



**WE DONT HAVE
AMNESIA
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Volume **SIX** • Section **TWO** • Chapter **ONE**

**Report of the Reparation &
Rehabilitation Committee**

INTRODUCTION

Report of the Reparation and Rehabilitation Committee

■ INTRODUCTION

1. In 1998, the Reparation and Rehabilitation Committee (RRC) reported on its work and presented its policy recommendations to the President.¹ This formed part of the Final Report of the Truth and Reconciliation Commission (the Commission), which was handed to the President of South Africa on 28 October 1998. In that chapter, the RRC discussed the need for reparation and the moral and legal obligation to meet the needs of victims of gross human rights violations. The RRC also outlined the nature and progress of the urgent interim reparation (UIR) programme and submitted a comprehensive set of proposals for final reparations. The present chapter needs to be read in conjunction with that earlier chapter.

MANDATE OF THE REPARATION AND REHABILITATION COMMITTEE

2. The RRC received its mandate from the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act)², which made provision for reparations for those who had suffered human rights violations.
3. As stated in the Final Report of the Commission, the Preamble to the Act stipulates that one of the objectives of the Commission was to provide for:
the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; ...
4. As an integral part of the Commission, the RRC was required to draw up a set of recommendations to the President with regard to:
(i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;

¹ See Volume Five, Chapter Five.

² Sections 25 and 26 of the Act.

(ii) *measures which should be taken to grant urgent interim reparation to victims; ...*³

5. Furthermore, section 25(b)(i) of the Act stipulates that the RRC may:

make recommendations which may include urgent interim measures as contemplated in section 4(f)(ii), as to appropriate measures of reparation to victims; ...

6. The Act also provides for referral to the RRC by the other Committees of the Commission. Thus:

*When the Committee [on Human Rights Violations] finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.*⁴

7. Similarly:

(1) *Where amnesty is granted to any person in respect of any act, omission or offence and the [Amnesty] Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.*⁵

(2) *Where amnesty is refused by the Committee and if it is of the opinion that –*

(a) *the act, omission or offence concerned constitutes a gross violation of human rights; and*

(b) *a person is a victim in the matter, it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 26.*

THE COMMISSION'S REPARATION AND REHABILITATION POLICY

8. The policy recommendations submitted to the President by the Commission consisted of five basic components. Following internationally accepted approaches to reparation and rehabilitation, the RRC stressed the following principles:

a Redress: the right to fair and adequate compensation;

b Restitution: the right to the restoration, where possible, of the situation existing prior to the violation;

³ Section 4(f) of the Act.

⁴ Section 15(1).

⁵ Section 22.

- c Rehabilitation: the right to medical and psychological care, as well as such other services and/or interventions at both individual and community level that would facilitate full rehabilitation;
 - d Restoration of dignity: the right of the individual/community to an acknowledgment of the violation committed and the right to a sense of worth, and
 - e Reassurance of non-repetition: the right to a guarantee, by means of appropriate legislative and/or institutional intervention and reform, that the violation will not be repeated.
9. These principles provided a basic framework from which to elaborate the specific proposals outlined below:⁶

Urgent interim reparation

10. UIR is defined as assistance for people in urgent need, with a view to providing them with access to appropriate services and facilities. In this regard, the Commission recommended that limited financial resources be made available to facilitate such access where necessary.

Individual reparation grants

11. This is an individual financial grant scheme. The Commission recommended that each victim of a gross human rights violation receive a financial grant, based on various criteria, to be paid over a period of six years.
12. It was proposed that individual reparation grants be paid to victims (if alive) or relatives/dependants (where victims were deceased). The amount to be paid should be calculated according to three criteria: an amount that acknowledges the suffering caused by the violation; an amount that enables access to requisite services and facilities, and an amount that subsidises daily living costs according to socio-economic circumstances. As the cost of living is higher in rural than in urban areas, it was recommended that victims living in the rural areas should receive a slightly higher grant. The amount also varied according to the number of dependants (up to a maximum of R23 023 per annum). It was recommended that the annual amount be paid twice a year for a period of six years and be administered by the President's Fund, which is located within the Department of Justice and Constitutional Development.

⁶ See Volume Five, Chapter Five.

Symbolic reparation and legal and administrative measures

13. Symbolic reparation encompasses measures that facilitate the communal process of remembering and commemorating the pain and victories of the past. Such measures aim to restore the dignity of victims and survivors.
14. Commemorative aspects include exhumations, tombstones, memorials or monuments, and the renaming of streets or public facilities.
15. Legal and administrative measures include matters such as the issuing of death certificates or declarations of death in the case of people who have disappeared, expunging criminal records where people were sentenced for politically related offences, and expediting outstanding legal matters.

Community rehabilitation programmes

16. The establishment of government-led community-based services and activities is aimed at promoting the healing and recovery of individuals and communities affected by human rights violations. As many victims were based in communities that were subjected to systemic abuse, the RRC identified possible rehabilitation programmes and recommended a series of interventions at both community and national level. These included programmes to demilitarise youth who had been involved in or witnessed political violence over decades; programmes to resettle the many thousands displaced by political violence; mental health and trauma counselling, as well as programmes to rehabilitate and reintegrate perpetrators of gross violations of human rights into normal community life.

Institutional reform

17. Institutional reform included legal, administrative and institutional measures designed to prevent the recurrence of abuses of human rights. The Commission drew up a fairly substantial set of recommendations aimed at the creation and maintenance of a stable society – a society that would never again allow the kind of violations experienced during the Commission's mandate period. These included recommendations relating to the judiciary, security forces and correctional services as well as other sectors in society such as education, business and media.
18. The RRC, focusing on the need to implement these recommendations, proposed that a structure or body be set up in the office of the State President or Deputy President and headed by a national director of Reparation and Rehabilitation.

Further, the RRC recommended that reparation desks be established at provincial and municipal levels to ensure effective delivery and monitoring.

DELAYS IN THE IMPLEMENTATION OF REPARATION THUS FAR

19. Since the submission of the Final Report of the Commission with its proposals for reparation, there has been a considerable delay on the part of government in setting forth its vision for the Reparation and Rehabilitation programme. Indeed, government's only response thus far has been to challenge the individual reparation grant component of the Commission's recommendations.
20. This delay has led to ongoing public debate and widespread criticism. Much of this criticism has been directed at the Commission, as public perception, frequently fuelled by the media, has continued to see reparation as the responsibility of the Commission rather than of the government.
21. The fact that this delay has taken place against the background of the amnesty process is also unfortunate. The fact that victims continue to wait for reparations while perpetrators receive amnesty has fuelled the debate about justice for victims⁷ within the Commission process.
22. It needs to be strongly emphasised that giving victim evidence before the Commission was not simply a question of reporting on the past. It was intended to change peoples' views and experiences of their own pain and suffering. It was intended, moreover, to play an important role in reconciling the nation. This exposure and exploration of past experiences – this reconciliation – needed to be accompanied by reparation and rehabilitation-related services and the meeting of financial and other needs. Without this important component, the work of the Commission remains essentially unbalanced.
23. It should be noted further that, while the public debate has tended to focus on individual financial grants, the reparation policy proposed by the RRC was much broader in intent. In other words, it did not focus simply on financial compensation.

⁷ The Commission's use of the term 'victim' was explained in its Final Report on the grounds of the original wording of the Act. The RRC acknowledges the connotations associated with the term as a multiplicity of experiences, or engendering notions of the 'victim' having being vanquished or conquered in some way. The alternative, 'survivor', is open to a more fluid interpretation, but still fails to represent the variations of that survival. In the context of the Commission, it is a definition based on the specific violation experienced by the individual – that is, killing, abduction, torture or severe ill-treatment. It is not a term based on the individual's current state or understanding of himself or herself. This 'violation-based' definition is unsatisfactory to the Commission in that it promotes a homogeneous grouping of those who approached the Commission and has the potential to stifle creative approaches to the issue of reparative interventions.

It catered not only for the individual needs of those who suffered from past abuses, but had implications for communities that had been targeted for abuse as well as those requiring fundamental institutional transformation.

THE FOCUS OF THIS REPORT

24. The purpose of these chapters is to re-emphasise the urgency and importance of the recommendations for reparation and rehabilitation. This section also focuses on the work undertaken by the RRC since 29 October 1998. At that time, the RRC had processed seventy applications and sent them to the President's Fund. As of 30 November 2001, when the RRC closed down, a total of 17 016 forms for UIR grants had been submitted to the President's Fund, of which some 16 855 payments had been made, totalling R50 million. The processing of forms and data in respect of UIR has formed the bulk of the RRC's work since October 1998.

25. In addition to the above, the RRC has been responsible for considering victims referred to it by the Amnesty Committee for purposes of reparations.⁸ Further, the Committee on Human Rights Violations has continuously referred new victims to the RRC as it completed its findings and dealt with appeals against earlier negative findings. As a result of these two processes, victim referrals were still being made to the RRC up to the time of finalising this report. (...p98)

⁸ In terms of section 22 of the Act.