations and control centres were declared national key points in 1980. All senior security officers and senior personnel at key points had to obtain security clearance. Eskom established its own counter-intelligence unit, which worked closely with the security police and military intelligence. Eskom also created its own militia force, procured a substantial number of firearms and established its own armoury.
37. Evidence was presented under oath to the Commission that, during the twilight years of the apartheid system, high-ranking members of Eskom attempted to make available or sell a portion of this armoury to Inkatha. According to the evidence, this was authorised and done with the knowledge of the Commissioner of Police.

⁷⁴ A secret society composed of Afrikaners holding key jobs in all walks of life.

38. Eskom co-financed the South African Uranium Enrichment Corporation and financially supported research into the development and manufacture of apartheid's nuclear bombs.
39. During its rapid expansion period between 1950 and 1980, Eskom had no particular interest in supplying the households of black people with electrical energy. The Group Areas Act of 1950 separated the administration of black urban areas from that of white cities. This often meant that black areas were without electricity services altogether. White municipal areas normally had industrial as well as residential demand. This could be used to balance the load factor, resulting in lower overall costs for industrial as well as residential users. As black townships were electrified, there were no industrial users to balance the peak load, with the result that consumers in black townships paid a very high demand charge whilst using considerably less electricity. Thus, in effect, electrified black townships subsidised neighbouring white municipal areas.
40. It was estimated in 1992 that about three million black households had no access to electricity – this after a history of electricity generation in South Africa of more than 85 years; equally some 19 000 schools and 4000 clinics serving black communities had not been linked to the national electrical grid.
41. The politics of racial segregation and apartheid suppressed for decades both the human rights and the consumer demands of South Africa's black people. People living in low-income black residential areas, both urban and rural, persistently faced high environmental costs. Energy sources other than electricity (low-quality coal and wood burning in open indoor fires without proper stoves and chimneys, paraffin and candles) have constantly polluted the air and endangered their users. Accidental fires and burns, paraffin poisoning and chronic bronchitis were all too common. On winter evenings, dense smog with high concentrations of sulphur dioxide, carbon dioxide, airborne ash particles and dust was found hanging low over black residential areas, leading to respiratory diseases and even circulatory disorders, and severely reducing the quality of life for young and old.

ESKOM AND OTHER PARASTATALS: THE CASE FOR REPARATIONS

42. In summary, the case for reparations in relation to parastatals such as Eskom is based on the following two factors:
- a The role of foreign lenders in supporting key institutions of apartheid. Debts incurred by Eskom and other parastatals during apartheid should also be considered 'odious' insofar as the new political dispensation is concerned.
 - b The failure of the parastatals to invest in infrastructure and services for the majority of the population, despite being financed by public means. Hence there is a case for highly subsidised investments in electricity and other services for the poor black majority today.

THE MINING CORPORATIONS

43. Again, as it is not possible to develop case studies on each private corporation, reference will be made to the Anglo American Corporation, without prejudice.
44. Through punitive taxes in rural reserves and through land dispossession (the Land Act of 1913 and 1936), the black male worker was dislodged from agricultural subsistence farming and forced to work at the underground rock faces. This influx of a large black population instigated early stirrings of *swart gevaar* ('black danger') – and more broadly a fear of the threat posed not only to frontier political control but also to the stability and profitability of diamond and gold mining.
45. Migration control regulations were first drafted by the Chamber of Mines' Native Labour Department in 1895 as a response to perceived state reluctance to organise a stable and constant labour supply. The President of the Chamber of Mines enthused: '... a most excellent law ... which should enable us to have complete control over the Kaffirs'. In its submission to a 1944 commission on 'native wages', the Chamber of Mines argued openly for the 'subsidiary means of subsistence' that migration back to homelands guaranteed. This would subsidise the cost of labour and the costs of reproducing that labour. This zeal for population control on the part of the mining houses set a precedent for the pass laws of the apartheid government.
46. The mines' thirst for migratory labour led them to establish recruiting agencies in distant rural areas and neighbouring countries, originally opened to capital by

military conquest. In this way 'native reserves' evolved into labour reserves. Offering financial inducements to the Swazi monarch, the Native Recruiting Commission set up by the Chamber of Mines was able to diminish the severe labour shortage in the post-World War II economic boom, while migrant work assured the King of his subjects' annual repatriation to fulfil tributary labour 'loyalties'. Tribalism on the Rand originated in recruitment strategies and bargain-hunting by the mines. It was perpetuated by a closed compound system of hostels that fostered separate identity and anticipated the conflicts within the hostels and with permanent township residents. Thus the blueprint for 'grand apartheid' was provided by the mines and was not an Afrikaner state innovation. The mines' instigation of tribalism in employment and housing practices is admitted in their submission to the Commission.

47. The single-sex hostels, moreover, eroded family structures. Women who had accompanied their male partners and husbands to the compounds were 'endorsed out' or sent back to the homelands. A corollary to the slave-like conditions of work on the mines, women were left to rear children and cultivate fields ultimately on behalf of the mine owners. When occupational hazards ejected invalid workers, the social security of homesteads helped absolve companies of providing adequate compensation and/or pensions.
48. In mitigation of its housing policy, the Anglo American Corporation contends that it was frustrated in its attempts to develop an 'urban model for black South Africans' by the apartheid regime. The Corporation argued that Sir Harry Oppenheimer appealed to the Verwoerd government in the 1950s to be allowed to house 10 per cent of black workers with their families at the Free State gold mines. These appeals were rejected by the state, but they cannot atone for the cellblock structures and systems the company provided for each of its armies of black miners.
49. Harsh conditions on the mines were enforced by state repression which employers – and Anglo American – did nothing to discourage. Strikes were unheard of during the booming 1960s. When the upsurge of worker resistance began with the wave of strike actions in Durban in 1973, state security forces became almost permanently resident on production sites to maintain and restore order. From the outset, Anglo American did not hesitate to use the services of the apartheid security apparatus to curb working-class militancy during this period. A strike at its Western Deep mine was dealt with by government forces and resulted in the deaths of twelve miners. Worker resistance to the state-led

'total onslaught' campaign led to the detention of five executive members of the National Union of Mineworkers (NUM).

50. The consensus between business and the apartheid government was given institutional expression in an array of joint committees at the interface of private capital and the state. 'Total strategy' was quickly sold to business South Africa at the government-convened Carlton Conference in 1979. Harry Oppenheimer promoted the 'new era' of business and state détente. Joint Management Centres (JMCs) were set up to gather intelligence about trade union activity. Their reports to the State Security Council (SSC) effectively drafted business leaders into the state apparatuses.
51. The renting of Waterloo farm to security force agents by Tongaat Hulett, a sugar-producing company with a majority Anglo American shareholding, represents one example of such collusion. Business, moreover, directly financed the SADF through its participation in the Defence Manpower Liaison Committee structures. These were designed to facilitate the least disruptive conscription of white men to the armed forces by supplementing the income of soldiers during their stints in the army.
52. Outsourcing the function and/or costs of national security to private interests was accomplished by the 1980 National Keypoints Act of the Botha regime. 'Keypoints' of national interest, usually production sites, were identified as possible targets. Protection was supplied by the SADF and paid for by the business concerned.
53. By 1976, the Anglo American group enjoyed a shareholding interest of 20 per cent in Barlow Rand. Through a number of its subsidiaries, Barlow Rand was a major producer of defence electronics, dividends from which were paid to Anglo American. Three members of the Barlow Rand board of executives (including the chairman) were also members of PW Botha's Defence Advisory Board. Anglo American chairman Gavin Relly himself served intermittently on the Armscor board. The sinews of the military-industrial complex were firmly enmeshed with the mine-based economy.
54. The high level of accidents on the mines went far beyond anything that can be excused by the ordinary hazards of working underground. Here again it was the mines themselves that must take responsibility for ignoring the most basic safety standards applied by the International Labour Organisation (ILO). By 1993, the

mortality rate on the gold mines as a result of accidents stood at 113 for every 100 000 miners. This does not take into account the delayed deaths and disability resulting from the occupational hazards of work underground. The migratory labour system allowed employers to repatriate miners suffering from injury, silicosis, pulmonary tuberculosis and other work-related ailments to their distant homes, where they would often die slow and painful deaths, living on meagre pensions and without the necessary medical treatment. Even though a curative treatment for pulmonary tuberculosis was available by the 1950s, mines continued to send sick miners home, with the result that up to 60 per cent would die within two years, and families became infected. By the 1980s, only 10 per cent of these workers – effectively retrenched – received the necessary treatment.

55. Apartheid also affected how workers were recompensed by the state, and can be seen in the inadequacy and racial differentials of lump sums paid out. The structure of the Workmen's Compensation Fund cleared mine owners of liabilities stemming from whatever civil claims could have been brought against them. Thus deference to the state made good business. As late as the early 1990s, permanently disabled black workers were paid only R2000, with a 1:13 compensation ratio between black and white workers.
56. In 1974, 'Harry Oppenheimer made a public call to review South Africa's labour laws' and was 'amongst the first to grant independent black unions access, recruiting and collective bargaining rights'. The Anglo American submission to the Commission attributes this to Oppenheimer philanthropy. Yet his sudden concern about the absence of union organisation amongst black workers cannot have been coincidental: his call was stoked by the fear of disruption of production schedules when industrial relations are not mediated by union representation. Despite the orderly bargaining framework that union recognition brought to industrial relations, apartheid employers did not take this to imply that legally striking workers ought not to be dismissed. Anglo American cut the biggest swathe through workers' ranks when it dismissed 50 000 workers who were on strike for a living wage.
57. Nor did the recognition of black trade unions preclude security cordons around mines and the control of union meetings. An NUM report on repression at Anglo American mines described how meetings had to be approved by mine management. The significance of union recognition was further downplayed by the spread of Anglo American companies throughout the Bantustans. Unions enjoyed legal status only if the labour laws upheld by the homeland puppet states allowed

this. Rustenburg Platinum, owned by the Anglo American subsidiary, Johannesburg Consolidated Investments, adopted schizophrenic policies that saw the company recognise NUM representatives in South Africa but not on the other side of the Bophuthatswana border.

58. When Botha's reforms of apartheid only elicited increased labour unrest, and economic sanctions looked set to force the regime to default on its debt, business leaders broke ranks with the government, and a delegation, including Mr Gavin Relly, flew to Lusaka to meet with African National Congress (ANC) leaders. Yet just two years later, in 1987, after the declaration of the second state of emergency, Mr Relly described the national alert as 'necessary'. 'Open minds' closed again once mass detentions brought a modicum of quiet to the townships and factory floors, and once debt payments had been successfully rescheduled by agreement with the International Monetary Fund.
59. The extent of Anglo American's 'real and permanent contribution to the well being of the people of southern Africa' and its founding 'economic nationalism' must be judged according to its deeds. Nor can its 'deeds' be represented by cases of its magnanimity when these stand out as exceptions against a general rule of profiteering based on racist systems of exclusion, indignity, manslaughter and expropriation. Even in terms of the modernisation thesis the corporation propounds in its literature – 'the slow march to modernity' – Anglo American fails. The basic premise that a modern, non-racial capitalist economy will engender full democratic rights for all South African citizens presumes the necessity of coerced labour and racist employment policies, because it is precisely on these practices that its empire was built. The estimated R20 billion that the corporation 'exported' in offshore investments between 1970 and 1988 cannot have benefited the modernisation project it claims to cherish.

THE MINING COMPANIES: THE CASE FOR REPARATIONS

60. A reparations claim against corporations like Anglo American would be based on the extent to which decades of profits were based on systematic violations of human rights. In legal terms, this could be based on the principle of 'unjust enrichment'. 'Unjust enrichment' is a source of legal obligation. Actions based on 'unjust enrichment' are common to most modern legal systems. These kinds of claims give rise to an obligation in terms of which the enriched party incurs a duty to restore the extent of his/her enrichment to the impoverished party. Put differently, the impoverished party acquires a legal right to claim that the extent of the other's enrichment be restored to him/her if it was acquired at his/her expense. (...p156)