**INTRODUCTION**

Restitution is a complex term that is often misunderstood and evokes emotion from most South Africans, whether it be relief and hope, or fear and anger. Some have mistakenly referred to it as retribution; others think it is about revenge. We often hear it used in legal terms. For example, a man who has stolen R1000 is ordered to make compensation of the same amount. We may understand it as a quid-pro-quo kind of arrangement: pay back precisely what was taken, and all parties can go their separate ways with the matter resolved.

Many, including the Restitution Foundation, understand restitution to go much deeper than this, and to be one of the most significant tools available to us in addressing the residual ills of discrimination and division in South Africa, as well as other causes of inequity in our communities. Restitution involves seeking to set right the generational ills of inequality by engaging those who have benefitted from the system, directly or indirectly, in transferring wealth and social capital and reinvesting in communities that are still suffering.

Whilst it is a topic that many who benefitted from apartheid would rather not discuss, and many young people feel has nothing to do with them, we believe it is key to the future of South Africa – socially, economically and relationally. Due to South Africa’s past, it is currently largely a race-based issue, but the ideology of restitution does go beyond that to all relationships in all contexts. We believe that restitution should become part of our common vocabulary and everyday conversations and have developed a set of tools for addressing situations in which any person or community has suffered harm.

Restitution is also a key component of justice, which we understand as the restoration of right relationships between ourselves, other people, and our environment, in which there is enough for everyone and no one goes without, and the dignity of every human being is revered. Theologian Cornel West has said that “*justice is what love looks like in public*,” and as we love our neighbours, we cannot help but seek justice and a more equitable society with them.

We are also driven to restitution as a robust and appropriate response to the grace extended by black South Africans to white South Africans since 1994. We must refute the idea of cheap grace and recognise that what has cost our countrymen much, cannot be cheap for us, to paraphrase German theologian Dietrich Bonhoeffer.

Restitution is easier to imagine in concrete terms. We understand the loss of money, land, education or even life, but the significant immeasurable losses must also be acknowledged. Imagine that level of theft of intangibles such as dignity, a sense of safety, self-worth, an understanding of one’s rights, a sense of belonging in one’s own country, culture and cultural wisdom, language, identity and so much more.

The process of restitution recognises that this is precisely the situation we face in South Africa today. How do we make restitution not just for the tangible but for the myriad of intangible things that have been lost in the dehumanisation of South Africans over centuries? This we must wrestle with together, with intentionality, humility and hope.

It may help to know what restitution is *not* before we think about what it is. One of the biggest misconceptions we face as a young nation with an oppressive past, is that charity is ‘giving back’ as restitution. Resourced South Africans are well practiced in charity, and very generous. This is not a bad thing – charity is always a good thing in its purest form, but not at the cost of restitution. We have developed a strong charity culture, but are under-developed when it comes to justice, which is where restitution comes in. What we lack as a community is in the understanding and actioning of restitution.

Restitution is not charity. Charity suggests discretionary giving out of one’s abundance; it services poverty but does not eradicate it. It is often a plaster of relief in a crisis, but seldom brings about long-term change. It usually makes the giver feel good and the recipient feel grateful. It is much easier to just give money to a good cause than acknowledge the massive structural change that is needed to bring about a more sustainable and equitable South African society. Charity is quick. Restitution takes time.

Restitution is highly relational, potentially costly and sacrificial, and long-term. It aims to restore—or create—whole, healthy relationships where before there was brokenness and suspicion. In this relationship, we progress past the point in which there is a clear benefactor and a clear beneficiary - roles that still leave power on one side and that can be unintentionally dehumanising. The relationship demands that we listen to all sides, hear the voices of those wronged when they articulate their needs, and move towards healing together.

Similarly, while restitution is about justice, it is not about punishment. We are used to thinking of a retributive model of justice, in which payment is exacted in proportion to the crime, but nothing is done to restore the offender to the community and the community may not benefit at all from the judgment.

Restitution is about restorative justice. It understands that a crime is rarely just one person against another; it tears at the fabric of the whole community. The violation of the social contract is what is at stake. However, perhaps we must begin thinking beyond even restorative justice. The very notion of restoration suggests that there was some previous time in which the parties lived in harmony and right relation with each other. Yet that is not the case – we have no time we can look back on of healthy relationships to which we can return. That is a hard reality to face, but it is the truth we must admit to in order to reboot as a society built on power, discrimination, oppression, disenfranchisement and exploitation.

Luthando Tofu, theologian and church leader, uses the analogy of someone coming into your home and evicting you, but saying you can stay in the basement. You are forced down into the depths of the unappealing part of the house. Years later, the people who stole your house offer to paint the basement for you, some members of the family say sorry they took your house, but you keep living in the basement with all the limitations that holds. The next generation take on the painting of the basement with great commitment and paint it every year, even offering minor alterations and second-hand furniture to make it look better. The next generation that were stolen from are still living in the basement. This is a helpful metaphor when looking at the structural and geographic injustice that is still in place, 24 years after ‘freedom.’

Perhaps it would be more apt to begin thinking in terms of *transformational justice.* This idea recognises that we need a wholesale shift in the way we relate to each other—a transformation—that opens up new possibilities. Transformational justice asks us to go deeper, as we ask difficult questions about why things are the way they are, and how we can change the cycles in which we operate so that we can reduce conflict and create new and equitable relationships. Restitution is crucial to us achieving the establishment of right relationship.

Before moving on, perhaps it would be helpful to look at some definitions and meanings of terms that will be used in this resource.

**Helpful definitions**

**Apology**: a regretful, unconditional acknowledgment of an offense or failure which involves the acceptance of full responsibility for an offensive act, the expression of sincere regret and sorrow for the harm committed, and the taking of responsibility to do restitution to help undo some of the harm caused.

**Charity**: the voluntary, discretionary giving from one’s abundance to those in need, as a humanitarian act, seldom intended to address the root causes of the injustices. When practiced correctly, charity can bring much needed relief to people in crisis, but, more often than not, it ends up being about the giver and the investor, intended for them to feel good about themselves, to relieve their own discomfort and to make others feel good about the investors and the givers.

**Reparations**: closely linked to restitution. Restitution is a process of compensation for losses while reparation is more punitive for pain and suffering. Reparations may take several forms, including: 1) restitution, 2) compensation, 3) rehabilitation, and 4) satisfaction and guarantees of non-repetition.

**Restitution**: restoring matters to the state they were before an injustice occurred. It refers to ‘paying back’ or ‘making things right’ for wrongs previously committed

**Restorative justice**: prioritises the restoration of the victims and the rehabilitation and restoration of perpetrators. It is a process that encourages all those involved in an offence to resolve collectively how to deal with the aftermath of the offence and its implications for the future.

**Retributive justice**: administration of justice as a corrective due to the transgression of a law. It deals with punishment rather than rehabilitation.

**Remorse**: often regarded as a feeling associated with guilt and regret, it is usually accompanied by an action, an apology, reparations, tears or a gesture of acknowledgement of wrongdoing. The gesture is usually deemed to indicate the sincerity or what is described as the ‘genuineness’ of the feeling of remorse in a person who has done something they or others perceive as wrong. The etymology of remorse comes from the Latin verb ‘to bite’ (*morsus, mordere*) in most cases it requires the perpetrator to lose something of themselves when they express remorse.

**Sustainable Peace**: sustainable peace is broadly defined as the conditions that need to be in place for a community to peacefully co-exist next to each other - now and in the future. It requires both a backward-looking and a forward-looking approach. The backward-looking approach assists in the identification of the underlying causes of a conflict while the forward-looking approach focuses on the development of strategies to ensure that the root causes for the violence are addressed.