



Terms of Reference

A consultant to conduct research on the state of reparations for apartheid-era gross human rights violations in South Africa

The South African Coalition for Transitional Justice (SACTJ) is seeking to appoint an individual or an organisation to conduct research on the state of reparations for apartheid-era gross human rights violations in South Africa.

In April 2023, the OSF-Africa awarded SACTJ a grant to implement a project titled “Civil Society Mobilization towards Comprehensive South African Reparations for Apartheid-Era Gross Human Rights Violations.”

The key objectives of the research are:

- To map out and assess:
 - the reparations framework that was recommended by the TRC
 - provisions for reparations in the the Promotion of National Unity Act
 - regulations and structures for providing reparations after the closure of the TRC
- To assess the extent that reparations
 - Have been implemented in South Africa
 - Have altered or failed to fulfil the TRC’s recommendations and the provisions of the Provision of National Unity Act;
- To assess what reparations have been provided to date;
 - To identify the key challenges in the process;
- To review research and other documentary evidence on:
 - persons excluded or left out of the post-TRC reparations processes
 - international best practice regarding reparations for those who suffered gross human rights violations (summary to be provided by Foundation for Human Rights)
 - the impact upon victims of the failure to provide adequate reparations, including the intergenerational effects of these failures.

1. Background to the SACTJ’s Reparation Project

Individuals and communities who suffered gross human rights violations during apartheid have a right to reparation both under international and South African law. Yet, the South African government has failed to fully implement the recommendations for reparations made by the Truth and Reconciliation Commission (TRC).

Today, twenty years after the close of the TRC, most victims of apartheid-era gross human rights violations have still not received redress or reparation. Government has had no

mandated policy guiding reparations, instead implementing administrative regulations which have failed to provide appropriate and inclusive redress. In spite of the post-Apartheid state's commitment to paying reparations, the reparations policy recommended by the TRC and international obligations to implement reparations, the state has failed to provide redress to victims of apartheid-era gross human rights violations at numerous levels. These failures include an arbitrary decision to decrease amounts paid as compensation; a failure to implement community rehabilitation projects and housing benefits; limited implementation of educational and medical benefits; and unlawful limitations imposed by the government on the category of victims who can claim reparations.

2. Purpose of the SACTJ's Reparation Project

SACTJ is currently implementing an OSF-Africa-funded two-year project, which aims to mobilise civil society and stakeholders to develop a mandated policy and process that is inclusive, victim-centred and human rights based, that will recognise and provide redress for persons who suffered gross human rights violations under apartheid. SACTJ's proposed intervention is built on its members' experience and capabilities.

SACTJ's project on reparations includes:

- a) Research activities, which will inform both civil society strategy on reparations going forward and the development of a draft reparations policy.
- b) Provincial consultations and a national conference on reparations, which will inform the draft policy on reparations.
- c) Vindicating the rights' of victims in courts. Should the government fail to engage with advocacy efforts concerning reparations policy, , SACTJ will pursue strategic litigation to enforce the rights of victims.
- d) Media and communications. The intervention will be accompanied by the full-fledged media strategy aimed at raising awareness amongst victims and society at large on issues related to reparations, and building public support.

The failure by the government to adopt a fully fledged reparations policy until now has led to the mobilization of civil society to make this happen. SACTJ's strategy aims to ensure that government meaningfully engages with civil society on the issue of reparations. Using the information gained through research and consultation, SACTJ will propose a mandated policy on reparations.

3. The role of the consultant

In order to assist SACTJ in developing its strategy around reparations and to prepare for the provincial consultations and the national conference, the consultant will be required to design and conduct research as follows:

- a) In consultation with the SACTJ's Reparation Task Team, design the scope and details of the research study on reparations including methodology and research approach;

- b) Collect and collate key resources available that cover issues around the TRC's recommendations on reparations and the implementation of reparations in the post-TRC period in South Africa;
- c) Conduct desktop research and interviews with key informants¹ in order to establish the current state of reparations in South Africa. In this regard, the consultant(s) is expected to research the extent and nature of failure of existing reparations roll-out (i.e., lack of consultation with beneficiaries, administrative failure etc). Among others, this should include:
 - i. The summary of the reparation process since the TRC made recommendations;
 - ii. The impact upon reparations roll-out of the current legal framework for implementation of reparations (including the Constitution, the TRC Act, the relevant regulations from 2003, decisions by the Joint ad-hoc parliamentary committee);
 - iii. Scope and limitations of current reparations framework; areas which are not addressed within current framework;
 - iv. How the 'closed list' was conceived and implemented; problems emerging from this process, and categories of persons who were excluded from the closed list;
 - v. Institutional arrangements for the implementation of reparation:
 - List and analysis of stakeholders involved in the implementation of reparation in South Africa
 - The role and functions of the DOJ's TRC Unit (governance and organisational structure, operations etc), and the functions assigned to the Presidency and Parliament;
 - vi. Implementation of reparation to date:
 - What the TRC recommended concerning reparations
 - What the government said it would implement
 - What has been actually implemented;
 - vii. Assessment of the current reparation roll-out:
 - In the implementation of reparation, has the process set out in the legal framework been followed?
 - To what extent the institutional arrangements for the implementation of reparations have been adequate and suitable for the purpose;
 - Extent to which reparations have been implemented; extent to which persons identified as qualified for reparations within current regulations have not received benefits or individual reparations
 - Key challenges in the implementation process

¹ Key informants will include individuals who have worked on reparations advocacy, those who have conducted research on reparations and also victims who are seeking reparations. SACTJ member organisations will support the researcher in facilitating interviews with victims.

- Areas and categories of victims who have not been acknowledged or offered reparations within post-TRC regulatory framework;
- viii. Summary of key findings
- d) Prepare a report incorporating findings from the desktop research and interviews and including the assessment of the current state of reparations in South Africa.
 - e) Prepare a summary report of not more than 10 pages written in a plain and simple language.

4. Requirements of the research

- a) The consultant shall take a holistic approach and look at the reparations that have been implemented by the Department of Justice's TRC Unit, the Department of Sport, Art and Culture and any other relevant government's entities.
- b) The consultant will be required to regularly liaise with the Task Team concerning the research and shall harness the knowledge and experiences of the Task Team and SACTJ members.
- c) The consultant will work with and draw upon other ongoing research under the SACTJ looking at the legal framework and the President's Fund. An inception meeting will be organised to introduce the three researchers to one another, and to set up a system for information sharing to avoid duplication.
- d) The summary of the state of reparation today should be preceded by a detailed analysis of the administrative data and information obtained from the government. Ideally, the consultant shall rely on primary sources (i.e., government reports, survey, interviews) to assess the extent to which reparation has been implemented in South Africa.
- e) The study and the report shall include case studies, which speak to victims' experiences with accessing reparations and the reparations' roll out, and the key expectations of victims with respect to reparations.
- f) The report shall be written in non-academic, simple and accessible language.

5. Reporting

- a) The consultant will report to the SACTJ's Reparation Task Team.
- b) The SACTJ's Task Team reserves a right to make inputs, comments and changes to any material or research output, in particular the report and the summary report. The consultancy is considered as delivered only after all inputs/comments have been considered and incorporated by the consultant.

6. Deliverables

- a) A full record of available resources on reparations in South Africa.
- b) A report containing findings from the desktop research and interviews.
- c) A summary report written in plain language.

7. Consultant's Profile

The consultant should have:²

- Extensive experience and/or knowledge of the transitional justice and reparations process in South Africa
- Demonstrated experience in designing and conducting similar research
- Excellent drafting skills in English and an ability to write comprehensive research reports
- Ability to analyse large amounts of documents for the purpose of producing a concise written material.

8. The application process

The application process is open to SACTJ members and external applicants. To apply, candidates should send the following documents:

- a) An updated CV clearly demonstrating relevant experience for the consultancy
- b) Expression of interest stating the consultant's proposed research approach, methodology and reasons for applying (maximum of 3 pages)
- c) Unedited writing sample (e.g., a previous report, article or other document on a relevant subject written by the applicant and not edited).

Only complete applications will be considered. Applications should be sent to: Jessie Waldman, Administrative Coordinator, SACTJ
jessiewaldman@SACTJ.org.za

Deadline for applications: 7 August 2023, however applications will be considered on a rolling basis and a selection may be made before the closing date should a suitable candidate be identified. Therefore interested candidates are encouraged to apply as soon as possible.

9. Costs and timelines

The duration of the assignment is two to three months. A timeline for the submission of the final report and summary report will be agreed with the consultant who is selected.

The overall maximum costs of the assignment is **ZAR 60,000**, which includes the consultant's fee and disbursements (i.e., costs of data and airtime, transport costs, etc).

² This applies to the individual consultant or to the team leader leading research on behalf of an organisation.