



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

**Report of the Reparation &  
Rehabilitation Committee**

**THE CASE FOR REPARATION  
AND REHABILITATION: DOMESTIC  
AND INTERNATIONAL LAW**

# The Case for Reparation and Rehabilitation: Domestic and International Law

1. In its broadest sense, the mandate of the Reparation and Rehabilitation Committee (RRC) was to affirm, acknowledge and consider the impact and consequences of gross violations of human rights<sup>9</sup> on victims, and to make recommendations accordingly. In doing so, the RRC had access to a rich source of information about reparations, drawn from domestic and international law and opinion.

## DOMESTIC LAW AND DEMOCRATIC ACCOUNTABILITY

### Domestic Law

2. The obligation to institute reparations is enshrined in South African law itself.
3. The Constitution of the Republic of South Africa Act No. 200 of 1993<sup>10</sup> (the Interim Constitution) recognised the principle that the conflicts of the past had caused immeasurable injury and suffering to the people of South Africa and that, because of the country's legacy of hatred, fear, guilt and revenge: 'there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation'.<sup>11</sup> This view was given concrete expression in the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act), which mandated the Commission to develop measures for the provision of reparation to those found to have been victims of gross violations of human rights.
4. Through the Act and in unambiguous language, the legislature made clear its intention that 'reparations' of some kind or form should be awarded to victims.

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9 Killings, torture, severe ill-treatment and abduction. A number of violations were reported to the Commission which did not fall into these categories. These were described as 'associated violations'.

10 Constitution of the Republic of South Africa Act No. 200 of 1993, 'National Unity and Reconciliation', Chapter Fifteen.

11 Constitution of the Republic of South Africa Act No. 200 of 1993.

This reaffirms the belief that the Act created rights in favour of victims. For example:

*[T]he Commission shall – ...*

*(f) make 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 [section 4];*

*Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form ... [section 26(1)].*

*The recommendations referred to in section 4(f)(i) shall be considered by the President with a view to making recommendations to Parliament and making regulations [section 27(1)].*

5. Entitlement to reparation therefore arises from the provisions of the Act itself. The only qualification is that the recipient must be a victim of a gross violation of human rights as defined in section 1 of the Act,<sup>12</sup> and as further elaborated in subsequent promulgated regulations.

## **Legitimate expectation**

6. The general statutory obligations imposed upon the Truth and Reconciliation Commission (the Commission) created a legitimate expectation on the part of victims of gross violations of human rights that the Commission would fulfil this part of its mandate. This legitimate expectation gave rise to legally enforceable rights in terms of section 26 of the Act. According to this section, persons are entitled to apply for reparations by virtue of having been referred as a victim to the RRC either by the Amnesty Committee<sup>13</sup> (the Committee) or the Human Rights Violations Committee<sup>14</sup> (HRVC).

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<sup>12</sup> Section 1(xix) of the Act defines ‘victims’ as – (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights – (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted; (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and (c) such relatives or dependants of victims as may be prescribed.

<sup>13</sup> Section 22 of the Act.

<sup>14</sup> Section 15(1).

7. The principle of legitimate expectation has been accepted in our law<sup>15</sup> and has since been enshrined in the South African Constitution. Victims, therefore, have a legitimate expectation that they are entitled to reparations once the RRC has considered their applications for reparation and referred them to the President's Fund and/or relevant government department in the proper manner.

## **Amnesty and reparations: Achieving a balance**

8. The argument that the case for reparations is well founded in the Constitution and in the Act is also supported and underpinned by a majority judgment of the Constitutional Court.<sup>16</sup> The judgment emphasises the obligation on the state to meet the 'need for reparations' as enshrined in the Constitution.
9. The Act requires that, once a perpetrator has been granted amnesty, the right of the victims and/or their families to institute criminal and/or civil proceedings is extinguished.<sup>17</sup> In 1996, the Azanian People's Organisation (AZAPO) and several relatives<sup>18</sup> of persons killed by the security forces challenged the constitutionality of the amnesty provisions.<sup>19</sup> The Constitutional Court dismissed the application in a majority judgment. Affirming the constitutionality of the provisions, the Court<sup>20</sup> noted that the notion of amnesty was a cornerstone of the negotiated settlement and was enshrined in the 'postamble' to the Interim Constitution<sup>21</sup>. However, the judgment noted that the 'postamble' made provision not only for amnesty, but also for a reparations process:

*The election made by the makers of the Constitution was to permit Parliament to favour 'the reconstruction of society' involving in the process a wider concept of 'reparation' which would allow the state to take into account the competing claims on its resources, but at the same time, to have regard to the 'untold sufferings' of individuals and families whose fundamental human rights had been invaded during the conflict of the past.<sup>22</sup>*

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15 Administrator of the Transvaal and Others v Traub and Others 1989 (4) SA 731 (A) at 761 D.

16 Constitutional Court Case No. CCT 19/96.

17 See section 20(7) of Act No. 34 of 1995.

18 Ms NM Biko, wife of Mr Steven Bantu Biko who died in detention in October 1977; Mr CH Mxenge, brother of Mr Griffiths Mxenge who was killed in November 1981 by a Security Branch hit squad; and Mr C Ribeiro, son of Dr Fabian and Ms Florence Ribeiro who were killed in a joint Security Branch and SADF Special Forces operation in December 1986.

19 See Volume One, Chapter Seven, pp. 175–8.

20 Constitutional Court Case No. CCT 19/96.

21 The Interim Constitution provided the framework for the transition to a democratic order.

22 See AZAPO judgment per Judge Mahomed at p. 40 para 45.

10. The Court offered some examples of such reparations, including: bursaries and scholarships for the youth; occupational training and rehabilitation; surgical intervention and medical assistance; housing subsidies, and tombstones and memorials.<sup>23</sup>
11. Thus it may be seen that the Act as passed by Parliament includes provisions for both amnesty and reparations, and embodies and endorses the spirit of the Interim Constitution.
12. Mr Justice Didcott, a Constitutional Court judge, issued a separate judgment in which he considered various constitutional matters and questions of law. In this judgment, which in no way disagrees with the majority view, Judge Didcott expressed the following opinion on the phrase 'need for reparation', which appears in the postscript of the Interim Constitution:

*Reparations are 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. What remains to be examined is the extent to which the statute gives effect to the acknowledgment of that responsibility. The question arises because it was said in argument to have done so insufficiently.*

*The long title of the statute declares one of the objects that it promotes to be: '... the taking of measures aimed at the granting of reparation to, and the rehabilitation and restoration of the human and civil dignity of, victims of violations of human rights'.*

*Section 1 defines 'reparation' in terms that include – '... any form of compensation, ex gratia payment, restoration, rehabilitation or recognition'.<sup>24</sup>*

13. Judge Didcott discussed the effects of granting amnesty and the award of reparations as follows:

*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 established the machinery for determining such alternate redress.<sup>25</sup>*

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<sup>23</sup> See [AZAPO judgment per Judge Mahomed](#) at p. 40 para 45.

<sup>24</sup> See [AZAPO judgment per Didcott I](#) paras 62–4.

<sup>25</sup> See [AZAPO judgment per Didcott I](#) at pp. 55–6, para 65.

14. Whilst the granting of reparations to victims whose rights to criminal prosecution and civil claims have been destroyed by the granting of amnesty to perpetrators may conceivably be described as a *quid pro quo*, it must be noted that the proportion of victims emerging from the amnesty process is relatively small compared to the total number of persons declared to be victims by the Commission. It must be stressed, however, that any reparation policy that attempted to make a distinction between these two categories of victims would be divisive and counter-productive.

## **THE INTERNATIONAL ARGUMENTS**

15. In its Final Report,<sup>26</sup> the Commission made it clear that its position with regard to reparations was consistent with well-established international principles. The following section re-states and elaborates this position.

### **The right to reparation**

16. The protection of human rights is widely recognised as a fundamental aim of modern international law, which holds states liable for human rights violations and the abuses they or their agents commit. For some considerable time now, the minds of the international legal community have been preoccupied with the issue of compensation for injuries arising from human rights violations and the formulation of effective reparation policies. Although no consistent reparations policy has evolved in international human rights law, there is nevertheless reasonable consensus about the obligations of states to make reparations for violations of human rights.
17. A survey of international law institutions, bodies and tribunals at both global and regional level, taken together with the many treaties, declarations, conventions and protocols in respect of the protection of civil liberties and human rights, provides overwhelming proof of the moral and legal support the Commission's reparations policy finds in international law. Indeed, as will be shown, the reparation policy proposed by the RRC is in many respects framed by the policy positions of the international human rights community.
18. The Universal Declaration of Human Rights of 1948, the founding document on international human rights, states that: 'Everyone has the right to an effective

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<sup>26</sup> Volume Five, Chapter Five.

remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or laws'. The declaration further states that any person unlawfully arrested, detained or convicted has an enforceable right to compensation.<sup>27</sup>

19. Further examples of support for reparation can be found in the International Covenant on Civil and Political Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the Convention on the Prevention and Punishment of Genocide (1948); the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the United Nations (UN) Security Council Resolution on the Establishment of the UN Compensation Commission (1991), and the study by the United Nations High Commission on Human Rights (UNHCHR) concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (1993).
20. In the Commission's Final Report, reference was made to the last-mentioned study, in which the UNHCHR argued that, where a state or any of its agents is responsible for killings, torture, abductions or disappearances, it has a legal obligation to compensate victims or their families.
21. Subsequent to the publication of the Commission's Final Report, the UN authorised a further study on the subject of reparations. On 18 January 2000, a UNHCHR working group, headed by international human rights scholar M Cherif Bassiouni, drew up a report that incorporated the UN 'Draft Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law' (the Draft Principles). The report confirms that, in order to comply with their international human rights and humanitarian law obligations, states must adopt *inter alia*:
  - a appropriate and effective judicial and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice; and
  - b measures to make available adequate effective and prompt reparation.
22. In terms of these Draft Principles, the expression 'access to justice' is not limited to access to ordinary courts of law, but also includes equal and effective access to justice in the form of adequate reparations. In order to give effect to

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<sup>27</sup> Articles 9(5) and 14(6) United Nations Declaration of Human Rights.

these principles, states must provide victims with appropriate mechanisms for accessing and receiving reparations.

## **Nature of remedy or reparation offered**

23. As the right to a remedy for victims of human rights abuse has increasingly been accepted in international human rights and humanitarian law, reasonable consensus has begun to emerge as to what such reparation should entail. Significantly, in almost every instance, the remedy envisaged goes far beyond individual monetary compensation.
24. The UNHCHR, established to ensure state compliance with the International Covenant on Civil and Political Rights, has recommended that a state that is in violation of the Covenant should:
  - a pay financial compensation to the victim;
  - b provide appropriate care where necessary;
  - c investigate the matter; and
  - d take appropriate action, including bringing the perpetrator to justice.
25. Article 14 of the Convention against Torture states that:

*Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as the result of an act of torture, his dependants shall be entitled to compensation.*
26. In 1998, the Working Group on Involuntary or Enforced Disappearances issued a similar declaration. However, it extended the right of redress to the family of the victims and stipulated that, in the case of enforced disappearances, it was the primary duty of the state to establish the fate and whereabouts of the disappeared. In considering what could be regarded as adequate reparation, the Working Group stated that it should be 'proportionate to the gravity of the human rights violations (that is the period of disappearance, the conditions of detentions and so on) and to the suffering of the victim and the family'. In determining compensation, the Working Group noted that consideration should be given to the following:
  - a physical and mental harm;
  - b lost opportunities;
  - c material damages and loss of earnings;



- d harm to reputation; and
- e legal costs incurred as a result of the violation.

27. In the event of the death of a victim, additional compensation should be awarded.
28. Additional measures to ensure rehabilitation (such as physical and mental services) and restitution (restoration of personal liberty, family life, citizenship, employment or property, return to the place of residence) should be provided. Finally the victim and her/his family should be guaranteed the non-repetition of the violation.
29. The Draft Principles (as drafted by Professor M Cherif Bassiouni) give fairly detailed guidance on the possible forms of reparation. These are worth setting out in full, as the recommendations made by the Commission exemplify these principles in many respects, demonstrating the extent to which the recommendations the Commission proposes are in line with those proposed internationally.

*Article 22: Restitution should, wherever possible, restore the victim to the original situation before the violations of international human rights or humanitarian law occurred. Restitution includes: restoration of liberty; legal rights; social status; family life or citizenship; return to one's place of residence; restoration of employment and return of property.*

*Article 23: Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian law, such as: physical or mental harm, including pain, suffering and emotional distress; lost opportunities, including education; material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; costs required for legal or expert assistance, medicines and medical services, and psychological and social services.*

*Article 24: Rehabilitation should include medical and psychological care as well as legal and social services.*

*Article 25: Satisfaction and guarantees of non-repetition should include, where applicable, any or all of the following: cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses or others; the search for the bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities; an official declaration or*

*a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of the persons closely connected with the victim; apology, including public acknowledgment of the facts and acceptance of responsibility; judicial or administrative sanctions against persons responsible for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the violations that occurred of international human rights and humanitarian law in training and in educational material at all levels.*

*Preventing the recurrence of violations by such means as (1) Ensuring effective civilian control of military and security forces; (2) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces; (3) Strengthening the independence of the judiciary; (4) Protecting persons in the legal, media and other related professions and human rights' defenders; (5) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials; (6) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises; (7) Creating mechanisms for monitoring conflict resolution and preventive intervention.*

## **Decisions of international human rights bodies supporting the right to reparation**

30. The creation of numerous bodies and procedures within the UN system has created a powerful mechanism for (amongst other things) the investigation of reported violations of human rights, the holding of public hearings, and recommendations on international policy. Yet none of the UN's permanent treaty or internal bodies is legally empowered to give concrete effect to reparations or the bringing of perpetrators to book.
31. Despite this, several regional bodies established to promote and protect human rights do have such competence. European and Inter-American bodies in particular have developed a rich jurisprudence around international human rights and humanitarian law generally, as well as on specific issues such as reparation.
32. The Inter-American Commission on Human Rights (IACHR) is, for example, empowered to investigate complaints and to effect the amicable settlement of disputes. In two well-publicised cases, the IACHR brokered a settlement where

damages were claimed from Ecuador for the disappearance of two young men. Ecuador admitted liability and agreed to implement the following reparations:

- a payment of a lump sum US\$ 2 000 000 settlement without prejudice to civil remedies against the perpetrators;
  - b an undertaking to conduct a definitive and complete search of the area where the boys allegedly disappeared and to provide all necessary and reasonable logistical support to carry out the search, including training men to recover the bodies;
  - c an undertaking not to interfere with any ceremonies commemorating the deaths of the youths;
  - d an undertaking to rehabilitate the reputation of the family by publicly affirming that the young men were not guilty of crimes under Ecuadorian law or morality;
  - e an undertaking properly to investigate, prosecute and punish the perpetrators of the violation of the human rights of the deceased and their families.
33. This case study is a good example of how a package of recommendations (such as the RRC has proposed in South Africa) can be holistically combined rather than quantifying the violations committed against the victims or their families to a sum of money alone.
34. The IACHR has made important contributions to the growing body of jurisprudence with respect to formulating reparation policy as an alternative to monetary compensation. It has, in a number of cases, recommended the reform of the military court system, methods of investigation (Columbia), prosecution and the punishment of violators (Tarcisso Meduna Charry v Colombia), the adoption or modification of offending legislation, and guarantees for the safety of witnesses. Similarly, the South African Commission has made many recommendations in respect of institutional reform.<sup>28</sup>
35. The IACHR has been particularly concerned with an important area of international jurisprudence relating to the issue of impunity: not only as it concerns past violations, but also to the prospect of violations that may take place in the future. This has a direct bearing on the kinds of reparation needed to remedy the situation. In its report on the *Ley de Caducidad* in Uruguay, the IACHR concluded that the impunity granted to officials who had violated human rights during the

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<sup>28</sup> See Volume Five, Chapter Five, 'Recommendations'.

period of military rule was in breach of the American Convention on Human Rights. A similar finding was made in respect of Argentina's *Ley de Punto Final* (the 'full-stop law') and Presidential Pardon No. 1002. In this respect, the South African Commission's recommendations in relation to prosecution<sup>29</sup> need to be seen as being an important part of reparation policy in that they address the issue of the non-repetition of violations by seeking to put an end to a culture of impunity.

36. Where settlement is not possible, the IACHR refers disputes to the Inter-American Court on Human Rights. In Valesquez Rodriguez v Honduras 1988 and Godinez Cruz v Honduras 1989, the Inter-American Court of Human Rights found the government of Honduras responsible for the disappearances of two young men at the hands of the military. Despite the argument by Honduras that the Court was limited to awarding the most favourable benefit under Honduran law for accidental death, the Court decided that international law required restitution of the *status quo ante* (before the violation occurred) where possible. Another case where full compensation was required was in the Barrios Altos case.<sup>30</sup> In Loayza Tamayo v Peru, the Court agreed that reparations could be granted, based on identifiable damage suffered as a result of a violation that included lost opportunities (*proyecto de vida* or 'enjoyment of life'). It should be noted that compensation proposed by the RRC does not include the notion of 'lost opportunities' addressed in this and other international human rights instruments and law. In this respect, the individual compensation proposed by the RRC is a far more modest amount.
37. The former European Court of Human Rights gave a more restrictive interpretation to Article 50 of the European Convention for Human Rights and Fundamental Freedoms, which provided, *inter alia*, for adequate compensation for human rights violations. This hampered the evolution of remedies in the European system. However, since the creation of the new European Court of Human Rights on 1 November 1998, the Court has expressed its opinion<sup>31</sup> that, in terms of the Convention, the state should do more than financially compensate the victim. Rather it should effect restitution so that the victim is restored to the position s/he held before the violation.
38. More recently, the Organisation of African Unity (OAU) established a system designed to ensure adherence to human rights. In 1986, the OAU issued an African Charter on Human and People's Rights. This Charter established an

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29 See recommendation on 'Accountability', Volume Five, Chapter Eight, p. 309.

30 Judgment March 14 2001, Inter-American Court on Human Rights Sec. C No 75 2001.

31 In cases like Papamichalopoulos and Others v Greece.

independent African Commission on Human and People's Rights, which was entrusted with, *inter alia*, the promotion and protection of human rights in African states as well as interpretation of the Charter.

39. In June 1998, the OAU went on to adopt a draft protocol for the establishment of an African Court on Human Rights. Article 26(1) provides that, if the Court should find that a violation of a human or people's rights has been committed, it should make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

## **Amnesty and reparation in international law**

40. The aim of restorative justice internationally is to restore the balance in favour of the victim to whom wrong has been done. The intention is to provide compensation for loss, to make victims whole and to sanction perpetrators and ensure that they are deterred from engaging in future misconduct.<sup>32</sup> The Final Report offers a definition of restorative justice as a process that satisfies the following criteria:<sup>33</sup>
  - a It seeks to redefine crime: it shifts the primary focus of crime from the breaking of laws or offences against a faceless state to a perception of crime as violations against human beings, as injury or wrong done to another person.
  - b It is based on reparation: it aims for the healing and the restoration of all concerned – of victims in the first place, but also of offenders, their families and the larger community.
  - c It encourages victims, offenders and the community to be directly involved in resolving conflict, with the state and legal professionals acting as facilitators.
  - d It supports a criminal justice system that aims at offender accountability, full participation of both the victims and offenders, and making good or putting right what is wrong.
41. International law has been hostile to blanket amnesties and to amnesty provisions that deprive victims of their civil law rights. The granting of amnesty undermines victims' rights to justice through the courts by removing their rights to pursue civil claims against perpetrators, who thereby escape liability. In a 1998 ruling,

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<sup>32</sup> See, for example, York, K, and Bauman, J, Remedies: Cases and Materials, 1979.

<sup>33</sup> Volume One, Chapter Five, p. 126, para 82, from South African Law Commission, 'Sentencing Restorative Justice' Issue Paper 7, p. 6.

the IAHRRC condemned the 1993 El Salvadorean amnesty law because it 'expressly eliminat[ed] all civil liability (article 4) ... Prevent[ing] the surviving victims and those with legal claims ... from access to effective judicial recourse'.

42. This implies that amnesty in respect of civil liability for human rights violations can be reconciled with international law only where the state has simultaneously furnished some mechanism of investigation and some form of reparation for victims. Thus the 'Draft Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity' prepared for the UNHCHR's Sub-Commission on Prevention of Discrimination and Protection of Minorities in October 1997 stipulates that:

*Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds. They shall be without effect with respect to the victims' right to reparation ...*

43. Repeated references in international human rights instruments and treaties, echoed by state practice and expert opinion, to the obligation of states to respect and ensure respect for rights, right of access to justice and the right to remedy, provide strong evidence of a customary obligation. Such obligation implies that victim reparations are a minimum requirement where ordinary access to the courts is limited.
44. Therefore, because the South African amnesty process deprives victims of access to the courts, its international legitimacy depends on the provision of adequate reparations to the victims of gross violations of human rights. Making good the injuries to victims of gross violations of human rights where their ability to seek reparation has been taken away from them is thus an inescapable moral obligation on the part of the post-apartheid democratic state.
45. In short, amnesty coupled with an adequate and effective provision for reparation and rehabilitation meets government's obligation to ensure justice to the victims of the past. Stated differently, amnesty without an effective reparations and rehabilitation programme would be a gross injustice and betrayal of the spirit of the Act, the Constitution and the country.
46. It can be seen from the above discussion that the reparation policy proposed by the RRC is well within the bounds determined by international human rights law.

Indeed, as suggested above, the policy proposed by the RRC is, in many respects, an attempt to take seriously international consensus on developing a defensible and sound reparations programme.

47. Finally, it must be noted that the former government was not a party to any of the major international human rights treaties during the Commission's mandate period – that is, the period during which violations of human rights were perpetrated on a large scale. This does not, however, render the current South African government immune from the obligation to make reparation for gross violations committed during the mandate period. As indicated above, South Africa is bound by customary international law for violations committed during the apartheid era. [\(...p112\)](#)