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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1111.

26 July 1995

No. 1111.

26 Julie 1995

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 34 of 1995: Promotion of National Unity and Reconciliation Act, 1995.

No. 34 van 1995: Wet op die Bevordering van Nasionale Eenheid en Versoening, 1995.

ACT

To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; 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; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission, a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith.

SINCE the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

AND SINCE it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;

AND SINCE the Constitution states that 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 victimization;

AND SINCE the Constitution states that in order to advance such reconciliation and reconstruction amnesty shall be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past;

AND SINCE the Constitution provides that Parliament shall under the Constitution adopt a law which determines a firm cut-off date, which shall be a date after 8 October 1990 and before the cut-off date envisaged in the Constitution, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with;

(English text signed by the President.)
(Assented to 19 July 1995.)

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

Interpretation and application

Definitions

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1. (1) In this Act, unless the context otherwise indicates—
- (i) “act associated with a political objective” has the meaning ascribed thereto in section 20(2) and (3); (ii)
 - (ii) “article” includes any evidence, book, document, file, object, writing, recording or transcribed computer printout produced by any mechanical or electronic device or any device by means of which information is recorded, stored or transcribed; (ix) 10
 - (iii) “Commission” means the Truth and Reconciliation Commission established by section 2; (ix)
 - (iv) “commissioner” means a member of the Commission appointed in terms of section 7(2)(a); (viii) 15
 - (v) “committee” means the Committee on Human Rights Violations, the Committee on Amnesty or the Committee on Reparation and Rehabilitation, as the case may be; (vii)
 - (vi) “Constitution” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (iv) 20
 - (vii) “cut-off date” means the latest date allowed as the cut-off date in terms of the Constitution as set out under the heading “National Unity and Reconciliation”; (i)
 - (viii) “former state” means any state or territory which was established by an Act of Parliament or by proclamation in terms of such an Act prior to the commencement of the Constitution and the territory of which now forms part of the Republic; (xvii) 25
 - (ix) “gross violation of human rights” means the violation of human rights through— 30
 - (a) the killing, abduction, torture or severe ill-treatment of any person; or
 - (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a),
 which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive; (v) 35
 - (x) “joint committee” means a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament for the purpose of considering matters referred to it in terms of this Act; (iii) 40
 - (xi) “Minister” means the Minister of Justice; (x)
 - (xii) “prescribe” means prescribe by regulation made under section 40; (xviii)
 - (xiii) “President” means the President of the Republic; (xi)
 - (xiv) “reparation” includes any form of compensation, *ex gratia* payment, restitution, rehabilitation or recognition; (vi) 45
 - (xv) “Republic” means the Republic of South Africa referred to in section 1(2) of the Constitution; (xii)
 - (xvi) “security forces” includes any full-time or part-time—
 - (a) member or agent of the South African Defence Force, the South African Police, the National Intelligence Service, the Bureau of State Security, the Department of Correctional Services, or any of their organs;
 - (b) member or agent of a defence force, police force, intelligence agency or prison service of any former state, or any of their organs; (xvi) 50
 - (xvii) “State” means the State of the Republic; (xiv)
 - (xviii) “subcommittee” means any subcommittee established by the Commission in terms of section 5(c); (xv) 55
 - (xix) “victims” includes—
 - (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. (xiii)
- (2) For the purposes of sections 10(1), (2) and (3) and 11 and Chapters 6 and 7 “Commission” shall be construed as including a reference to “committee” or “subcommittee”, as the case may be, and “Chairperson”, “Vice-Chairperson” or “commissioner” shall be construed as including a reference to the chairperson, vice-chairperson or a member of a committee or subcommittee, as the case may be.

CHAPTER 2

Truth and Reconciliation Commission

Establishment and seat of Truth and Reconciliation Commission

2. (1) There is hereby established a juristic person to be known as the Truth and Reconciliation Commission.
- (2) The seat of the Commission shall be determined by the President.

Objectives of Commission

3. (1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by—
- (a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;
 - (b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;
 - (c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;
 - (d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.
- (2) The provisions of subsection (1) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act.
- (3) In order to achieve the objectives of the Commission—
- (a) the Committee on Human Rights Violations, as contemplated in Chapter 3, shall deal, among other things, with matters pertaining to investigations of gross violations of human rights;

- (b) the Committee on Amnesty, as contemplated in Chapter 4, shall deal with matters relating to amnesty;
- (c) the Committee on Reparation and Rehabilitation, as contemplated in Chapter 5, shall deal with matters referred to it relating to reparations;
- (d) the investigating unit referred to in section 5(d) shall perform the investigations contemplated in section 28(4)(a); and
- (e) the subcommittees shall exercise, perform and carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.

Functions of Commission

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4. The functions of the Commission shall be to achieve its objectives, and to that end the Commission 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; 15
 - (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; 20
 - (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; 25
- (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; 30
- (c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the *Gazette*; 35
- (d) determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;
- (e) prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal; 40
- (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; 45
 - (ii) measures which should be taken to grant urgent interim reparation to victims;
- (g) make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of this Act; 50
- (h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Powers of Commission

5. In order to achieve its objectives and to perform its functions the Commission shall have the power to—

- (a) determine the seat, if any, of every committee;
- (b) establish such offices as it may deem necessary for the performance of its functions; 5
- (c) establish subcommittees to exercise, carry out or perform any of the powers, duties and functions assigned to them by the Commission;
- (d) conduct any investigation or hold any hearing it may deem necessary and establish the investigating unit referred to in section 28; 10
- (e) refer specific or general matters to, give guidance and instructions to, or review the decisions of, any committee or subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions and the carrying out of its duties, the working procedures which should be followed and the divisions which should be set up by any committee in order to deal effectively with the work of the committee: Provided that no decision, or the process of arriving at such a decision, of the Committee on Amnesty regarding any application for amnesty shall be reviewed by the Commission; 15
- (f) direct any committee or subcommittee to make information which it has in its possession available to any other committee or subcommittee; 20
- (g) direct the submission of and receive reports or interim reports from any committee or subcommittee;
- (h) have the administrative and incidental work connected with the exercise of its powers, the execution of its duties or the performance of its functions carried out by persons— 25
 - (i) employed or appointed by it;
 - (ii) seconded to its service by any department of State at the request of the Commission and after consultation with the Public Service Commission;
 - (iii) appointed by it for the performance of specified tasks;
- (i) in consultation with the Minister and through diplomatic channels, obtain permission from the relevant authority of a foreign country to receive evidence or gather information in that country; 30
- (j) enter into an agreement with any person, including any department of State, in terms of which the Commission will be authorized to make use of any of the facilities, equipment or personnel belonging to or under the control or in the employment of such person or department; 35
- (k) recommend to the President that steps be taken to obtain an order declaring a person to be dead;
- (l) hold meetings at any place within or outside the Republic;
- (m) on its own initiative or at the request of any interested person inquire or investigate into any matter, including the disappearance of any person or group of persons. 40

Certain powers shall be exercised in consultation with Minister

6. Subject to the provisions of section 45, any power referred to in section 5(a), (b) and (c), and, if it is to be exercised outside the Republic, any power referred to in sections 5(d) and (l), 10(1) and 29(1), shall be exercised in consultation with the Minister. 45

Constitution of Commission

- 7. (1) The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet. 50
- (2) (a) The President shall appoint the commissioners in consultation with the Cabinet.
- (b) The commissioners shall be fit and proper persons who are impartial and who do not have a high political profile: Provided that not more than two persons who are not South African citizens may be appointed as commissioners. 55
- (3) The President shall make the appointment of the commissioners known by proclamation in the *Gazette*.

(4) The President shall designate one of the commissioners as the Chairperson, and another as the Vice-Chairperson, of the Commission.

(5) A commissioner appointed in terms of subsection (2)(a) shall, subject to the provisions of subsections (6) and (7), hold office for the duration of the Commission.

(6) A commissioner may at any time resign as commissioner by tendering his or her resignation in writing to the President. 5

(7) The President may remove a commissioner from office on the grounds of misbehaviour, incapacity or incompetence, as determined by the joint committee and upon receipt of an address from the National Assembly and an address from the Senate.

(8) If any commissioner tenders his or her resignation under subsection (6), or is removed from office under subsection (7), or dies, the President in consultation with the Cabinet, may fill the vacancy by appointing a person for the unexpired portion of the term of office of his or her predecessor or may allow the seat vacated as a result of a resignation, removal from office or death to remain vacant. 10

Acting Chairperson of Commission 15

8. If both the Chairperson and Vice-Chairperson are absent or unable to perform their duties, the other commissioners shall from among their number nominate an Acting Chairperson for the duration of such absence or incapacity.

Conditions of service, remuneration, allowances and other benefits of staff of Commission 20

9. (1) The persons appointed or employed by the Commission who are not officials of the State, shall receive such remuneration, allowances and other employment benefits and shall be appointed or employed on such terms and conditions and for such periods as the Commission with the approval of the Minister, granted in concurrence with the Minister of Finance, may determine. 25

(2) (a) A document setting out the remuneration, allowances and other conditions of employment determined by the Commission in terms of subsection (1), shall be tabled in Parliament within 14 days after each such determination.

(b) If Parliament disapproves of any determination, such determination shall cease to be of force to the extent to which it is so disapproved. 30

(c) If a determination ceases to be of force as contemplated in paragraph (b)—

(i) anything done in terms of such determination up to the date on which such determination ceases to be of force shall be deemed to have been validly done; and

(ii) any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date. 35

Meetings, procedure at and quorum for meetings of Commission and recording of proceedings

10. (1) A meeting of the Commission shall be held at a time and place determined by the Chairperson of the Commission or, in the absence or inability of such Chairperson, by the Vice-Chairperson of the Commission or, in the absence or inability of both such Chairperson and Vice-Chairperson, by the Acting Chairperson of the Commission. 40

(2) Subject to section 40, the Commission shall have the power to determine the procedure for its meetings, including the manner in which decisions shall be taken.

(3) The Commission shall cause a record to be kept of its proceedings. 45

(4) The quorum for the first meeting of the Commission shall be two less than the total number of the Commission.

Principles to govern actions of Commission when dealing with victims

11. When dealing with victims the actions of the Commission shall be guided by the following principles: 50

(a) Victims shall be treated with compassion and respect for their dignity;

(b) victims shall be treated equally and without discrimination of any kind,

- including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
- (c) procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible; 5
- (d) victims shall be informed through the press and any other medium of their rights in seeking redress through the Commission, including information of—
- (i) the role of the Commission and the scope of its activities;
- (ii) the right of victims to have their views and submissions presented and considered at appropriate stages of the inquiry; 10
- (e) appropriate measures shall be taken in order to minimize inconvenience to victims and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;
- (f) appropriate measures shall be taken to allow victims to communicate in the language of their choice; 15
- (g) informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims. 20

CHAPTER 3

Investigation of Human Rights Violations

Committee on Human Rights Violations

12. There is hereby established a committee to be known as the Committee on Human Rights Violations, which shall in this Chapter be referred to as the Committee. 25

Constitution of Committee

13. (1) The Committee shall consist of—

- (a) (i) a Chairperson; and
- (ii) two Vice-Chairpersons, who shall be commissioners designated by the Commission; 30
- (b) such other commissioners as may be appointed by the Commission; and
- (c) not more than three other members.

(2) The Commission shall appoint, as the members referred to in subsection (1)(c), South African citizens who are fit and proper persons and broadly representative of the South African community and shall, when making such appointments, give preference 35 to persons possessing knowledge of the content and application of human rights or of investigative or fact-finding procedures.

Powers, duties and functions of Committee

14. (1) In addition to the powers, duties and functions conferred on, imposed upon and assigned to it in this Act, and for the purpose of achieving the objectives of the Commission, referred to in section 3(1)(a), (c) and (d)— 40

- (a) the Committee shall—
- (i) institute the inquiries referred to in section 4(a);
- (ii) gather the information and receive the evidence referred to in section 4(b); 45
- (iii) determine the facts contemplated in section 4(d);
- (iv) take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and the date of commencement of this Act or for which prisoners were released or had their sentences remitted for the sake of reconciliation and 50 for the finding of peaceful solutions during that period;
- (v) record allegations and complaints of gross violations of human rights;
- (b) the Committee may—

- (i) collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;
- (ii) make recommendations to the Commission with regard to the matters referred to in section 4(f), (g) or (h);
- (iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit;
- (iv) submit to the Commission interim reports indicating the progress made by the Committee with its activities or with regard to any other particular matter;
- (v) exercise the powers referred to in Chapters 6 and 7.

(2) The Committee shall at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying out of its duties in terms of this Act.

Referrals to Committee on Reparation and Rehabilitation

15. (1) When the Committee finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.

(2) After a referral to the Committee on Reparation and Rehabilitation has been made by the Committee in terms of subsection (1), it shall, at the request of the Committee on Reparation and Rehabilitation, furnish that Committee with all the evidence and other information relating to the victim concerned or conduct such further investigation or hearing as the said Committee may require.

CHAPTER 4

Amnesty mechanisms and procedures

Committee on Amnesty

16. There is hereby established a committee to be known as the Committee on Amnesty, which shall in this Chapter be referred to as the Committee.

Constitution of Committee

17. (1) The Committee shall consist of a Chairperson, a Vice-Chairperson and three other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community.

(2) The President shall appoint the Chairperson, the Vice-Chairperson, one other person and, after consultation with the Commission, two commissioners as members of the Committee.

(3) The Chairperson of the Committee shall be—

(a) a judge as defined in section 1(1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); or

(b) a judge who has been discharged from active service in terms of section 3 of the said Act.

(4) Any vacancies in the Committee shall be filled in accordance with this section.

Applications for granting of amnesty

18. (1) Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in section 7(3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form.

(2) The Committee shall give priority to applications of persons in custody and shall prescribe measures in respect of such applications after consultation with the Minister and the Minister of Correctional Services.

Committee shall consider applications for amnesty

19. (1) Upon receipt of any application for amnesty, the Committee may return the application to the applicant and give such directions in respect of the completion and submission of the application as may be necessary or request the applicant to provide such further particulars as it may deem necessary. 5

(2) The Committee shall investigate the application and make such enquiries as it may deem necessary: Provided that the provisions of section 30(2) shall, with the necessary changes, apply in respect of such investigation.

(3) After such investigation, the Committee may—

(a) (i) inform the applicant that the application, judged on the particulars or further particulars contained in the application or provided by the applicant or revealed as a result of enquiries made by the Committee, if any, does not relate to an act associated with a political objective; 10

(ii) afford the applicant the opportunity to make a further submission; and

(iii) decide whether the application, judged on the particulars referred to in subparagraph (i); and in such further submission, relates to such an act associated with a political objective, 15

and if it is satisfied that the application does not relate to such an act, in the absence of the applicant and without holding a hearing refuse the application and inform the applicant accordingly; or 20

(b) if it is satisfied that—

(i) the requirements mentioned in section 20(1) have been complied with;

(ii) there is no need for a hearing; and

(iii) the act, omission or offence to which the application relates, does not constitute a gross violation of human rights, 25

in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly.

(4) If an application has not been dealt with in terms of subsection (3), the Committee shall conduct a hearing as contemplated in Chapter 6 and shall, subject to the provisions of section 33— 30

(a) in the prescribed manner, notify the applicant and any victim or person implicated, or having an interest in the application, of the place where and the time when the application will be heard and considered;

(b) inform the persons referred to in paragraph (a) of their right to be present at the hearing and to testify, adduce evidence and submit any article to be taken into consideration; 35

(c) deal with the application in terms of section 20 or 21 by granting or refusing amnesty.

(5) (a) The Committee shall, for the purpose of considering and deciding upon an application referred to in subsection (1), have the same powers as those conferred upon the Commission in section 5(l) and (m) and Chapters 6 and 7. 40

(b) Notwithstanding the provisions of section 18(1), the Committee may consider jointly the individual applications in respect of any particular act, omission or offence to which such applications relate.

(6) If the act or omission which is the subject of an application under section 18 constitutes the ground of any claim in civil proceedings instituted against the person who submitted that application, the court hearing that claim may at the request of such person, if it is satisfied that the other parties to such proceedings have been informed of the request and afforded the opportunity to address the court or to make further submissions in this regard, suspend those proceedings pending the consideration and disposal of the application. 50

(7) If the person who submitted an application under section 18 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, the Committee may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application for amnesty. 55

(8) (a) Subject to the provisions of section 33, the applications, documentation in connection therewith, further information and evidence obtained before and during an investigation by the Commission, the deliberations conducted in order to come to a decision or to conduct a hearing contemplated in section 33, shall be confidential. 60

(b) Subject to the provisions of section 33, the confidentiality referred to in paragraph

(a) shall lapse when the Commission decides to release such information or when the hearing commences.

Granting of amnesty and effect thereof

20. (1) If the Committee, after considering an application for amnesty, is satisfied that—

- (a) the application complies with the requirements of this Act;
 - (b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and
 - (c) the applicant has made a full disclosure of all relevant facts,
- it shall grant amnesty in respect of that act, omission or offence.

(2) In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date, by—

- (a) any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of such organisation or movement, *bona fide* in furtherance of a political struggle waged by such organisation or movement against the State or any former state or another publicly known political organisation or liberation movement;
- (b) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against any members or supporters of such organisation or movement, and which was committed *bona fide* with the object of countering or otherwise resisting the said struggle;
- (c) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed—
 - (i) in the case of the State, against any former state; or
 - (ii) in the case of a former state, against the State or any other former state, whilst engaged in a political struggle against each other or against any employee of the State or such former state, as the case may be, and which was committed *bona fide* with the object of countering or otherwise resisting the said struggle;
- (d) any employee or member of a publicly known political organisation or liberation movement in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against the State or any former state or any publicly known political organisation or liberation movement engaged in a political struggle against that political organisation or liberation movement or against members of the security forces of the State or any former state or members or supporters of such publicly known political organisation or liberation movement, and which was committed *bona fide* in furtherance of the said struggle;
- (e) any person in the performance of a *coup d'état* to take over the government of any former state, or in any attempt thereto;
- (f) any person referred to in paragraphs (a), (b), (c) and (d), who on reasonable grounds believed that he or she was acting in the course and scope of his or her duties and within the scope of his or her express or implied authority;
- (g) any person who associated himself or herself with any act or omission committed for the purposes referred to in paragraphs (a), (b), (c), (d), (e) and (f).

(3) Whether a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective, shall be decided with reference to the following criteria:

- (a) The motive of the person who committed the act, omission or offence; 5
- (b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto; 10
- (c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence; 10
- (d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals; 10
- (e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and 15
- (f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, 20

but does not include any act, omission or offence committed by any person referred to in subsection (2) who acted—

- (i) for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or 25
- (ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed. 30

(4) In applying the criteria contemplated in subsection (3), the Committee shall take into account the criteria applied in the Acts repealed by section 48.

(5) The Commission shall inform the person concerned and, if possible, any victim, of the decision of the Committee to grant amnesty to such person in respect of a specified act, omission or offence and the Committee shall submit to the Commission a record of the proceedings, which may, subject to the provisions of this Act, be used by the Commission. 35

(6) The Committee shall forthwith by proclamation in the *Gazette* make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act, omission or offence in respect of which amnesty has been granted. 40

(7) (a) No person who has been granted amnesty in respect of an act, omission or offence shall be criminally or civilly liable in respect of such act, omission or offence and no body or organisation or the State shall be liable, and no person shall be vicariously liable, for any such act, omission or offence. 45

(b) Where amnesty is granted to any person in respect of any act, omission or offence, such amnesty shall have no influence upon the criminal liability of any other person contingent upon the liability of the first-mentioned person.

(c) No person, organisation or state shall be civilly or vicariously liable for an act, omission or offence committed between 1 March 1960 and the cut-off date by a person who is deceased, unless amnesty could not have been granted in terms of this Act in respect of such an act, omission or offence. 50

(8) If any person—

- (a) has been charged with and is standing trial in respect of an offence constituted by the act or omission in respect of which amnesty is granted in terms of this section; or 55
- (b) has been convicted of, and is awaiting the passing of sentence in respect of, or is in custody for the purpose of serving a sentence imposed in respect of, an offence constituted by the act or omission in respect of which amnesty is so granted, 60

the criminal proceedings shall forthwith upon publication of the proclamation referred

to in subsection (6) become void or the sentence so imposed shall upon such publication lapse and the person so in custody shall forthwith be released.

(9) If any person has been granted amnesty in respect of any act or omission which formed the ground of a civil judgment which was delivered at any time before the granting of the amnesty, the publication of the proclamation in terms of subsection (6) shall not affect the operation of the judgment in so far as it applies to that person.

(10) Where any person has been convicted of any offence constituted by an act or omission associated with a political objective in respect of which amnesty has been granted in terms of this Act, any entry or record of the conviction shall be deemed to be expunged from all official documents or records and the conviction shall for all purposes, including the application of any Act of Parliament or any other law, be deemed not to have taken place: Provided that the Committee may recommend to the authority concerned the taking of such measures as it may deem necessary for the protection of the safety of the public.

Refusal of amnesty and effect thereof

21. (1) If the Committee has refused any application for amnesty, it shall as soon as practicable notify—

- (a) the person who applied for amnesty;
- (b) any person who is in relation to the act, omission or offence concerned, a victim; and
- (c) the Commission,

in writing of its decision and the reasons for its refusal.

(2) (a) If any criminal or civil proceedings were suspended pending a decision on an application for amnesty, and such application is refused, the court concerned shall be notified accordingly.

(b) No adverse inference shall be drawn by the court concerned from the fact that the proceedings which were suspended pending a decision on an application for amnesty, are subsequently resumed.

Referrals to Committee on Reparation and Rehabilitation

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

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

- (a) the act, omission or offence concerned constitutes a gross violation of human rights; and
- (b) a person is a victim in the matter,

it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 26.

CHAPTER 5

Reparation and rehabilitation of victims

Committee on Reparation and Rehabilitation

23. There is hereby established a committee to be known as the Committee on Reparation and Rehabilitation, which shall in this Chapter be referred to as the Committee.

Constitution of Committee

24. (1) The Committee shall consist of—

- (a) a Chairperson;
- (b) a Vice-Chairperson;
- (c) not more than five other members; and
- (d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed to the Committee by the Commission.

(2) Commissioners designated by the Commission shall be the Chairperson and Vice-Chairperson of the Committee.

(3) The Commission shall for the purpose of subsection (1)(c) appoint as members of the Committee fit and proper persons who are suitably qualified, South African citizens and broadly representative of the South African community.

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Powers, duties and functions of Committee

25. (1) In addition to the powers, duties and functions in this Act and for the purpose of achieving the Commission's objectives referred to in section 3(1)(c) and (d)—

(a) the Committee shall—

(i) consider matters referred to it by—

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(aa) the Commission in terms of section 5(e);

(bb) the Committee on Human Rights Violations in terms of section 15(1); and

(cc) the Committee on Amnesty in terms of section 22(1);

(ii) gather the evidence referred to in section 4(b);

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(b) the Committee may—

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

(ii) make recommendations referred to in section 4(h);

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(iii) prepare and submit to the Commission interim reports in connection with its activities;

(iv) may exercise the powers referred to in section 5(l) and (m) and Chapters 6 and 7.

(2) The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

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Applications for reparation

26. (1) 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.

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(2) (a) The Committee shall consider an application contemplated in subsection (1) and may exercise any of the powers conferred upon it by section 25.

(b) In any matter referred to the Committee, and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations to deal with the matter in terms of section 14.

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(3) If upon consideration of any matter or application submitted to it under subsection (1) and any evidence received or obtained by it concerning such matter or application, the Committee is of the opinion that the applicant is a victim, it shall, having regard to criteria as prescribed, make recommendations as contemplated in section 25(1)(b)(i) in an endeavour to restore the human and civil dignity of such victim.

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Parliament to consider recommendations with regard to reparation of victims

27. (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.

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(2) The recommendations referred to in subsection (1) shall be considered by the joint committee and the decisions of the said joint committee shall, when approved by Parliament, be implemented by the President by making regulations.

(3) The regulations referred to in subsection (2)—

(a) shall—

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(i) determine the basis and conditions upon which reparation shall be granted;

(ii) determine the authority responsible for the application of the regulations; and

(b) may—

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(i) provide for the revision and, in appropriate cases, the discontinuance or reduction of any reparation;

- (ii) prohibit the cession, assignment or attachment of any reparation in terms of the regulations, or the right to any such reparation;
- (iii) determine that any reparation received in terms of the regulations shall not form part of the estate of the recipient should such estate be sequestrated; and
- (iv) provide for any other matter which the President may deem fit to prescribe in order to ensure an efficient application of the regulations.

(4) The joint committee may also advise the President in respect of measures that should be taken to grant urgent interim reparation to victims.

CHAPTER 6

Investigations and hearings by Commission

Commission may establish investigating unit

28. (1) The Commission may establish an investigating unit which shall consist of such persons, including one or more commissioners, as may be determined by the Commission.

(2) The period of appointment of such members shall be determined by the Commission at the time of appointment, but such period may be extended or curtailed by the Commission.

(3) The Commission shall appoint a commissioner as the head of the investigating unit.

(4) (a) The investigating unit shall investigate any matter falling within the scope of the Commission's powers, functions and duties, subject to the directions of the Commission, and shall at the request of a committee investigate any matter falling within the scope of the powers, functions and duties of that committee, subject to the directions of the committee.

(b) The investigating unit shall in the performance of its functions follow such procedure as may be determined by the Commission or the committee concerned, as the case may be.

(5) Subject to section 33, no article or information obtained by the investigating unit shall be made public, and no person except a member of the investigating unit, the Commission, the committee concerned or a member of the staff of the Commission shall have access to such article or information until such time as the Commission or the committee determines that it may be made public or until the commencement of any hearing in terms of this Act which is not held behind closed doors.

Powers of Commission with regard to investigations and hearings

29. (1) The Commission may for the purposes of or in connection with the conduct of an investigation or the holding of a hearing, as the case may be—

(a) at any time before the commencement or in the course of such investigation or hearing conduct an inspection *in loco*;

(b) by notice in writing call upon any person who is in possession of or has the custody of or control over any article or other thing which in the opinion of the Commission is relevant to the subject matter of the investigation or hearing to produce such article or thing to the Commission, and the Commission may inspect and, subject to subsection (3), retain any article or other thing so produced for a reasonable time;

(c) by notice in writing call upon any person to appear before the Commission and to give evidence or to answer questions relevant to the subject matter of the hearing;

(d) in accordance with section 32 seize any article or thing referred to in paragraph (b) which is relevant to the subject matter of the investigation or hearing.

(2) A notice referred to in subsection (1) shall specify the time when and the place where the person to whom it is directed shall appear, shall be signed by a commissioner, shall be served by a member of the staff of the Commission or by a sheriff, by delivering a copy thereof to the person concerned or by leaving it at such person's last known place

of residence or business, and shall specify the reason why the article is to be produced or the evidence is to be given.

(3) If the Commission is of the opinion that the production of any article in the possession or custody or under the control of the State, any department of State, the Auditor-General or any Attorney-General may adversely affect any intended or pending judicial proceedings or the conduct of any investigation carried out with a view to the institution of judicial proceedings, the Commission shall take steps aimed at the prevention of any undue delay in or the disruption of such investigation or proceedings.

(4) The Commission may require any person who in compliance with a requirement in terms of this section appears before it, to take the oath or to make an affirmation and may through the Chairperson or any member of the staff of the Commission administer the oath to or accept an affirmation from such person.

(5) No person other than a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information submitted at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced at a hearing in terms of this Act, or at any proceedings in any court of law.

Procedure to be followed at investigations and hearings of Commission, committees and subcommittees

30. (1) The Commission and any committee or subcommittee shall in any investigation or hearing follow the prescribed procedure or, if no procedure has been prescribed, the procedure determined by the Commission, or, in the absence of such a determination, in the case of a committee or subcommittee, the procedure determined by the committee or subcommittee, as the case may be.

(2) If during any investigation by or any hearing before the Commission—

- (a) any person is implicated in a manner which may be to his detriment;
- (b) the Commission contemplates making a decision which may be to the detriment of a person who has been so implicated;
- (c) it appears that any person may have suffered harm as a result of a gross violation of human rights,

the Commission shall, if such person is available, afford him or her an opportunity to submit representations to the Commission within a specified time with regard to the matter under consideration or to give evidence at a hearing of the Commission.

Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

31. (1) Any person who is questioned by the Commission in the exercise of its powers in terms of this Act, or who has been subpoenaed to give evidence or to produce any article at a hearing of the Commission shall, subject to the provisions of subsections (2), (3) and (5), be compelled to produce any article or to answer any question put to him or her with regard to the subject-matter of the hearing notwithstanding the fact that the article or his or her answer may incriminate him or her.

(2) A person referred to in subsection (1) shall only be compelled to answer a question or to produce an article which may incriminate him or her if the Commission has issued an order to that effect, after the Commission—

- (a) has consulted with the attorney-general who has jurisdiction;
- (b) has satisfied itself that to require such information from such a person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
- (c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.

(3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that

incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 39(d)(ii) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(4) Subject to the provisions of this section, the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1). 5

(5) Any person appearing before the Commission by virtue of the provisions of subsection (1) shall be entitled to peruse any article referred to in that subsection, which was produced by him or her, as may be reasonably necessary to refresh his or her memory. 10

Entry upon premises, search for and seizure and removal of certain articles or other things

32. (1) Any commissioner, member of the staff of the Commission or police officer authorized thereto by a commissioner may on the authority of an entry warrant, issued in terms of subsection (2), enter upon any premises in or upon which any article or thing— 15

(a) which is concerned with or is upon reasonable grounds suspected to be concerned with any matter which is the subject of any investigation in terms of this Act; 20

(b) which contains, or is upon reasonable grounds suspected to contain, information with regard to any such matter, is or is upon reasonable grounds suspected to be,

and may on the authority of a search warrant, issued in terms of subsection (2)—

(i) inspect and search such premises and there make such inquiries as he or she may deem necessary; 25

(ii) examine any article or thing found in or upon such premises;

(iii) request from the person who is in control of such premises or in whose possession or under whose control any article or thing is when it is found, or who is upon reasonable grounds believed to have information with regard to any article or thing, an explanation or information; 30

(iv) make copies of or extracts from any such article found upon or in such premises;

(v) seize any article or thing found upon or in such premises which he or she upon reasonable grounds suspects to be an article or thing mentioned in paragraph (a) or (b); 35

(vi) after having issued a receipt in respect thereof remove any article or thing found on such premises and suspected upon reasonable grounds to be an article or thing mentioned in paragraph (a) or (b), and retain such article or thing for a reasonable period for the purpose of further examination or, in the case of such article, the making of copies thereof or extracts therefrom: Provided that any article or thing that has been so removed, shall be returned as soon as possible after the purpose of such removal has been accomplished. 40

(2) An entry or search warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article or thing mentioned in paragraph (a) or (b) of subsection (1) is upon or in such premises, and shall specify which of the acts mentioned in paragraph (b)(i) to (vi) of that subsection may be performed thereunder by the person to whom it is issued. 50

(3) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and any entry upon or search of any premises specified in such warrant shall be conducted with strict regard to decency and order, including— 55

Act No. 34, 1995 PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995

- (a) a person's right to, respect for and the protection of his or her dignity;
 (b) the right of a person to freedom and security; and
 (c) the right of a person to his or her personal privacy.
- (4) Any person executing a warrant in terms of this section shall immediately before commencing with the execution— 5
- (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;
 (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant. 10
- (5) (a) Any commissioner, or any member of the staff of the Commission or police officer at the request of a commissioner, may without a warrant enter upon any premises, other than a private dwelling, and search for, seize and remove any article or thing referred to in subsection (1)—
- (i) if the person who is competent to do so consents to such entry, search, seizure and removal; or 15
- (ii) if he or she upon reasonable grounds believes that—
- (aa) the required warrant will be issued to him or her in terms of subsection (2) if he or she were to apply for such warrant; and
 (bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal. 20
- (b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary.
- (6) (a) Any person who may on the authority of a warrant issued in terms of subsection (2), or under the provisions of subsection (5), enter upon and search any premises, may use such force as may be reasonably necessary to overcome resistance to such entry or search. 25
- (b) No person may enter upon or search any premises unless he or she has audibly demanded admission to the premises and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article or thing may be destroyed if such admission is first demanded and such purpose is first notified. 30
- (7) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not. 35
- (8) A warrant issued in terms of this section may be issued on any day and shall be of force until— 40
- (a) it is executed; or
 (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or 45
- (c) the expiry of one month from the day of its issue; or
 (d) the purpose for the issuing of the warrant has lapsed,
 whichever may occur first.

Hearings of Commission to be open to public

33. (1) (a) Subject to the provisions of this section, the hearings of the Commission shall be open to the public. 50
- (b) If the Commission, in any proceedings before it, is satisfied that—
- (i) it would be in the interest of justice; or
 (ii) there is a likelihood that harm may ensue to any person as a result of the proceedings being open, 55

it may direct that such proceedings be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or any part thereof: Provided that the Commission shall permit any victim who has an interest in the proceedings concerned, to be present.

(c) An application for proceedings to be held behind closed doors may be brought by a person referred to in paragraph (b) and such application shall be heard behind closed doors. 5

(d) The Commission may at any time review its decision with regard to the question whether or not the proceedings shall be held behind closed doors.

(2) Where the Commission under subsection (1)(b) on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the Commission may, subject to the provisions of section 20(6)— 10

(a) direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner; 15

(b) direct that no person may, in any manner, make public any information which may reveal the identity of any witness in the proceedings;

(c) give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness: 20

Provided that the Commission may authorize the publication of so much information as it considers would be just and equitable.

Legal representation

34. (1) Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative. 25

(2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of witnesses or any address to the Commission.

(3) The Commission may appoint a legal representative to appear on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative. 30

(4) A person referred to in subsection (1) shall be informed timeously of his or her right to be represented by a legal representative.

Limited witness protection programme 35

35. (1) The Minister shall, in consultation with the Commission, promote the establishment of a witness protection programme in order to provide for the protection and safety of witnesses in any manner when necessary.

(2) The witness protection programme contemplated in subsection (1) shall be prescribed by the President as soon as possible after the date referred to in section 7(3). 40

(3) The regulations providing for a witness protection programme shall—

(a) provide for, among others, the appointment of a private person or the secondment of an official or employee of any department of State in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), to act as the witness protector; and 45

(b) be Tabled in Parliament for approval.

(4) (a) Until such time as the witness protection programme has been established the President may, in consultation with the Minister and the Commission, prescribe interim measures to be followed in order to provide for the protection and the safety of a witness: Provided that the provisions of section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, with the necessary changes, apply in the absence of such interim measures. 50

(b) The interim measures contemplated in paragraph (a) shall be Tabled in Parliament for approval.

(5) In this section— 55

“witness” means a person who wishes to give evidence, gives evidence or gave evidence for the purposes of this Act and includes any member of his or her family

or household whose safety is being threatened by any person or group of persons, whether known to him or her or not, as a result thereof.

CHAPTER 7

General provisions

Independence of Commission

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36. (1) The Commission, its commissioners and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any party, government, administration, or any other functionary or body directly or indirectly representing the interests of any such entity. 10

(2) To the extent that any of the personnel of the entities referred to in subsection (1) may be involved in the activities of the Commission, such personnel will be accountable solely to the Commission.

(3) (a) If at any stage during the course of proceedings at any meeting of the Commission it appears that a commissioner has or may have a financial or personal interest which may cause a substantial conflict of interests in the performance of his or her functions as such a commissioner, such a commissioner shall forthwith and fully disclose the nature of his or her interest and absent himself or herself from that meeting so as to enable the remaining commissioners to decide whether the commissioner should be precluded from participating in the meeting by reason of that interest. 15 20

(b) Such a disclosure and the decision taken by the remaining commissioners shall be entered on the record of the proceedings.

(4) If a commissioner fails to disclose any conflict of interest as required by subsection (3) and is present at a meeting of the Commission or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall, as soon as such non-disclosure is discovered, be reviewed and be varied or set aside by the Commission without the participation of the commissioner concerned. 25

(5) Every commissioner and member of a committee shall—

(a) notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her duties in good faith and without fear, favour, bias or prejudice; 30

(b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of another office: Provided that the Commission may exempt a commissioner from the provisions of this paragraph. 35

(6) No commissioner or member of a committee shall—

(a) by his or her membership of the Commission, association, statement, conduct or in any other manner jeopardize his or her independence or in any other manner harm the credibility, impartiality or integrity of the Commission; 40

(b) make private use of or profit from any confidential information gained as a result of his or her membership of the Commission or a committee; or

(c) divulge any such information to any other person except in the course of the performance of his or her functions as such a commissioner or member of a committee. 45

Commission to decide on disclosure of identity of applicants and witnesses

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37. Subject to the provisions of sections 20(6), 33 and 35 the Commission shall, with due regard to the purposes of this Act and the objectives and functions of the Commission, decide to what extent, if at all, the identity of any person who made an application under this Act or gave evidence at the hearing of such application or at any other inquiry or investigation under this Act may be disclosed in any report of the Commission. 50

Confidentiality of matters and information

38. (1) Every commissioner and every member of the staff of the Commission shall, with regard to any matter dealt with by him or her, or information which comes to his or her knowledge in the exercise, performance or carrying out of his or her powers, functions or duties as such a commissioner or member, preserve and assist in the preservation of those matters which are confidential in terms of the provisions of this Act or which have been declared confidential by the Commission. 5

(2) (a) Every commissioner and every member of the staff of the Commission shall, upon taking office, take an oath or make an affirmation in the form specified in subsection (6). 10

(b) A commissioner shall take the oath or make the affirmation referred to in paragraph (a) before the Chairperson of the Commission or, in the case of the Chairperson, before the Vice-Chairperson.

(c) A member of the staff of the Commission shall take the oath or make the affirmation referred to in paragraph (a) before a commissioner. 15

(3) No commissioner shall, except for the purpose of the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties or when required by a court of law to do so, or under any law, disclose to any person any information acquired by him or her as such a commissioner or while attending any meeting of the Commission. 20

(4) Subject to the provisions of subsection (3) and sections 20(6) and 33, no person shall disclose or make known any information which is confidential by virtue of any provision of this Act.

(5) No person who is not authorized thereto by the Commission shall have access to any information which is confidential by virtue of any provision of this Act. 25

(6) For the purposes of this section the oath or affirmation shall be in the following form:

“I, A B, hereby declare under oath/solemnly affirm that I understand and shall honour the obligation of confidentiality imposed upon me by any provision of the Promotion of National Unity and Reconciliation Act, 1995, and shall not act in contravention thereof.”. 30

Offences and penalties

39. Any person who—

(a) anticipates any finding of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings; 35

(b) does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an investigation;

(c) does anything in relation to the Commission which, if done in relation to a court of law, would constitute contempt of court; 40

(d) (i) hinders the Commission, any commissioner or member of the staff of the Commission in the exercise, performance or carrying out of its, his or her powers, functions or duties under this Act;

(ii) wilfully furnishes the Commission, any such commissioner or member with any information which is false or misleading; 45

(e) (i) having been subpoenaed in terms of this Act, without sufficient cause fails to attend at the time and place specified in the subpoena, or fails to remain in attendance until the conclusion of the meeting in question or until excused from further attendance by the person presiding at that meeting, or fails to produce any article in his or her possession or custody or under his or her control; 50

(ii) having been subpoenaed in terms of this Act, without sufficient cause refuses to be sworn or to make affirmation as a witness or fails or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her; 55

(f) fails to perform any act as required in terms of sections 36(6) and 38;

(g) discloses any confidential information in contravention of any provision of this Act;

(h) destroys any article relating to or in anticipation of any investigation or proceedings in terms of this Act, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Regulations

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40. (1) The President may make regulations—

- (a) prescribing anything required to be prescribed for the proper application of this Act;
- (b) prescribing the remuneration and allowances and other benefits, if any, of commissioners: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa; 10
- (c) determining the persons who shall for the purposes of this Act be regarded as the dependants or relatives of victims;
- (d) providing, in the case of interim measures for urgent reparation payable over a period of time, for the revision, and, in appropriate cases, for the discontinuance or reduction of any reparation so paid; 15
- (e) prohibiting the cession, attachment or assignment of any such reparation so granted;
- (f) determining that any such reparation received in terms of a recommendation shall not form part of the estate of the recipient, should such estate be sequestrated; 20
- (g) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation by persons attending any hearing of the Commission in compliance with a subpoena issued in terms of this Act;
- (h) with regard to any matter relating to the affairs of the Fund, established in terms of section 42; 25
- (i) with regard to any matter which the President deems necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Any regulation made in terms of subsection (1) which may result in the expenditure of State money shall be made in consultation with the Minister and the Minister of Finance. 30

Liability of Commission, commissioners and members of staff

41. (1) Subject to the provisions of subsection (2), the State Liability Act, 1957 (Act No. 20 of 1957), shall apply, with the necessary changes, in respect of the Commission, a member of its staff and a commissioner, and in such application a reference in that Act to "the State" shall be construed as a reference to "the Commission", and a reference to "the Minister of the department concerned" shall be construed as a reference to the Chairperson of the Commission. 35

(2) No—

- (a) commissioner; 40
- (b) member of the staff of the Commission; or
- (c) person who performs any task on behalf of the Commission,

shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted or made known in terms of this Act. 45

President's Fund

42. (1) The President may, in such manner as he or she may deem fit, in consultation with the Minister and the Minister of Finance, establish a Fund into which shall be paid—

- (a) all money appropriated by Parliament for the purposes of the Fund; and 50
- (b) all money donated or contributed to the Fund or accruing to the Fund from any source.

(2) There shall be paid from the Fund all amounts payable to victims by way of reparation in terms of regulations made by the President.

(3) Any money of the Fund which is not required for immediate use may be invested with a financial institution approved by the Minister of Finance and may be withdrawn when required.

(4) Any unexpended balance of the money of the Fund at the end of a financial year, shall be carried forward as a credit to the Fund for the next financial year. 5

(5) The administrative work, including the receipt of money appropriated by Parliament for, or donated for the purposes of, the Fund or accruing to the Fund from any source, and the making of payments from the Fund in compliance with a recommendation in terms of this Act, shall be performed by officers in the Public Service designated by the Minister. 10

(6) The Minister shall appoint an officer designated under subsection (5) as accounting officer in respect of the Fund.

(7) The Auditor-General shall audit the Fund and all financial statements relating thereto, and the provisions of section 6 of the Auditor-General Act, 1989 (Act No. 52 of 1989), shall apply in respect of any such audit. 15

Completion of report by Commission and dissolution of Commission

43. (1) Subject to the provisions of subsection (2), the Commission shall within a period of 18 months from its constitution or the further period, not exceeding six months, as the President may determine, complete its work.

(2) The Commission shall within three months, from the date contemplated in subsection (1), complete its final report. 20

(3) The Commission shall be dissolved on a date determined by the President by proclamation in the *Gazette*.

Publication of final report of Commission

44. The President shall, in such manner as he or she may deem fit, bring the final report of the Commission to the notice of the Nation, among others, by laying such report, within two months after having received it, upon the Table in Parliament. 25

Approach to and review by joint committee of, and reports to, Parliament

45. (1) (a) The Commission may, at any time, approach the joint committee with regard to any matter pertaining to the functions and powers of the Commission. 30

(b) The Minister may at any time approach the joint committee with regard to any matter pertaining to functions and powers which may be performed or exercised by him or her in terms of this Act.

(c) The joint committee may at any time review any regulation made under section 40 and request the President to amend certain regulations or to make further regulations in terms of that section. 35

(2) The Commission shall submit to Parliament half-yearly financial reports: Provided that the Commission may, at any time, submit a financial report to Parliament on specific or general matters if—

(a) it deems it necessary; 40

(b) it deems it in the public interest;

(c) it requires the urgent attention of, or an intervention by, Parliament;

(d) it is requested to do so by the Speaker of the National Assembly or the President of the Senate.

Chief executive officer, secretaries, expenditure and estimates of Commission 45

46. (1) The Commission shall appoint in its service a person as the chief executive officer of the Commission and four other persons as secretaries to the Commission, the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation, respectively.

(2) The chief executive officer— 50

(a) shall for the purposes of section 15 of the Exchequer Act, 1975 (Act No. 66 of 1975), be the accounting officer in respect of all State moneys received in respect of and paid out of the account of the Commission referred to in

- subsection (4), and shall keep proper accounting records of all financial transactions of the Commission;
- (b) shall carry out such duties and perform such functions as the Commission may from time to time impose upon or assign to him or her in order to achieve the objectives of the Commission. 5
- (3) The expenses in connection with the exercise of the powers, the performance of the functions and the carrying out of the duties of the Commission shall be defrayed out of money appropriated by Parliament for that purpose.
- (4) The Commission shall, in consultation with the Minister of Finance, open an account with a banking institution, into which shall be deposited all moneys appropriated as mentioned in subsection (3) and from which all money required to pay for the expenses so mentioned shall be paid. 10
- (5) (a) The Commission shall within three months from the date referred to in section 7(3), for the first financial year, and thereafter in each financial year for the following financial year, in a format determined by the Audit Commission established by section 2 of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), prepare the necessary estimate of revenue and expenditure of the Commission, which shall, after consultation with the said Audit Commission, be submitted to the Minister for his or her approval, granted in concurrence with the Minister of Finance, for furtherance in terms of subsection (3). 15
- (b) The Commission shall not incur any expenditure which exceeds the total amount approved in terms of paragraph (a). 20
- (6) As from the date on which the Commission is dissolved in terms of section 43(3) and after all the expenses referred to in subsection (3) have been paid, the account opened in terms of subsection (4) shall be closed and the balance of the moneys deposited into that account, if any, shall be transferred to the *fiscus*. 25

Consequences of dissolution

47. (1) As from the date on which the Commission is dissolved in terms of section 43(3), all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund-raising Act, 1978 (Act No. 107 of 1978), and shall vest in the Disaster Relief Fund. 30
- (2) After the date referred to in subsection (1), all the funds and property which would have accrued to the President's Fund, if the Commission had not been dissolved, shall vest in the Disaster Relief Fund.
- (3) Any funds or property which, by trust, donation or bequest were vested in, or would have accrued to, the President's Fund, and which vest in the Disaster Relief Fund in terms of subsection (1), shall be dealt with by the board of the Disaster Relief Fund in accordance with the conditions of such trust, donation or bequest. 35
- (4) As from the date referred to in subsection (1) the liabilities incurred by the Commission or the President's Fund in terms of this Act, shall pass to the Disaster Relief Fund: Provided that such a liability shall be defrayed only from funds or property which vest in the Disaster Relief Fund in terms of this section. 40
- (5) No transfer duty, stamp duty or registration fees shall be payable in respect of the acquisition of any funds or property in terms of this section.

Acts repealed

48. (1) The Indemnity Act, 1990 (Act No. 35 of 1990), the Indemnity Amendment Act, 1992 (Act No. 124 of 1992), and the Further Indemnity Act, 1992 (Act No. 151 of 1992), are hereby repealed. 45
- (2) Any indemnity granted under the provisions of the Indemnity Act, 1990, the Indemnity Amendment Act, 1992, or the Further Indemnity Act, 1992, shall remain in force notwithstanding the repeal of those Acts. 50
- (3) Any temporary immunity or indemnity granted under an Act repealed in terms of subsection (1) shall remain in force for a period of 12 months after the date referred to in section 7(3) notwithstanding the repeal of that Act.

Short title and commencement:

49. This Act shall be called the Promotion of National Unity and Reconciliation Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.