



Volume **SIX** • Section **FIVE** • Chapter **SEVEN**

**Findings and  
Recommendations  
RECOMMENDATIONS**

# Recommendations

## **RECONFIRMATION OF REPARATION AND REHABILITATION RECOMMENDATIONS IN FINAL REPORT**

1. The Truth and Reconciliation Commission (the Commission) reconfirms the Reparation and Rehabilitation Committee's recommendations drawn up in terms of sections 25 and 26 of its founding Act<sup>84</sup> and set out in its Final Report.<sup>85</sup>

## **RECONFIRMATION OF RECOMMENDATION FOR A SECRETARIAT TO OVERSEE IMPLEMENTATION**

2. The Commission confirms and supports the recommendation in its Final Report that a Secretariat be established in the Presidency to oversee the implementation of the recommendations of the Commission. It is recommended that the Secretariat:
  - a be responsible for reporting on and publishing an annual report on the status of victims for a period of six years following the publication of this Codicil to the Commission's Final Report;
  - b establish a particular presence and visibility in rural areas;
  - c establish a Presidential Award for innovative and inclusive projects aimed at 'keeping the memory of the past alive' in schools, research centres and institutions of higher learning;
  - d focus on reparations and democracy-related capacity-building through the specialised training of development workers.

## **REPARATION TRUST FUND**

3. The Commission recommends and urges that a Reparation Trust be set up and trustees appointed.
4. The Reparation Fund should be managed by government, organised local and international business and civil society.

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<sup>84</sup> The Promotion of National Unity and Reconciliation Act No. 34 of 1995.

<sup>85</sup> Chapter Five of Volume Five.

5. The purpose of the trust will be to raise funds, to audit the budget for victim support and to be responsible for financial controls and accounting.

### **ONCE-OFF WEALTH TAX**

6. The Commission recommends and urges that government impose a once-off wealth tax on South African business and industry.

### **BENEFICIARY CONTRIBUTION TO REPARATION FUND**

7. The Commission recommends and urges that all beneficiaries of apartheid make a contribution to the Reparation Fund.

### **NATIONAL PROGRAMME OF ACTION**

8. The Commission recommends and urges that government and civil society adopt the national programme of action proposed by the South African Human Rights Commission, and work towards a society free of racism, xenophobia and related intolerance.
9. It proposes further that government move urgently to implement related programmes, particularly amongst young people.

### **ANNUAL REPORTING DURING BUDGET VOTE**

10. The Commission recommends and urges that all ministers with portfolios relating to issues affecting victims report annually on the status and circumstances of surviving victims during the budget vote in parliament for a period of six years following the publication of this Codicil to the Commission's Final Report.

### **SPECIAL ARRANGEMENTS FOR EDUCATION**

11. The Commission recommends and urges that the Department of Education, the South African Qualifications Authority and institutions of higher learning make special arrangements for entry into tertiary educational institutions of those whose secondary and tertiary education was interrupted by the struggle, as was done for those whose studies were interrupted by World War II.

## **KEEPING THE PAST ALIVE**

12. The Commission recommends and urges that the curriculum of the South African Human Rights Commission National Education Centre include projects that aim to encourage children to keep the past alive.

## **TASK TEAM TO DEAL WITH DISAPPEARANCES AND EXHUMATIONS**

13. The Commission recommends and urges government to act on the recommendation of the Commission in regard to dealing with disappearances and exhumations and to establish a task team to deal with these matters.

## **‘HEALING THE MEMORY’ CONFERENCE**

14. The Commission recommends and urges that government convene an urgent conference aimed at healing the memory in respect of those who did not return.

## **CONFERENCE DEDICATED TO THE FALLEN**

15. The Commission recommends and urges that government convene a conference dedicated to the memories of those who were executed or killed in such circumstances that their honour and reputation and their loyalty to their organisations were deliberately slandered by others, often causing their families and friends great distress and sometimes leading to the death and torture of family members.

## **APOLOGY BY HEAD OF STATE ON BEHALF OF PERPETRATORS OF GROSS VIOLATIONS OF HUMAN RIGHTS**

16. The Commission recommends and urges that, as head of state, the President of the Republic of South Africa apologises to all victims on behalf of those members of the security forces of the former state and those armed forces of the liberation movements who committed gross violations of human rights.

## THE COMMISSION'S DATABASE

### Preamble

17. The Commission created and maintained a database to manage the data requirements of the three Committees. The database was used to register human rights violations statements and amnesty applications as they were lodged with the Commission, after which teams of data processors stored the names of the victims, the violations they suffered and details of the alleged perpetrators. During the life of the Commission, the database was upgraded to assist with the management of the work of the Reparations and Rehabilitation Committee. It is still being used by the staff of the President's Fund today to record disbursements made.
18. By the time the Commission closed, the database had become a rich repository of information about the nature, scale, location, dates, types and consequences of violations of human rights suffered by South Africans. As such, it is an essential primary source of valuable historical material, which must be made accessible to future generations.

### Data provision

19. The Commission recommends that the database be owned, managed and maintained by the National Archives and Records Service of South Africa, who must take responsibility for ensuring that the database:
  - a forms the cornerstone of an electronic repository of historical materials concerning the work of the Commission;
  - b is enriched by electronic multi-media facilities to support audio-visual and other graphic materials;
  - c is in a format that allows for distribution to schools, other educational institutions and the general public by means of CD-ROM or other portable electronic format, and
  - d uses language that is accessible to the majority of South Africans.

### Data reconciliation

20. The work of the Amnesty Committee continued after that of the Human Rights Violations (HRV) Committee had been completed, so a process of data reconciliation is necessary to compare and contrast the victims and violations described in

Amnesty applications with those gathered by the HRV Committee. The Commission recommends that:

- a the database be updated with the victim and violation details from the transcripts of amnesty hearings which, for security reasons, were not always recorded on the database prior to the hearing, and
- b the details of the victims and violations mentioned in each amnesty application be reconciled with those recorded by the HRV Committee, to ensure that every victim in need of reparation and rehabilitation is identified and noted.

### **Database conversion**

21. The Commission's database is a custom-built system whose functionality was designed primarily to record victims and violations to support the work of the three Committees. Its current format does not lend itself easily to use by researchers or the general public.
22. The Commission therefore recommends that the database:
  - a be converted to run on technology best suited for Internet-based, read-only access, using open-source software wherever possible;
  - b be web-enabled in a user-friendly, searchable format, and
  - c have facilities for extracting the data for further research and analysis.

### **WEBSITE**

23. The Commission established a website, which became popular amongst researchers and scholars of transitional justice. The contents of that website currently appear in a section on the Department of Justice website.
24. The Commission recommends that custody of the website should be held by the National State Archives, who should manage it in a way that ensures maximum accessibility. The Commission recommends that the Archives, in consultation with the various stakeholders, should decide on the physical location of the site.

### **WITCHCRAFT**

25. The Commission received statements from many victims as well as a number of amnesty applications regarding the use of witchcraft in the commission of gross

human rights violations. 'Witchcraft' and 'tradition and culture' were major factors cited in a number of cases as being the motivation for the commission of gross human rights violations.

26. The Commission, and in particular the Amnesty Committee, accepted 'witchcraft' as a political motive sufficient within the context of the founding Act to grant amnesty to those applicants who had satisfied the provisions of the amnesty legislation. The political context of the time warranted this approach.
27. However, the Commission notes that this problem is endemic particularly in many parts of Limpopo province. The Commission received hundreds of statements regarding this issue after the cut-off date.
28. The Commission recommends therefore that the authorities note this problem as a matter of urgency, and embark on an education program and take action to stop practices related to witchcraft that lead to the commission of gross human rights violations.

## **EXERCISE OF THE PRESIDENTIAL PARDON**

29. The following comments and recommendation are made in the full knowledge that the Commission operated under enormous political and legal constraints and that it was not a holy cow that was not itself open to criticism:
30. With this in mind, the Commission notes:
  - a the recent pardons extended by the President and
  - b the President's constitutional discretion to pardon those who have committed crimes, and further,
  - c that it in no way wishes to impugn or intervene in this discretion.
31. The Commission is, however, of the view that this presidential discretion should not be used to subvert the rights of victims by framing blanket amnesties through a pardon process.
32. The Commission therefore recommends that in the event that the President is considering a further amnesty provision, the following should be taken into account:
  - a that the rationale for establishing the Commission should not be undermined and that the value of its work should not be compromised through such a process;

- b that real reconciliation comes from facing the demons of the past honestly and demanding truth and accountability, and
  - c that victims should not be 'revictimised' and that any amnesty should take into account their needs and their right to the truth and full disclosure and ultimately reparation.
33. The Commission is thus of the view that any amnesty and pardon must make provision for the rights of victims and maintain the constitutionality of our new state based on disclosure and a respect for the human rights of all.

## **POPULAR VERSION**

34. The Commission will hand the Minister of Justice the completed popular version of the Truth and Reconciliation Commission's report.
35. The Commission recommends that the Minister has this printed, published and distributed to schools and tertiary institutions in conjunction with the Ministry of Education.

## **'CLOSED LIST' POLICY**

36. The Commission, anxious not to impose a huge burden on the government, adopted a 'closed list' policy. Effectively this limited the payment of reparation only to those victims who made statements to the Commission before 15 December 1997. In the period between December 1997 and January 2002, victims' groups confirmed to the Commission that they had collected more than 8000 statements from victims who, for a variety of reasons, were unable to access the Commission. The consequence of ignoring this group of people has potentially dangerous implications for South Africa, as communities may become divided if some receive reparation that is not accessible to others who have had similar experiences.
37. The Commission is of the view that the 'closed list' policy should be reviewed by government, in order to ensure justice and equity. It needs to be noted that, in many other countries which have gone through similar processes, victims have been able to access reparation many years after the truth commission process has been completed. (..p733)