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Transforming victims into active citizens

SUBMISSION FROM KHULUMANI SUPPORT GROUP TO WORKING GROUP 3 OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE: 31 March 2017

SPECIFIC LEGISLATION RELATED TO THIS SUBMISSION:

1. **PROMOTION OF NATIONAL UNIT AND RECONCILIATION ACT 34, 1995** (Date of Commencement 11 December 1995)

The Truth and Reconciliation Commission was established in terms of this legislation and inspired great hope that the state would deliver on its obligations to provide remedies for victims of the gross human rights violations suffered by individuals as they opposed apartheid oppression and repression.

2. **RECOMMENDATIONS OF THE TRC in respect of REPARATIONS and REHABILITATION**

The output of the TRC was a report that was handed to then-President Mandela on 29 October 1998, now some 19 years later in a process that has failed to facilitate the socio-economic transformation of the lives of struggle veterans who *"suffered in the struggle for justice and freedom in South Africa"* (Preamble to the 1996 Constitution)

The premature closure of the TRC for victims of gross human rights violations after only 18 months of statement-taking from victims has resulted in a grossly unjust administrative process: .

The injustice is based on the state's adherence to an unjustifiable "closed list" that includes only names of TRC declared victims who are then eligible for reparations payouts and additional remedies.

The Department of Justice asserts that:

"Only people who:

* made statements to the Commission; or

* were referred to in someone else's statement can be considered for reparation.

“Reparation will be given only to those formally declared victims by the Commission. The Commission will decide if someone is a victim by looking at all the information they have on the gross human rights violation suffered by that person. It may be possible, in certain circumstances that the relatives and dependents of victims will also qualify for reparation.”

(From the DOJ website on the TRC, “A Summary of Reparation and Rehabilitation Policy, including proposals to be considered by the President”, http://www.justice.gov.za/trc/reparations/summary.htm)

The DoJ claims this principle is founded in the TRC Act and embedded in subsequent functions of the TRC; government regulations that enforce it merely carry out their legislative mandate.

We argue here that:

- The Act does not assert this principle; rather the DOJ has mis-interpreted the wording and intention of the Act.
- Because the Act did not task the TRC itself with determining who is a victim or not, the TRC made no efforts to set up rigorous, fair and just procedures to make these determinations.
- Decisions on victim status made by the TRC were part of its mandated process to develop policy on reparations, rather than intended as final and binding decisions on individual cases.
- As a result, TRC “decisions” about the victim status of individuals often use arbitrary, inconsistent, and even discriminatory criteria; to the extent that, taking these decisions as final and binding would violate constitutionally guaranteed rights of administrative justice.
- Thus, a regulation which makes TRC decisions about victim status as the sole determinant of a person’s access to reparations is inherently unfair.

Moreover, contrary to assertions of the DoJ, the DoJ amended the TRC Act in 2003 to make provision for the Ministry to re-convene the TRC Commission to complete any unfinished business that may be identified after the formal closure of the TRC. (See The Promotion of National Unity and Reconciliation Act, Chapter 8 sections 47b, ff. http://www.justice.gov.za/legislation/acts/1995-034.pdf).

If the Department of Justice and Parliament requires that the function of identifying victims for reparations should be accomplished within the TRC framework, the amendment provides for government to reopen that process, and introduce mechanisms within reconstituted TRC Committees that would conform with the dictates of administrative justice.

1. The mandate of the TRC – in the Act and in action

No one – whether victims, perpetrators, statement takers, TRC commissioners, data collectors, government officials or members of the general public – assumed at the beginning of the statement-taking and TRC hearings that “only those whom the TRC declared as victims would qualify to receive reparations”.

The TRC Act itself says that the TRC commission would “inform” and “advise” government on appropriate measures for reparations following collecting evidence. It does accept that in the

course of its functions, the TRC will indicate who should be considered for reparation; but the Act does not empower the TRC alone to make those decisions.[1]
In the process of its operations, the TRC Commissioners realized that their decisions on victim status could affect whether the person who gave a statement would successfully apply for reparations. The TRC final report states:

> Although it was impossible for the Commission to investigate each individual case, it was obliged to make victim findings, the effect of which was to make victims and their families eligible for reparation. As a result, the Commission adopted a policy of low-level corroboration when determining whether or not a person was a victim of a gross violation of human rights. In essence, this meant that instead of a full investigation, a series of corroborative 'pointers' would be established – for example the retrieval of a confirmatory press report, or an entry in an SAP occurrence book or a hospital file.
>
> (http://sabctrc.saha.org.za/reports/volume6/section4/chapter1/subsection9.htm)

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[1] The Act states that the TRC shall:

(a) facilitate, and where necessary initiate or coordinate, inquiries into-

(i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;

(ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;

(iii) the identity of all persons, authorities, institutions and organisations involved in such violations;

(iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and

(v) accountability, political or otherwise, for any such violation;

(b) facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims.

Moreover, the Act specifies that the Committee on Human Rights Violations
*"**may**" (not should or must) -*
"make recommendations to the Commission with regard to the matters referred to in section 4 (f), (g) or (h)" ; where section 4(f) reads:

(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;

(ii) measures which should be taken to grant urgent interim reparation to victims…

This acknowledgement that their decision would "make victims and their families eligible for reparation" meant the TRC recognised that *each person that the TRC gave "victim status" should became a valid candidate for reparation.* This is a very different proposition from claiming that *only people on the TRC victim list, out of all the people who apply for reparations across the country, could get reparations*. In this later formulation – which is the present DoJ interpretation -- a negative decision by the TRC effectively bars the victim from government restitution.

The very fact that the Commission only put into place "low-level corroboration" and "pointers" to guide its decisions suggests that it did not imagine that those decisions could block individuals from entering the only door to reparations.

Constitutionally guaranteed principles of administrative justice demand that where an official ruling has serious implications on a person's welfare, that official must apply rigorous, transparent, and equitable criteria and processes in making that ruling – including, that the recipient knows about the consequences of the ruling, and that he or she knows about, and may use, an appeals process. None of these measures were in place by the Commission when it pronounced on individual victim status.

Research done to date (which does not claim to be exhaustive) suggests that government only put into place the regulation that only people who were "declared victims" by the TRC would receive reparations when they published regulations around paying out reparations in May 2003 -- years after the TRC was closed down, and after the TRC had published its list of "declared victims".

2. Arbitrary, discriminatory and unjust processes in recognising TRC "declared victims"

a. Arbitrary and discriminatory access to giving statements

The Commission summarized its task of taking victim statements thus:

> 28. The Commission did not try to carry out a census of violations of human rights. It had neither the time nor the resources to do so. Consequently, we will never know exactly how many people suffered during the mandate period.
>
> 29. Instead, the Commission appealed to South Africans to come forward to tell the Human Rights Violation Committee what had happened to them. By the end of the Commission's lifespan, 21 000 people had come forward
>
> (http://sabctrc.saha.org.za/reports/volume1/chapter6/appendix2/subsection6.htm)

To begin the process of taking statements, the TRC made announcements in the media and to organisations and civil society bodies asking people to come and give testimony about violations of human rights that they had experienced. People in rural areas, who did not have connections with political or civil society organisations concerned with the issues, were less likely to hear the call. Where they did hear about it, many did not have resources to go to where the statement takers were located (and while the TRC did make provision to assist people with transport for this, most did not know that this assistance was available, or how to access it).

Others could not go to the statement-takers because they were aged, ill or disabled (including as a result of human rights violations).

Moreover, many people were still traumatised and living in fear. In many areas, especially the ex-Bantustans, local police and authorities who had inflicted or ignored violations were still in positions of power. In some places (such as the East Rand) violence continued into the late 1990s. We have heard of people being told by the police: *"We know who you are; if you go to the TRC, we will know you had been involved in killing police and fighting – we will arrest you for that (if you make a statement to the TRC)."*

The most common reasons given by Khulumani members for not giving a statement to the TRC are "I did not know about it"; "I could not get to the statement-taker"; and "I was afraid". *(See cases: 002, 019, 020, 007, 019, 020)*

The net effect of this process of informing people is that the poor, the least educated, and those most suffering from violations, were those least able to come to tell their stories.

> *A telling example is that of Mrs. Maribolie Mampuru, (Case No O16 attached) who was banished with her husband from Sekhukhuneland in 1961 to the Eastern Cape, where her husband died; she returned to Sekhukhuneland decades later; she did not hear about the TRC process until it was over (when she was told about it by a grandson).*
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> *Other telling cases here are those who, at the time the TRC took statements in their area, were in hospital or incapacitated or traumatised with physical or mental disabilities as a result of gross human rights violations, and thus were never informed or able to engage with the process. See cases 022 (a), 003.*

b. Arbitrary acceptance of statements

The first point of access to the TRC was giving a statement to a statement-taker; that statement was then put into the TRC system.

i. Many people attempted to give statements to statement-takers, especially in the early period of the TRC, but were turned away after waiting in line.

   Cases in point are two victims of the Germiston bombing (see Case No: 012 attached), both severely injured, both who reported to the statement-taker on the same day; one gave a statement (No 012(a)), the other was unable to enter by closing time (and subsequent attempts to get to speak to statement-takers were not successful) (No, 012(b)). The outcome of this was the one who gave a statement qualified as a victim, and received reparations; the other did not.

   Another Case (No. 018) is Busisiwe Mathamu Mlaba, who went to the TRC but was told they were only taking statements for an amnesty hearing; they promised to come back for her story but did not do so.

ii. There is substantial evidence that many people gave statements to statement-takers, or tried to give statements to statement-takers, but their statements were not put into the system. Some people report they made a statement to statement-takers, but were never given a TRC number (presumably meaning they were never recorded as having given a statement). *(see Case No. 022(c), from Khutsong).*

Others received a case number, but never heard from the TRC again. *See the Zamdela Strike, Case No 024 ; where a group submitted a statement covering the Sasolburg 1987 strike where 77 people were killed in six months; they were given a TRC number, but never contacted again, and none were listed as victims.*

In still other cases, especially towards the end of the process where the TRC appointed NGOs as "designated statement-takers" to supplement those employed by the TRC, the regional office would tell *the statement-taker* (ie. not the person giving the statement) that the statement as submitted to the TRC office was not properly compiled. Moreover, at the end of the process, NGO statement-takers were told that statements were submitted past the "closure" deadline (although they had been collected before the deadline).

A case in point is the GaMatlala case (Case No.023): statements made by rural residents in Limpopo were collected by an NGO statement taker, but when handed in to the Gauteng Centre were rejected as "being in the wrong format"; the statement-taker then went back to the group, and resubmitted the statements, only to be told they were rejected because it was now after the deadline for submission.

In this case, and in other anecdotal evidence, it appears that NGO statement-takers assumed that the deadline referred to when the person made the statement to the statement-taker, rather than to the point of submission of the statement to the regional centre. Thus literally thousands of statements given to NGO statement-takers were rejected by regional centres as "too late" in the weeks after the closure date. (According to Commissioner Yasmin Sooka, 8000 statements from NGO statement-takers were rejected as "missing the deadline" by the Johannesburg office in the weeks following closure).

c. Deciding who became a "declared victim"

The TRC report states that:

> "The Commission received more than 22 000 HRV statements. Most statements contained information relating to multiple victims, requiring the Commission to verify more than 40 000 individual cases. Most statements also referred to more than one violation, thus significantly increasing the number of violations to be corroborated." (http://sabctrc.saha.org.za/reports/volume6/section4/chapter1/subsection9.htm)

The “final list” of victims, who received reparations, was nearly 17 000 people. Ultimately, less than half (42%) of the 40 000 individuals for whom the Commission had opened HRV cases actually were classified as victims, and thus were able to receive reparations.

i. **Criteria:**

We can find (to date) no published criteria that were used to make decisions as to who qualified for victim status, and who was refused victim status.

The TRC report mentions that:

> “the Commission adopted a policy of low-level corroboration when determining whether or not a person was a victim of a gross violation of human rights. In essence, this meant that instead of a full investigation, a series of corroborative ‘pointers’ would be established – for example the retrieval of a confirmatory press report, or an entry in an SAP occurrence book or a hospital file.”
> http://sabctrc.saha.org.za/reports/volume6/section4/chapter1/subsection9.htm
>
> However, providing this “low level corroboration” occurred in a haphazard and inherently unfair manner.
>
> The TRC report gives these examples of the problems with its corroboration processes in respect of disappearances:

“88. In retrospect, this approach was not useful when dealing with disappearances. In such cases, corroborators generally resorted to fairly routine procedures: a letter requesting information would be sent to the relevant SAP office or, in cases of a person missing in exile, to the ANC Missing Persons’ Desk at Shell House. In many instances, these requests received no response and the matter could not be taken much further.

89. Where a disappearance was potentially associated with political unrest, the corroborator would note this. In a few cases it was possible to identify actual incidents and, more importantly, deaths. More often, a general pattern would be observed. For example, when Katlehong was the scene of conflict between the ANC and IFP, a number of people were killed. It is thus probable that the missing person was a victim of this conflict, although there was insufficient information to confirm this as fact.

90. In most disappearance cases, family members were not able to give the Commission a great deal of detail or information, making corroboration extremely difficult. This added to problems in tracing a missing person or establishing the facts surrounding a disappearance.

91. In some instances, poor statement-taking also impacted on the corroboration process: basic information such as the personal details of the victim and the circumstances of the disappearance were not always recorded correctly. The Commission was sometimes able to take a second statement or to obtain a photograph. Where this proved

impossible, it was difficult and often impossible to make any progress. These incidents also require further investigation.

(http://sabctrc.saha.org.za/reports/volume6/section4/chapter1/subsection9.htm)

The TRC in its final report "verified" only 458 cases of disappearances country-wide. Yet during the East Rand violence alone Khulumani records over 5000 disappearances; some figures put the figure as high as 20 000.

As an example of just how badly the records and research on disappearances was, see Case No 011 attached – where the TRC sent a formal letter to the disappeared person thanking them for making a statement about their case to the TRC.

ii. Corroborative Evidence

The announcement sent out to the public asking for statements asked people to supply "corroborative evidence", including news reports of incidents, witnesses, or other testimony that might validate the victim's description, if this is available. Yet the announcement does not REQUIRE corroborative evidence, and gives no indication of what kind of evidence would make a statement acceptable or not acceptable.

a. In some cases those who accepted and evaluated statements did ask the person making the statement for back-up documentation such as news stories, medical records, police files, and so on. Where these were not available, the person was often denied "victim status*". Case 006 included here: After the TRC asked person to get medical records, the doctors at Natalspruit Hospital told him that records of his treatment for bullet wounds had been destroyed. Without these records, the TRC then did not accept that he qualified for reparation, although he points out "his body still has the damage to prove it".*

b. Statements may have been rejected out of hand if the people taking in the statements felt that they did not have "sufficient" supporting evidence, or if the record was insufficient or erroneous.

   (This comes out in the TRC final report on disappearances, quoted above:

   "In some instances, poor statement-taking also impacted on the corroboration process: basic information such as the personal details of the victim and the circumstances of the disappearance were not always recorded correctly. The Commission was sometimes able to take a second statement or to obtain a photograph. *Where this proved impossible, it was difficult and often impossible to make any progress*. These incidents also require further investigation."

iii. Statements are rejected without reference to the actual victims

Rejecting statements during “pre-findings” at regional level: the TRC final report mentions that the committee at regional level would make “pre-findings” that accepted or rejected statements based upon a combination of corroborative material and background research provided by researchers. These decisions were made without any reference to actual victims, and “on the balance of probability”.

> 25 The information taken from the statements, the corroborative material gathered by the investigators and the background research material provided by the researchers were presented on a regular basis to the Human Rights Violations Committee, which would then make ‘pre-findings’ at a regional level.
>
> 26 Making ‘pre-findings’ involved either rejecting statements of alleged violations as untrue or outside the mandate of the Act, or sending them back for further corroboration, or finding them true on a balance of probability.

iv. There are changing goalposts

The National Findings Task Group “met regularly to discuss policy issues and to ensure that policy on findings was applied in a consistent manner in each region.” While this was undoubtedly a valuable process in establishing and maintaining policy, it implies that grounds for assessment and acceptance of statements were changed at various stages, after some stories were collected – and that these changes may have adversely affected how cases were considered. People whose statements were made in the later days may have faced different criteria for evaluation than those dealt with in the earlier period.

v. Government policy is inconsistent

Another type of inconsistency, and unfair treatment resulting from this, arises with the case of the Victims of the 1996 Worcester bombing *(see Case no 025 attached).* In this case, the violation clearly falls outside of the original time-frame of the Act, which ends on May 10 1994. However, after the bombing the group were repeatedly assured by government officials that redress for the harm done to them would be met through the TRC’s processes. But this was never put into place legally; so that this group of victims still today has no restitution, and no alternatives to seek repair.

d. Discrimination around gender

a. Inability to provide acceptable “supporting evidence” has been put forward as the reason that so few women reported rape to the TRC as the gross human rights violation that they experienced (only 14 cases of the 17000 recognised victims were for rape). Numerous women have told KSG researchers that statement-takers refused to write down rape as a violation unless the woman had previously laid a case of rape with police; even where police and soldiers were the perpetrators. *(see attached cases 004, 005 and 008)*

b. Along with the failure to prove rape, there are no cases in the TRC records that state that women were infected with HIV as a result of rape during political violence. We accept that it is notoriously difficult to "prove" that HIV infection was the result of a specific encounter. Moreover, very few (if any) women raped in the political violence had an HIV test at the time, as even where they did get hospital treatment there was no awareness or even medical protocol for testing for HIV sero-conversion for rape victims. However, many women today are convinced they were infected with HIV as a result of rape by the 32 Battalion in Tokoza *(see cases 004 and 005 in attached examples).*

c. In another case listed here, a woman tried to make a statement to the TRC about the destruction of her home during the East Rand violence; but was told that her husband would have to make the report. As the woman's husband was too traumatised and injured (beaten) to go to the TRC, he did not follow up on this; they subsequently did not receive reparation. The husband has since deceased. *(see case no 003)*

e. Different mechanisms for different cases

a. **Verifying cases for "Elite Victims" but not others**: There is a widespread perception amongst "victims" that the TRC followed up on, and verified, "well-known cases" - that is, those identified through news coverage, through political organisations, or civil society bodies (such as churches). The result is that many poor and disadvantaged victims perceive the TRC practiced discrimination and elitisim -- of creating "elite victims", while side-lining those who were not important; so they were never recognized, much less compensated.

b. **"Different justice" for perpetrators and victims:** The process for providing and evaluating evidence in amnesty hearings for perpetrators was far more rigorous than that used in the Human Rights Violations hearings (and statements). The TRC was subject to a series of legal challenges around the amnesty hearings, which resulted in following formal judicial processes in amnesty hearings, including around admission of evidence and legal representation.

A number of people who gave statements to the TRC have complained that although their statements covered a number of incidents, they were only asked to provide and verify detailed information where a perpetrator had applied for amnesty. These people say the TRC had failed to recognise the violations against them, but were only interested in processing perpetrator's amnesty applications.

In Case No 021; N.D. Mtembu, the mother of a youth killed in front of her by members of the Internal Stability Unity, testified against the perpetrators at the TRC Amnesty hearings, but she was not asked to apply as a claimant for violation of human rights, and therefore received no reparations.

In Case No 009, Emily Nonthetho Sikhonyane witnessed her son's death in 1993; she testified at the Amnesty Committee (against amnesty); her son was not given status as victim by TRC.

It should also be noted that the computerized records of the TRC required a person must be listed as either a perpetrator or a victim – the person could not be recorded as both. Thus it appears that in cases where the statement-takers/ data-collectors saw the person as a perpetrator, they could not record human rights violations against that person. There is a strong belief amongst those who gave statements that in some cases data-collectors and statement-takers would see a person as a perpetrator, and fail to even record/take into account the human rights violations done to that person. This may have been particularly a problem around the 1990s violence, where SDU members and Inkatha groups engaged in violence following violence done to them. Khulumani Support Group has, in order to address this, created a separate category for people they call "victim-perpetrators" (which has never been recognized by the TRC, or post-TRC reparations processes).

3. Post-TRC: paying out victims "recognized by the TRC"

a. Conflating cases and victims:

An assessment of final payouts in 2003 also indicate that a further "winnowing" process was made, to give only one payout to victims from the same family group and event, even where the TRC had recognized several individuals as separate victims, cases and statements (each with separate needs for reparation).

Thus Case No 013 here, which covers the Manyelo family, where two daughters were killed; at the same time the parents, one brother and sister, and a grandchild were injured (the grandchild was also orphaned); three family members gave independent statements; they all received victim status, and were assigned two case numbers; but only one R30 000 payment was ultimately made (although two letters were sent in respect of two separate cases, saying a payment was made).

In Case No 014, the brother and parents of applicant were killed in different events: different cases were opened and recognised; only one payment was made of R30 000 (the payout letter lists one case; there is no payout or follow-up letter on the other case).

In Case No 015, where the applicant recited repeated violations from the Sharpeville Massacre to death of children in 1990s violence; one reparations payout of R30 000 was made with no explanation for which event.

See also Case No 010, where 4 family members were killed and the home destroyed in one incident; one payout of R30 000 made.

b. Informing people that they were not qualified for reparations

After the TRC closed down, reparations were given or not given on the grounds of "victim status" assigned by the TRC.

Rejection was done by sending people a formal notice that the TRC had determined that they did not qualify for reparations, and one of several listed points was ticked as the "reason" for this decision. These notices were sent long after the TRC had closed down its statement-taking process on 15 December 1997, while the TRC as a whole disbanded in May 2001. Although notices state that the person can appeal the finding in writing, no structures were in place before which a person rejected might appeal their case. [2]

One such notice *(see supporting documents in case 001),* dated 27 June 2000, reads:

We have reached our decisions, after careful consideration by the Commission, for the reason(s) indicated below:

- The event falls outside the prescribed period of March 1960 to May 10 1994
- There is insufficient evidence to enable us to make a decision on your story
- There is insufficient evidence to show that this was an event which was politically motivated, as part of the conflict of the period
- The extent of the injury incurred is not such as to justify as a "gross violation"
- The victim was a combatant, killed or injured in active conflict, whilst on duty.

If you have any additional evidence which may persuade us to change our finding, you are informed that you have the right to make such additional evidence available to us, in writing, not later than 30 days after the date of this letter. If such additional evidence is not received within 30 days, the finding will be regarded as final.

(The letter itself is signed by Archbishop Desmond Tutu as Chairperson of the TRC).

4. Refusal to re-open TRC processes – refusing a key remedy that could be done within the Act

The Department of Justice and Parliament has steadfastly refused to reopen any process which verifies victims for reparations, citing the TRC Act as its mandate. However, the Amendment to the Act [S. 47B inserted by s. 3 of Act 23 of 2003.] specifies that after the closure of the TRC:

47B Minister may appoint other committees

(1) If, after the dissolution of the Commission, it appears that any other committee referred to in this Act, other than the Committee on Amnesty or any subcommittee thereof, needs to deal with

[2] It should be pointed out that South Africa enacted **THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000 (ACT 3 OF 2000),** which commenced on 30 November 2000; this spells out processes for administrative justice. PAJA spells out that any adverse finding (such as the above) must give written reasons, and an appeals process which is fully explained to the recipient of the adverse judgement.

a matter arising from the consideration of any matter by a subcommittee appointed in terms of section 47A (1), the Minister may, by notice in the Gazette , appoint a committee to deal with the matter in such manner as may be required.

(5) Where a committee is appointed in terms of subsection (1) that performs the functions of a Committee on Reparation and Rehabilitation in order to consider a matter referred to it by a subcommittee appointed in terms of section 47A (1), that committee shall, if it is of the opinion that-

(a) the person is a victim, recommend to the Minister that such person be entitled to reparation as prescribed; or

(b) a determination needs to be made whether a person is a victim and whether an act, omission or offence constitutes a gross violation of human rights, refer the matter to a committee referred to in subsection (6).

(6) Where a committee is appointed in terms of subsection (1) that performs the functions of a Committee on Human Rights Violations in order to determine a gross violation of human rights as contemplated in subsection (5) (b) , and the committee is of the opinion that-

(a) a gross violation of human rights has been committed; and

(b) a person is a victim of such violation,

it shall recommend to the committee appointed to perform the functions of a Committee on Reparation and Rehabilitation to forward such person's name to the Minister, who shall deal with the recommendation in terms of subsection (5) (a) .