

Reparation and Rehabilitation Policy

INTRODUCTION

- 1 During the period under review, the majority of South Africans were denied their fundamental rights, including the right to vote and the right to access to appropriate education, adequate housing, accessible health care and proper sanitation. Those who opposed apartheid were subjected to various forms of repression. Many organisations and individuals in opposition to the former state were banned and banished, protest marches were dispersed, freedom of speech was curtailed, and thousands were detained and imprisoned. This gave rise to tremendous frustration and anger amongst the disenfranchised. Soon, each act of repression by the state gave rise to a reciprocal act of resistance. The South African conflict spiralled out of control, resulting in horrific acts of violence and human rights abuses on all sides of the conflict. No section of society escaped these acts and abuses.

WHY REPARATION?

- 2 Victims of human rights abuses have suffered a multiplicity of losses and therefore have the right to reparation. Without adequate reparation and rehabilitation measures, there can be no healing or reconciliation.
- 3 In addition, in the context of the South African Truth and Reconciliation Commission, reparation is essential to counterbalance amnesty. The granting of amnesty denies victims the right to institute civil claims against perpetrators. The government should thus accept responsibility for reparation.

The legal basis for reparation

- 4 The Promotion of National Unity and Reconciliation Act (the Act) mandates the Reparation and Rehabilitation Committee of the Commission to provide, amongst other things, measures to be taken in order to grant reparation to victims of gross human rights violations (see below).
- 5 The legal authority for reparation is further entrenched in domestic law by the judgement in the case of the AZAPO and Others v The President of the Republic of South Africa and Others (1996(8) BCLR 1015 (CC), in which the applicants sought an order declaring section 20(7) of the Act unconstitutional. Section 20(7) states that a person who has been granted amnesty shall not be criminally or civilly liable in respect of that act. The court held that section 20(7) is not unconstitutional. In arriving at such decision Didcott J held at paragraph 62:

Reparation is usually payable by states, and there is no reason to doubt that the postscript envisages our own state shouldering the national responsibility for those. It therefore does not contemplate that the state will go Scot-free. On the contrary, I believe an actual commitment on the point is implicit in its terms, a commitment in principle to the assumption by the state of the burden.

- 6 He stated further at paragraph 65:

The Statute does not, it is true, grant any legally enforceable rights in lieu of those lost by claimants whom the amnesties hit. It nevertheless offers some quid pro quo for the loss and establishes the machinery for determining such alternative redress. I cannot see what else it might have achieved immediately once, in the light of the painful choices described by Mohammed DP and in the exercise of the legislative judgement brought to bear on them, the basic decision had been taken to substitute the indeterminate prospect of reparations for the concrete reality of legal claims wherever those were enjoyed. For nothing more definite, detailed and efficacious could feasibly have been promised at that stage, and with no prior investigations, recommendations and decisions of the very sort for which provision is now made.

Review of the Act

- 7 The Preamble to the Act, stipulates that one of the objectives of the Commission is 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.

- 8 Pursuant thereto, section 4(f) states that one of the functions of the Commission shall be to make recommendations to the President with regard to:

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; measures which should be taken to grant Urgent Interim Reparation to victims.

- 9 Furthermore, section 25(b)(i) stipulates that the Reparation and Rehabilitation Committee may:

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

- 10 In terms of section 42, the State President, in consultation with the Ministers of Justice and Finance, will establish a President's Fund. All money payable to victims in terms of regulations promulgated by the President shall be disbursed from this fund.

International legal framework

- 11 The right of victims of human rights abuse to fair and adequate compensation is well established in international law. In the past three years, South Africa has signed a number of important international instruments, which place it under an obligation¹ to provide victims of human rights abuse with fair and adequate compensation. The provisions of these instruments, together with the rulings of those bodies established to ensure compliance with them, indicate that it is not sufficient to award 'token' or nominal compensation to victims. The amount of reparation awarded must be sufficient to make a meaningful and substantial impact on their lives. In terms of United Nations Conventions, there is well established right of victims of human rights abuse to compensation for their losses and suffering. It is important that the reparation policy adopted by the government, based on recommendations made by the Commission is in accordance with South Africa's international obligations. The reparation awarded to victims must be significant.
- 12 What follows is a brief review of international law in this regard.

Universal Declaration of Human Rights²

- 13 Article 8 of the Universal Declaration of Human Rights stipulates that:

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

- 14 The use of the words “effective remedy” underscores the point that the reparation awarded must be meaningful and substantial.

The International Covenant on Civil and Political Rights³

- 15 Section 3(a) of the International Covenant on Civil and Political Rights reads:

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

- 16 The Human Rights Committee established under the Optional Protocol to the International Covenant on Civil and Political Rights to consider alleged breaches of the Covenant has considered a number of cases relating to the right to compensation arising from gross violations of human rights.⁴ In all these cases, it has been held that, where the state or any of its agents is responsible for killings, torture, abductions or disappearances, it is under a legal obligation to pay compensation to the victims or their families. The fact that, in the majority of instances, the Committee has used the term ‘compensation’ implies that the award to victims should be substantial.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵

- 17 The Committee against Torture, established to ensure compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has found that complaints relating to acts of torture which occurred before the Convention entered into force are inadmissible because the Convention cannot be applied retroactively. Consequently, the Committee declared inadmissible a series of complaints by Argentinean citizens who alleged that they had been tortured before the Convention had come into force. Despite this rather technical finding, the Committee stressed in its communication to the government of Argentina that it should, in order to comply with the spirit of the Convention against Torture, ensure that victims of torture receive “adequate compensation”. This is another example of an international body requiring, not just token, but significant reparation to be made to victims of human rights abuse.

The Inter-American Conventions on Human Rights

- 18 The Inter-American Convention on Human Rights contains provisions that grant victims of human rights abuse a right to compensation. In the famous Velasquez Rodriguez case⁶, the Inter-American Court held that a state is under an obligation to “provide compensation as warranted for damages resulting from the violations [of the rights recognised by the Convention]”. On numerous other occasions – most recently in 1992 with respect to the governments of Uruguay and Argentina – the Inter-American Court has reasserted its view that victims of human rights abuse are entitled to compensation .

The moral argument

- 19 The South African conflict produced casualties. Many people were killed, tortured, abducted and subjected to various forms of severe ill treatment. This not only destroyed individual lives, but also affected families, communities and the nation as a whole.⁸ As a result, the new South Africa has inherited thousands of people whose lives have been severely affected. If we are to transcend the past and build national unity and reconciliation, we must ensure that those whose rights have been violated are acknowledged through access to reparation and rehabilitation. While such measures can never bring back the dead, nor adequately compensate for pain and suffering, they can and must improve the quality of life of the victims of human rights violations and/or their dependants.
- 20 The present government has accepted that it is morally obliged to carry the debts of its predecessors and is thus equally responsible for reparation. Implementation of reparation will afford all South Africans an opportunity to contribute to healing and reconciliation.
- 21 Without adequate reparation and rehabilitation measures, there can be no healing and reconciliation, either at an individual or a community level. Comprehensive forms of reparation should also be implemented to restore the physical and mental well being of victims.
- 22 The following policy proposals and recommendations in respect of both urgent interim reparation and reparation itself are, therefore, submitted to the State President for his consideration in terms of sections 27 and 40(1)(d) of the Act.

p WHAT CONSTITUTES REPARATION AND REHABILITATION

- 23 Section 1(1) (xiv) of the Act defines reparation as including: “any form of compensation, ex *gratia* payment, restitution, rehabilitation or recognition.”
- 24 The proposed reparation and rehabilitation policy has five components:

Urgent Interim Reparation

- 25 Urgent interim reparation is assistance for people in urgent need, to provide them with access to appropriate services and facilities. It is recommended that limited financial resources be made available to facilitate this access.

Individual Reparation Grants

- 26 This is an individual financial grant scheme. It is recommended that each victim of a gross human rights violation receive a financial grant, according to various criteria, paid over a period of six years.

Symbolic reparation/legal and administrative measures

- 27 Symbolic reparation encompasses measures to facilitate the communal process of remembering and commemorating the pain and victories of the past.
- 28 Amongst other measures, symbolic reparation should entail identifying a national day of remembrance and reconciliation, erection of memorials and monuments, and the development of museums.
- 29 Legal and administrative measures will also be proposed to assist individuals to obtain death certificates, expedite outstanding legal matters and expunge criminal records.

Community rehabilitation programmes

- 30 The Commission consulted with relevant government ministries in preparing its proposals for the establishment of community-based services and activities, aimed at promoting the healing and recovery of individuals and communities that have been affected by human rights violations.
- 31 During the life of the Commission, a number of victims were referred to the relevant government departments for assistance. It is recommended that this process continue after the Commission closes.

Institutional reform

- 32 These proposals include legal, administrative and institutional measures designed to prevent the recurrence of human rights abuses.

p WHO IS ENTITLED TO REPARATION AND REHABILITATION?

- 33 It is recommended that the recipients of urgent interim reparation and individual reparation grants should be victims as found by the Commission, as well as their relatives and dependants who are found to be in urgent need, after the consideration of a completed prescribed application form, according to the proposed urgency criteria.
- 34 For the purposes of this policy, the Reparation and Rehabilitation Committee (chapter 1 of the Act) defines relatives and dependants of a victim as:
- a parents (or those who acted/act in place of a parent);
 - b spouse (according to customary, common, religious or indigenous law);
 - c children (either in or out of wedlock or adopted);
 - d someone the victim has/had a customary or legal duty to support.
- 35 It should be noted that, if the victim died as the result of the violation, the definition of relatives and dependants will apply to the situation *at the time of the victim's death*. If the victim is alive, the definition will apply to the situation as at 14 December 1997.

p REPARATION AND REHABILITATION POLICY DEVELOPMENT

- 36 In formulating these policies and recommendations, the Reparation and Rehabilitation Committee collected information from a variety of sources. Specifically, the Committee collected information from victims and survivors, representatives of non-governmental organisations (NGOs) and community based organisations (CBOs), faith communities and academic institutions. Consultative workshops were held throughout the country. The information collected from deponents was processed and coded in the Commission database and assisted the Reparation and Rehabilitation Committee to:
- a establish harm suffered;
 - b determine the needs and expectations of victims;
 - c establish criteria to identify victims in urgent need;
 - d develop proposals regarding long term reparation and rehabilitation measures.
- 37 The Reparation and Rehabilitation Committee was also guided by internationally accepted approaches to reparation and rehabilitation:
- a redress: the right to fair and adequate compensation;
 - b restitution: the right to the re-establishment, as far as possible, of the situation that existed prior to the violation;

- c rehabilitation: the right to the provision of medical and psychological care and fulfilment of significant personal and community needs;
- d restoration of dignity: the right of the individual/community to a sense of worth; and
- e reassurance of non-repetition: the strategies for the creation of legislative and administrative measures that contribute to the maintenance of a stable society and the prevention of the re-occurrence of human rights violations.

- 38 Policy development was also informed by the work and recommendations of other Truth Commissions, in particular the Chilean Commission, which awarded a 'pension' to the families of the dead and disappeared; by the decision of the United Nations to award financial compensation to the victims of the Iran-Iraq war; and, most pertinently, by the conclusions of the Skweyiya and Motsuenyane Commissions.
- 39 The Skweyiya Commission⁹ recommended that victims of "maltreatment during detention" should receive monetary compensation, appropriate medical and psychological assistance, assistance in completing interrupted education and compensation for property lost. The Motsuenyane Commission¹⁰ also recommended compensation to those who suffered human rights violations and assistance with medical expenses.
- 40 In the process of developing policy, the Reparation and Rehabilitation Committee was faced with a number of decisions. Perhaps the most important of these was whether reparation should be financial and, if so, how much money should be given.
- 41 The alternative to a financial grant would be a 'service package'. Offering a service package has a number of pitfalls:
- a The costs of administering the process might reduce the amount available to victims.
 - b Victims' needs change over time. Thus, a service package tailored to meet present needs could well be inappropriate after a period.
 - c Dependants' needs (and status) also change over time.
 - d Giving preferential access to services to select individuals in a community could give rise to tensions.
 - e The way in which a distant implementing body chooses to service a need may not be the way the individual would have chosen him or herself.
- 42 The Reparation and Rehabilitation Committee decided that a well-structured monetary grant would be preferable to a services package, providing it took two things into account:
- a It should enable reasonable access to essential basic services.
 - b It should generate opportunities to achieve a dignified standard of living within the South African socio-economic context.
- 43 A monetary package also gives freedom of choice to the recipient. He or she can use the money in a way that is most appropriate to redress the injustice experienced. Because a monetary package provides government with a set of predictable, limited expenses, it makes fiscal management more feasible. An appropriately organised package requires minimal bureaucratic oversight.
- 44 The final, and most important factor in favour of an individual monetary grant, was that analysis of a representative sample of statements revealed that most deponents requested reparation in the form of money or services that money can purchase (see Figure RR1). The highest expectation of the reparation process was for monetary assistance. Compensation, bursaries, shelter, medical care and tombstones occupied third to seventh places respectively in the most frequent requests (the second most commonly requested intervention was for investigation of the violation).

- 45 For all these reasons, it was decided to recommend the provision of urgent interim reparations and individual reparation grants in the form of money.

p **PRINCIPLES OF REPARATION AND REHABILITATION POLICY**

Development-centred

- 46 This policy is development-centred. Central to the approach is a focus on resources, knowledge and choice. Development is not about provision of resources to passive individuals, but rather about actively empowering individuals and communities to take control of their own lives. In adherence to this principle, it is essential to provide individuals with sufficient knowledge and information about available resources and to help them utilise those resources to their maximum benefit.
- 47 Implementation must be a participatory process. This strengthens collective community development and local reconstruction and development initiatives.

Simplicity and efficacy

- 48 The policy should be simple, efficient and fair to ensure that the allocated resources are utilised to the maximum benefit of the recipients.

Cultural appropriateness

- 49 The services developed as a result of this policy should be responsive to the religious and cultural beliefs and practices of the community in which the services are provided.

Community-based

- 50 In consultation with appropriate ministries, community-based services and delivery should be strengthened and expanded to have a lasting and sustainable impact on communities.

Capacity development

- 51 Those community resources that are developed should focus not only on delivery of services, but also on local capacity building, to ensure sustainability of programmes.

Promoting healing and reconciliation

- 52 The activities that emerge from this policy should aim to bring people together, to promote mutual understanding and reconciliation.
- 53 The Act provides for two stages in the process of Reparation and Rehabilitation, namely, Urgent Interim Reparation and Final Reparation Measures.

p **URGENT INTERIM REPARATION**

- 54 Urgent Interim Reparation is the delivery of reparative measures to victims who are in urgent need. During the life of the Commission, urgent interim reparation was granted to certain victims. It was further recommended that all applicants be considered for this grant while awaiting final reparation.

Benefits

- 55 It was recommended that beneficiaries be entitled to the following:
- a Information about and or referral to appropriate services (government, non-government and/or private sector), depending on type of need.

- b Financial assistance in order to access and/or pay for services deemed necessary to meet specifically identified urgent needs. Payment will be based on a sliding scale according to number of dependants and need. Thus:

p NUMBER OF PEOPLE IN NEED

One (i.e. applicant only)	R 2 000
One plus one	R 2 900
One plus two	R 3 750
One plus three	R 4 530
One plus four	R 5 205
One plus five or more	R 5 705

Intervention categories and eligibility criteria

- 56 Victims or their relatives and dependants who have urgent medical, emotional, educational, material and/or symbolic needs will be entitled to urgent interim reparations.
- 57 Urgency will be determined in each of the above categories using a detailed set of criteria available to the Committee and the proposed government implementing structure.

Implementation

- 58 The promulgation of government regulations on urgent interim reparation took longer than expected, which resulted in a delay in making this relief available. The time it would have taken for a multi-disciplinary implementing body (as originally envisaged) to be set up would, in turn, have meant further delay in delivering tangible reparation to victims.
- 59 The Reparation and Rehabilitation Committee thus took responsibility for disseminating, receiving and assessing reparation application forms. Two committee members recommended a cash payment and made suggestions about appropriate services that the applicant could access. This information was forwarded to the President's Fund in Pretoria. The President's Fund made payment to the applicant, either via electronic bank transfer or a cheque posted by registered mail and, through a network of nodal points in provincial governments, informed applicants of available services.
- 60 While this system was being implemented (first payments were made in July 1998), ongoing discussion took place about the constitution of the implementing body that would eventually take over from the Reparation and Rehabilitation Committee. This matter had not been finalised at the time of reporting.

Implementation of Urgent Interim Reparations before the date specified by the President in terms of section 43(1)

- 61 This section outlines the different ways in which urgent interim relief policy was implemented before the date specified by the President in terms of section 43(1).
- 62 Regional Human Rights Violations Committees made preliminary findings on victim statements gathered from their areas. Preliminary regional findings were considered by the national Human Rights Violations

Committee and were either accepted or rejected. If the Human Rights Violations Committee found that a gross violation of human rights had occurred and was of the opinion that a person was a victim of such a violation, it referred the statement of the person concerned to the Reparation and Rehabilitation Committee. Moreover, if the Amnesty Committee granted amnesty in respect of any act and was of the opinion that a person was a victim of that act, it referred the identified individual to the Human Rights Violations Committee which, if it concurred, referred the matter to the Reparation and Rehabilitation Committee. In addition, if the Amnesty Committee did not grant amnesty for an act and was of the opinion that the act was a gross violation of human rights and that a person was a victim in the matter, it referred the matter to the Reparation and Rehabilitation Committee through the Human Rights Violations Committee.

- 63 Any person referred to the Reparation and Rehabilitation Committee, in terms of the steps outlined above, was entitled to apply for reparation on the prescribed form that was sent to them.
- 64 The Reparation and Rehabilitation Committee applied its mind to the information contained in the prescribed application form and other evidence or information of possible relevance in order to determine whether the applicant was a victim (that is, whether he or she had suffered harm in terms of section 1(1)(xix) of the Act), whether s/he was in urgent need and to identify the nature of the urgency. The final decision was based on the information contained in the prescribed application form. If the applicant was found to be both a victim and in urgent need, the Reparation and Rehabilitation Committee conveyed this decision and all other relevant information regarding this application to the President's Fund.
- 65 Delivery of urgent interim reparation by the President's Fund involved the following steps:
- a Receiving decisions from the Commission's Reparation and Rehabilitation Committee.
 - b Referring victims to appropriate service/s.
 - c Making payment according to the approved sliding scale and/or type of need.
- 66 It is recommended that all those found to be victims will be eligible for final reparation, regardless of urgency of need.

p INDIVIDUAL REPARATION GRANTS

- 67 In acknowledgement of victim's rights to reparation, it is recommended that final reparation involve an amount of money, called an individual reparation grant, to be made available to each victim (if he/she is alive) or equally divided amongst relatives and/or dependants who have applied for reparation (as defined above) if the victim is dead. The amount of the grant will be based on the formula outlined below. The formula is based on three components, namely an amount to *acknowledge the suffering* caused by the gross violation that took place, an amount to *enable access to services and facilities* and an amount to *subsidise daily living costs*, based on socio-economic circumstances.

Rationale

- 68 The individual reparation grant is an acknowledgement of a person's suffering due to his/her experience of a gross human rights violation. It is based on the fact that survivors of human rights violations have a right to reparation and rehabilitation. The individual reparation grant provides resources to victims in an effort to restore their dignity. It will be accompanied by information and advice in order to allow the recipient to make the best possible use of these resources. Thirty-eight per cent of the Commission's deponents requested financial assistance to improve the quality of their lives. In addition, over 90 per cent of deponents asked for

a range of services which can be purchased if money is made available – for example, education, medical care, housing and so on.

Formula for calculating Interim Reparation Grants¹¹

- 69 The monetary package is based on a benchmark amount of R21 700, which was the median annual household income in South Africa in 1997. The Reparation and Rehabilitation Committee believes that this is an appropriate amount to achieve the aims of the individual reparation grant – that is to enable access to services and to assist in establishing a dignified way of life. The poverty line of R15 600 per annum was rejected as a benchmark, as this would be condemning victims to a life of near poverty, rather than one of minimum dignity.
- 70 The actual amount that each victim receives will be based on an easily administered formula, which differentiates according to three criteria:
- a an acknowledgement of the suffering caused by the violation (#1);
 - b an amount to facilitate access to services. Because services are less accessible in rural areas, those living in rural communities will receive a premium in this part of the grant. The difference is based on the assumption that accessing services in rural areas is 30 per cent more expensive than in urban areas (#2)¹²;
 - c an amount to subsidise daily living costs. This will be differentiated according to numbers of dependants and/or relatives, which will be capped at nine. In addition, because the cost of living is higher in urban areas, people living in urban areas will be favoured in this portion of the grant. The difference is based on the assumption that the cost of living in urban areas is 15 per cent higher than in urban areas (#3).
- 71 Each portion of the formula is given a weighting or ranking as follows:
- #1= 50%, #2 = 25%, #3=25% of total Interim Reparations grant.**
- 72 The actual variation in amounts payable according to the formula and differentiation criteria is shown in the table.
- 73 Using the proposed projections, no individual will receive more than R23 023 per annum (the maximum individual reparation grant). This maximum amount would apply to an individual, living in a rural area, who has nine or more dependants.
- 74 The annual individual reparation grant should be calculated for each beneficiary and paid as 50 per cent of the total every six months. The annual payments will continue for a period of six years.

Administration/President's Fund

- 75 The grant will be funded and administered by the President's Fund. The President's Fund will accrue resources through allocations from the national fiscus, international and local donations and earned interest on the funds. Based on the given policy and formula, and estimating 22 000 victims, the total cost of this policy will be R477 400 000 per annum or R2 864 400 000 over six years. The figure of 22 000 victims is based on the Commission's Human Rights Violations Statement as the only point of entry.
- 76 It is recommended that the President's Fund functions on an interdepartmental or interdisciplinary basis as a dual structure with:
- a an administrative capacity to disburse the money which has been allocated;

- b a multi-disciplinary Reparation Panel to assess application forms and to advise appropriately. While the Commission is still in existence, members of the Reparation and Rehabilitation Committee may sit on this panel.

n REPARATION PAYMENT SCHEDULE (PER ANNUM PER VICTIM)

#1	#2	#3	
Acknowledgement of Violation	Access to Services ¹³	Daily Living Costs ¹⁴	TOTAL ANNUAL REPARATION
50%	25%	25%	

n RURAL

0.5 x 21 700 = 10850	0.25 x 24 630 = 61 57.5	Household Size	
		Size	0.25 x
		1 5 169	18 330
		2 8 396	19 107
		3 11 152	19 796
		4 13 640	20 418
		5 15 946	20 994
		6 18 117	21 537
		7 20 181	22 053
		8 22 158	22 547
		9 +24 063	23 023

n URBAN

0.5 x 21 700 = 10850	0.25 x 18 771 = 4 693	Household Size	
		Size	0.25 x
		1 5 947	17 029
		2 9 660	17 958
		3 12 831	18 750
		4 15 693	19 466
		5 18 347	20 129
		6 20 844	20 754
		7 23 219	21 348
		8 25 494	21 916
		9 +27 685	22 464

SYMBOLIC REPARATION / LEGAL AND ADMINISTRATIVE INTERVENTIONS

78 Symbolic reparation measures are aimed at restoring the dignity of victims and survivors of gross human rights violations. These include measures to facilitate the communal process of commemorating the pain and celebrating the victories of the past. Deponents to the Commission have indicated that these types of interventions are an important part of coming to terms with the past.

Individual interventions

79 The following services will be made available:

Issuing of death certificates

- 80 Many people making statements to the Commission highlighted the fact that they did not receive death certificates for deceased relatives. It is recommended that mechanisms to facilitate the issuing of death certificates be established by the appropriate ministry.¹⁵

Exhumations, reburials and ceremonies

- 81 In a number of cases, the need for exhumations and reburials became evident. It is recommended that mechanisms to expedite this process be established by the appropriate ministries. Alternative culture-specific ceremonies should similarly be facilitated. Costs associated with exhumations, reburials and alternative ceremonies will be met from the individual reparation grant.

Headstones and tombstones

- 82 In a number of cases, deponents asked for tombstones and headstones to be erected on the graves of the deceased. It is recommended that these will be paid for from the individual reparation grant.

Declarations of death

- 83 In many cases of disappearances reported to the Commission, people have not formally been declared dead. It is recommended that mechanisms to facilitate the declaration of deaths be established and implemented in those cases where the family requests an official declaration of death. This is an obligation of the Commission according to section (k) of the Act.

Expunging of criminal records

- 84 Many victims received criminal sentences for political activities. It is recommended that mechanisms to facilitate the expunging of these records be established by the appropriate ministry.

Expediting outstanding legal matters related to the violations

- 85 A careful analysis of statements indicates that there are still many outstanding legal matters that deponents would like to have resolved. Mechanisms to facilitate the resolution of outstanding legal matters which are directly related to reported violations, should be established within the President's Fund.

Community interventions

- 86 It is recommended that the following measures be taken:

Renaming of streets and facilities

- 87 It is recommended that streets and community facilities be renamed to reflect, remember and honour individuals or events in particular communities. Local and provincial authorities should be informed about these requests.

Memorials/monuments

- 88 It is recommended that monuments and memorials be built to commemorate the conflicts and/or victories of the past. These monuments and memorials should be built in consultation with local government structures. Local and provincial authorities should establish the necessary mechanisms in this regard.

Culturally appropriate ceremonies

- 89 It is recommended that specific needs of communities regarding remembering and/or celebrating be honoured through culturally appropriate ceremonies. This, according to requests, could include cleansing ceremonies. Local and provincial authorities should establish the necessary mechanisms in this regard, in close co-operation with the appropriate faith communities and cultural and community organisations.

National interventions

- 90 The following measures need to be taken:

Renaming of public facilities

- 91 It is recommended that, after careful consideration and consultation, public facilities should be renamed in honour of individuals or past events. The necessary mechanisms should be put in place by the appropriate ministries.

Monuments and memorials

- 92 In response to the requests of many victims and the broader community, the erection of appropriate monuments/memorials should be considered. The appropriate ministries should put the necessary mechanisms in place to plan and implement this.

A day of remembrance

- 93 In response to the requests of many victims and the broader community, it is recommended that the government declare a National Day of Remembrance. The appropriate ministries should facilitate this, in close liaison with the different faith communities and cultural organisations in the country.

p COMMUNITY REHABILITATION

- 94 Individuals eligible for individual reparation grants are members of communities that have been subjected to systemic abuse. Entire communities suffer the adverse effects of post-traumatic stress disorder, expressed by a wide range of deponents to the Commission. It is therefore recommended that rehabilitation programmes be established both at community and national levels.
- 95 Rehabilitation programmes should form part of a general initiative to transform the way in which services are provided in South Africa. Such programmes can also promote reconciliation within communities. The following possible rehabilitation programmes have been identified with reference to the needs expressed by deponents in their statements. For community rehabilitation programmes to have the desired positive effect and to be sustainable, relevant government ministries should facilitate their development, in consultation with other partners like representatives of organised businesses, victim support groups, NGOs, faith communities and so on.

Health and social services

National demilitarisation

- 96 Because of ongoing exposure to and involvement in political violence, young people have become socialised to accept violence as a way of resolving conflict. This issue needs to be addressed as a matter of urgency.
- 97 The demilitarisation programme should be systematic and assist in demilitarising youth, who have for decades been involved in violent activity to effect political change. Secondary and tertiary educational institutions and sporting bodies should be involved in the implementation of this programme. The programme should consist of a combination of social, therapeutic and political processes and interventions, appropriate to the area in which they are being implemented.

Dislocation and displacement

- 98 South Africa has thousands of 'internal' refugees, who have been driven from their homes by political conflict. Displacement can lead to psychological distress, unemployment and trauma.
- 99 It is recommended that a multi-disciplinary programme, involving all relevant ministries and departments (such as health, welfare and housing) be put in place to resettle displaced persons and address the problems of displaced communities.

Appropriate local treatment centres

- 100 Victims and survivors of gross human rights violations have complex physical and emotional needs which can be most appropriately addressed by multi-disciplinary teams – taking cultural and personal preferences into account - at accessible local treatment centres. It is recommended that the Department of Health establish such centres.

Rehabilitation for perpetrators and their families

- 101 Perpetrators and their families need to be reintegrated into normal community life. This is essential to create a society in which human rights abuses will not recur. Individual and family rehabilitative systems need to be instituted to assist individuals and families in coming to terms with their violent past and learning constructive and peaceful ways of resolving conflict without resort to violence.

Mental health services

- 102 Prevailing negative perceptions of therapy and its practice prevent people from accessing mental health services. Individuals and communities should be educated about the link between mental health and conflicts of the past. Appropriate mental health initiatives should be linked with developmental projects, for example, the Reconstruction and Development Programme and *Masakhane*. Mental health cannot be seen in isolation from socio-economic development.

Community-based interventions

- 103 It is recommended that self-sustaining, community-based survivor support groups be established, staffed by trained facilitators from the community. This method of support and treatment is not a unique concept and enjoys success where facilitators focus on therapy. The support group method represents a cost effective, accessible, non-threatening way in which people can access counselling.

Skills training

- 104 Community members should be trained in a variety of skills to enable them to assist victims of human rights abuses. These should include crisis management, critical incident briefing, trauma awareness training, referral skills and knowledge of available resources.

Specialised trauma counselling services

- 105 Specialised emotional trauma counselling services should be established. A national strategy to train trauma counsellors should be developed.

Family-based therapy

- 106 The impact of gross human rights violations on the family is often underestimated. To address this issue, it is recommended that training programmes for health care workers, aimed at improving their skills in the family systems approach be instituted by the relevant ministries.

Education

- 107 The standard of black education was appalling and this aspect of the legacy of apartheid is likely to be with us for a long time to come. Education is ripe for reform and the possibilities for its transformation are exciting. However, one of the effects of the past is that it has resulted in a strong culture of often pointless conflict around education matters. The desire to learn in a disciplined environment no longer seems to prevail.

Assistance for continuation of studies

- 108 It is recommended that the establishment of community colleges and youth centres be prioritised, to facilitate the re-integration of affected youth into society.
- 109 Specific accelerated adult basic education and training (ABET) programmes should be established to meet the needs of youth and adults who are semi-literate and have lost educational opportunities due to human rights abuses.

Building and improvement of schools

- 110 Rebuilding of demolished schools, particularly in rural and disadvantaged areas should be prioritised.

Special educational support services

- 111 Remedial and emotional support should be included in mainstream educational programmes.
- 112 Mainstream educational facilities should provide skills based training courses in order to respond to the needs of mature students and to help them find employment.

Housing

Housing provision

- 113 It is recommended that specific attention be given to establishing housing projects in communities where gross violations of human rights led to mass destruction of property and/or displacement. The appropriate ministry should put the necessary mechanisms in place.

Institutional reform

- 114 One of the functions of the Commission is to make recommendations on institutional legislative and administrative measures designed to prevent the recurrence of human rights abuses in the future.¹⁶
- 115 The Reparation and Rehabilitation Committee recommends that the measures and programmes outlined in the chapter on *Recommendations* become part of the operational plans and ethos of a wide range of sectors in society including the judiciary, media, security forces, business, education and correctional services.

p IMPLEMENTATION PROCESS AND RESPONSIBILITY

- 116 The nature and structure of the body which implements Final Reparation will need to be debated and will obviously depend on the decisions taken by Parliament about the form that final reparation will take. Based on present policy proposals, the Reparation and Rehabilitation Committee believes that the following issues must be considered:
- a Implementation must take place at national, provincial and local levels.
 - b The national implementing body should be located in the office of the State President or Deputy President. The body should not be allocated to one particular ministry, as its functions will require access to the resources, infrastructure and services of a number of ministries (such as housing, health, welfare, and education).
 - c The national body should be headed by a National Director of Reparation and Rehabilitation, who will be advised by a panel or board of trustees, composed of appropriately qualified members from relevant ministries and human rights organisations.
- 117 The national body will have the following functions:
- a Implementing and administering any financial reparation policy.
 - b Maintaining regular contact with relevant ministries, to ensure appropriate service provision.
 - c Establishing provincial reparation desks.
 - d Facilitating the formation of partnerships with NGOs, the private sector, faith communities and other appropriate groupings, in order to meet victims' needs.
 - e Promoting fund raising and communication strategies.
 - f Monitoring, evaluating and documenting the national implementation of reparation and rehabilitation.
 - g Reporting to the Inter-Ministerial Committee.
- 118 Provincial reparation desks should be established within existing provincial government structures.
- 119 Provincial reparation desks will have the following functions:
- a Ensuring that reparation recipients are linked to appropriate service providers.
 - b Monitoring dispersal of financial reparation and providing suitable financial counselling to recipients.
 - c Taking particular responsibility for community reparation and symbolic reparation at a local level.
 - d Monitoring, evaluating and documenting implementation of reparation at a provincial level.
 - e Reporting to the National Director of Reparation and Rehabilitation.