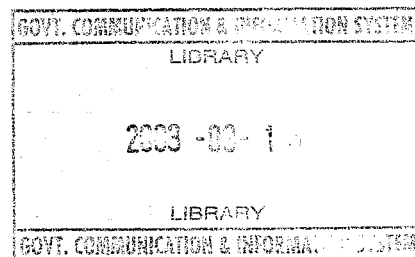


REPUBLIC OF SOUTH AFRICA

PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)



[B 34B—2003]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to allow payments from the President's Fund towards the rehabilitation of communities; to make provision regarding funds and property vesting in or accruing to the Fund subject to conditions; to provide for the appointment of committees after the dissolution of the Commission; and to confer additional powers on the Minister; and to provide for matters connected therewith.

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

Amendment of section 40 of Act 34 of 1995

1. Section 40 of the Promotion of National Unity and Reconciliation Act, 1995 (hereinafter referred to as the principal Act), is amended by the insertion after subparagraph (h) of subsection (1) of the following subparagraph: 5

“(hA) with regard to any matter which may be necessary for the effective allocation of the amounts as contemplated in section 42(2A).”

Amendment of section 42 of Act 34 of 1995

2. Section 42 of the principal Act is amended by the insertion after subsection (2) of the following subsections: 10

“(2A) There shall be paid from the Fund all amounts payable by way of reparations towards the rehabilitation of communities as prescribed.

(2B) Any funds or property which, by a trust, donation or bequest vests or accrues in the Fund, shall be dealt with in accordance with the conditions of such trust, donation or bequest.” 15

Insertion of sections 47A, 47B and 47C in Act 34 of 1995

3. The following sections are inserted in the principal Act:

“Minister may appoint subcommittee on amnesty after dissolution of Commission” 20

47A. (1) If, after the dissolution of the Commission, it appears that any matter that was dealt with by the Committee on Amnesty or any subcommittee thereof contemplated in section 17(2A) needs to be dealt with further or anew as a result of—

(a) any order or finding of a competent court; or 25

(b) any settlement agreement reached pursuant to pending litigation emanating from such a matter, the Minister may, by notice in the *Gazette*, appoint a subcommittee as contemplated in section 17(2A) to deal with the matter in such manner as may be required.

(2) A subcommittee appointed in terms of subsection (1) must consist of a judge as referred to in section 17(3), as chairperson, and two other members, who are fit and proper persons.

(3) A subcommittee appointed in terms of subsection (1) shall have all the powers to deal with the matter for which it was appointed that a subcommittee referred to in section 17(2A) would have had prior to the dissolution of the Commission.

(4) The Minister may, after consultation with the Minister of Finance, authorize the expenditure with regard to the functioning of the subcommittee and may determine how the expenditure is to be regulated.

(5) The Director-General of the Department of Justice and Constitutional Development shall provide the necessary administrative support, including staff required by the subcommittee for the performance of its functions.

(6) If a subcommittee appointed in terms of subsection (1) grants amnesty to any person, the Minister shall by notice 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.

(7) If a subcommittee has refused to grant amnesty to any person, the provisions of section 21 shall apply, with the necessary changes required by the context.

Minister may appoint other committees

47B. (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 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.

(2) A committee appointed in terms of subsection (1) may consist of one or more fit and proper persons.

(3) A committee appointed in terms of subsection (1) shall have all the powers to deal with the matter for which it was appointed that the corresponding committee in terms of this Act would have had prior to the dissolution of the Commission.

(4) The provisions of section 47A(4) and (5) apply, with the necessary changes required by the context, in respect of a committee appointed in terms of subsection (1).

(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).

Further powers of Minister after dissolution of Commission

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47C. (1) The Minister may, after the dissolution of the Commission, in order to correct any error contained in any notice, proclamation or any other publication issued in terms of this Act, excluding the final report by the Commission, amend by way of notice in the *Gazette* a publication so made.

(2) Subsection (1) does not detract from the general nature of section 46(7)(b).” 10

Short title and commencement

3. This Act is called the Promotion of National Unity and Reconciliation Amendment Act, 2003, and comes into operation on 1 October 2003 or on such earlier date as may be fixed by the President by proclamation in the *Gazette*. 15

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT BILL, 2003

1. BACKGROUND TO AND OBJECTS OF BILL

1.1 One of the declarations in the preamble to the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995) ("the TRC Act"), states that "the (1993) 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".

1.2 In the process of reparation and rehabilitation emanating from the Truth and Reconciliation Commission's Report, special emphasis will be placed on the rehabilitation of communities. It will mainly be effected by funds generated by Government and donations by the private sector. In order to provide for effective control, payment for purposes of particular projects will have to be channelled through the President's Fund established in terms of section 42(1) of the TRC Act.

1.3 The current wording of section 42(2) of the TRC Act only requires payments from that fund to be made "to victims by way of reparation in terms of regulations made by the President". The definition of "victims" is not broad enough to include the community at large. It is therefore recommended that section 42 of the TRC Act be amended to enable payments to be made from the President's Fund also "towards the rehabilitation of communities".

1.4 Although provision is made in section 47(3) of the TRC Act that "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", no similar provision exists in regard to the President's Fund during the President's Fund's existence (emphasis inserted). It is therefore also recommended that such provision be made in section 42 of the TRC Act.

1.5 The Bill also makes provision for the Minister for Justice and Constitutional Development, in consequence of a finding or order of a court and after the dissolution of the Commission, to appoint certain committees to deal with outstanding matters. Additional powers are also conferred on the Minister to, after the dissolution of the Commission and where necessary, amend a publication, excluding the Final Report by the Truth and Reconciliation Commission, made in terms of the TRC Act.

1.6 The Bill seeks to achieve the objects stated in subparagraphs 1.3, 1.4 and 1.5.

2. CONSULTATION

The proposed amendments are of a technical nature and do not require consultation. However, an explanatory summary of the Bill has been published in the *Gazette* in the ordinary course of public notification.

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

Since use is made of existing structures such as those provided for in the TRC Act, no additional financial implications for the State are foreseen.

5. PARLIAMENTARY PROCEDURE

The Department of Justice and Constitutional Development and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.