

rr/089408

J&R. Commission

BILL

To provide for the proper investigation and the establishment of as complete a picture as possible of the nature and extent of all gross violations of human rights committed within or outside the Republic during the period from 1 March 1960 to 6 December 1993, involving South African citizens and emanating from the conflicts of the past, and of the fate or whereabouts of the victims, individually, of such violations, in order to bring about national unity and reconciliation; the bringing to public knowledge of the truth about such violations and victims as revealed by such investigation; the granting of amnesty to certain persons in respect of certain acts with political objects committed during the said period; in order to repair the damage caused to the victims of such violations, to provide for measures aimed at the restoration of the human and civil dignity and the rehabilitation of the victims; the payment of compensation and the making of restitution to such victims; measures aimed at the prevention of future gross violations of human rights; for the aforesaid purposes to provide for the establishment of a ^①Commission for Truth and Reconciliation, a ^②Committee on Human Rights Violations, a ^③Committee on Amnesty and a ^④Committee on Reparation and Rehabilitation; to confer certain powers, impose certain

duties and assign certain functions upon and to that Commission and those committees; and to provide for matters connected therewith.

Considering the affirmation by the Constitution that it 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 and development opportunities for all South Africans, irrespective of colour, race, class, belief and sex.

Recognizing that the adoption of the Constitution lays the secure foundation for the people of South Africa to transcend the divisions of strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

Realizing that the constitution provides that these can now be addressed on the basis that there is a need for understanding but not revenge, a need for reparation but not retaliation, a need for ubuntu but not for victimization.

Realizing further that the Constitution also provides that in order to have such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.

Providing further that to this end, Parliament under the Constitution shall adopt a new law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria, and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

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

CHAPTER 1

Interpretation and application

Definitions

1. (1) In this Act, unless the context otherwise indicates -

(i) "act with a political object" includes any act or omission which constitutes an offence or delict which was advised, planned, directed, commanded, ordered or performed within or outside the Republic during the period from 1 March 1960 to 6 December 1993, by-

- (a) a member or supporter of a political organisation or liberation movement on behalf of or in support of such organisation or movement, *bona fide* in furtherance of a struggle waged by such organisation or movement against the State or any former state by civil war, insurrection or political turmoil;
- (b) a 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 political organisation or liberation movement engaged in a political struggle against the State or former state by civil war, insurrection or political turmoil, or against members or any supporters of such organisation or movement, and which was committed *bona fide* with the object of

countering or otherwise resisting the said struggle,

but does not include any act or omission performed by any person referred to in paragraph (a) or (b) who has acted-

(aa) for personal gain; or

(bb) out of personal malice, ill-will or spite, directed against the victim of the acts performed; or

(cc) in furtherance of deliberate acts where, objectively seen, no reasonable relationship exists between the act committed and the objective pursued, or where the act is committed out of proportion to the objective pursued;

"Chairperson" means the Chairperson of the Commission;

"Commission" means the Truth and Reconciliation Commission established by section 2;

"committee" means the Committee on Human Rights Violations, the Committee on Amnesty or the Committee on Reparation and Rehabilitation;

"Constitution" means the Constitution of the Republic of South Africa, 1993;

"former state" means any state the territory of which formed part of the Republic;

"gross violation of human rights" includes the killing, attempted killing, abduction, severe ill-treatment or torture of any person during the period from 1 March 1960 to 6 December 1993, by -

(a) an agent, member or supporter of the State, any former state, any political organization or liberation movement;

(b) or any other person acting with a political motive;

"Minister" means the Minister of Justice;

"President" means the President of the Republic;

"Republic" means the Republic of South Africa as defined in section 1(2) of the Constitution;

"security forces" includes -

(a) any permanent or part-time member or agent of the South African Defence Force or any of its organs, the South African Police Force or any of its organs and any such member or any agent

of the State Intelligence Agency or any of its organs;

- (b) a member or agent of a defence force, police force or intelligence agency of any former state, or any of their organs;

"State" means the State of the Republic of South Africa;

"victims" includes -

- (a) persons who as a result of the commission of gross violations of human rights, individually or together with other persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of fundamental human rights;
- (b) the relatives and dependants of victims; and
- (c) persons who have suffered such harm when intervening to assist victims in distress or to prevent victimisation.

(2) Whenever the application in of this Act the question arises as to whether a particular act or omission is

an act with a political object, such question shall be decided with reference to, among other, the following:

- (a) The motive of the person who committed the act or omission;
- (b) whether the act or omission was committed in the course or as part of a political uprising, disturbance or event;
- (c) the nature of the political objective sought to be achieved by the person who committed the act or omission;
- (d) the legal and factual nature of the act or omission including its gravity;
- (e) whether the act or omission was primarily directed at State property or personnel or against private property or individuals;
- (f) whether the act or omission was committed in the execution of an order or with the approval of the organisation, institution or body of which the person who committed the act was a member or supporter.

CHAPTER 2

TRUTH AND RECONCILIATION COMMISSION

Establishment and objectives of Truth and Reconciliation Commission

2. (1) There is hereby established a commission to be known as the Truth and Reconciliation Commission.

(2) The objectives of the Commission shall be -

- (a) with a view to achieving national unity and reconciliation, to establish, in accordance with the principles of international law and the Constitution, as complete a picture as possible of the nature and extent of all gross violations human rights emanating from conflicts of the past which were committed in the Republic, or which, wherever they were committed, involved South African citizens, during the period from 1 March 1960 to 6 December 1993;
- (b) to establish and make publicly known the identity and fate or whereabouts of every victim of such violations;
- (c) to endeavour restore the human and civil dignity of all victims;

(d) to promote the granting of amnesty to persons who make a full disclosure of the commission by them of acts with political objects and who acknowledge all the facts of such acts;

(e) to endeavour to prevent the future commission of gross human rights violations.

Functions of Commission

3. (1) The function of the Commission shall be to endeavour to achieve its objectives with all the means at its disposal, and for the purpose of achieving those objectives the Commission shall -

(a) inquire into and investigate all gross violations of human rights which were committed in the Republic, or which, wherever they were committed involved South African citizens, during the period from 1 March 1960 to 6 December 1993, and to establish the circumstances and factors which led to the commission of such violations, the nature of such violations and the identity of all persons, authorities and organisations concerned in the commission thereof;

(b) gather information and receive evidence from persons alleging to be the victims of such violations, or the dependants, other relatives or representatives of

such victims, which establish the identity of every victim of such violations, the fate or present whereabouts of such victims and the nature and extent of the injury or loss suffered by such victims;

(c) determine whether such violations were the result of deliberate planning on the part of the State, authorities or persons;

(d) prepare a full and complete report, based on factual and objective information and evidence collected or received by it or placed at its disposal, which sets out the events which occurred during the period referred to in paragraph (a) and the nature and causes of gross violations of human rights committed during that period;

(e) make recommendations to the President with regard to the general policy which should be followed with regard to the payment, on an ex gratia basis, of compensation or the granting of restitution to victims or the taking of other measures aimed at rehabilitating and restoring of the human and civil dignity of victims;

(f) make recommendations to the President with regard to the building or reconstruction 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 violations⁹ human rights;

(g) facilitate and promote the granting of amnesty in respect of acts with political objects, by receiving from persons desiring to make a full disclosure of all the relevant facts applications for the granting of amnesty in respect of such acts, by transmitting such applications to the Committee on Amnesty for its recommendations and by submitting such recommendations, together with its own report, to the President for his decision.

(2) The Commission shall not be obliged to inquire into any matter brought to its notice under subsection (1) if in its opinion the request in question is of a vexatious, trivial or frivolous nature, and shall, if it is of such opinion, inform the person who made the request accordingly.

Powers of Commission

4. (1) For the purpose of achieving its objectives and performing its functions the Commission shall, subject to the provisions of this Act, have power, in addition to any other power conferred upon it by this Act, -

(a) to have the work incidental to the exercise of its powers, the performance of its functions and the carrying out of its duties performed by -

- (i) persons employed by it on conditions approved by the Minister;
- (ii) persons appointed by it with the approval of the Minister for the performance of specified tasks;
- (iii) officials and employees of any department of State seconded to the service of the Commission in terms of the provisions of the Public Service Act, 1994
(Proclamation No. 103 of 1994);

(b) to carry out such investigations with regard to any matter as it may deem necessary in order to achieve its objectives;

(c) with the approval of and subject to conditions laid down by the Minister, to take expert advice with regard to any matter relating to the Commission's functions;

(d) to convene meetings of the Commission at any place within, or with the approval of the Minister,

outside, the Republic for the purpose of hearing evidence with regard to any matter relating to the Commission's functions;

(e) to carry out local inspections within, or with the Minister's approval, outside the Republic with regard to any matter relating to the Commission's functions;

(f) to invite, in such manner as it may deem fit, persons to give evidence before the Commission or to submit to it any book, document, object, file or writing which may provide proof of the commission of gross violations of human rights or which relates to any matter pertaining to the Commission's functions;

(g) to call upon or summon any person or any officer or employee in the service of the State, any department of State or the Auditor-general to give evidence before, or to produce to the Commission any book, document, file, object or writing relating to the Commission's functions and which the Commission upon reasonable grounds believes to be within the knowledge or in the possession or custody or under control of such person;

(h) to require any person summoned to give evidence before the Commission to take the oath or to make an affirmation;

(i) to interview, in such manner as it may deem fit, in private or in public, any person or group of persons, organisation or institution with regard to any matter relating to the Commission's functions;

(j) to require the production of any book, document, file, object or writing in the custody or under the control of the State, any department of State or the Auditor-General or of any person in the employment or acting on behalf of the State, any department of State or the Auditor-General which in the opinion of Commission relates to any matter pertaining to its functions;

(k) without giving prior notice but at any reasonable time, to enter upon and inspect premises in or upon which any such book, document, file, object or writing is kept and to require any person in or upon such premises who has it in his possession or custody or under his control, or who controls access thereto to hand such book, document, file, object or writing over to any person designated by the Commission, and to keep it for a reasonable time for the purpose of performing its functions;

(l) to give guidance to any of the committees with regard to correct working procedures, including the divisions which should be set up by the committee inroder to deal effectively with the work of the committees;

(m) of its own volition or at the request of any interested person inquire into any matter with a view to promote national unity and reconciliation;

(n) subject to the provisions of this Act, to establish such other committees as it may consider to be necessary for the effective exercise, carrying out or performance of its powers, duties or functions.

(2) Whenever the Commission has reasonable grounds to believe that any book, document, file, object or writing which contains any information relevant to the Commission's functions may be destroyed, altered or otherwise rendered inaccessible to the Commission, it may without prior notice and at any time enter upon the premises where it is kept, and search for and summarily seize such book, document, file, object or writing.

Constitution of Commission

5. (1) The Commission shall consist of 8, 9 or 10 members, as may be determined by the President.

(2) (a) The members of the Commission shall be South African citizens who are impartial and respected, who do not have a high political profile and who shall be representative of the entire population.

(3) (a) The President shall appoint as members of the Commission persons -

(a) who have been nominated by a joint committee of the National Assembly and the Senate, which is constituted in terms of the Rules of Parliament;

(b) whose nominations have been approved at a joint meeting of the National Assembly and the Senate in terms of a resolution adopted by a majority of the members who are present and voting at such meeting:

Provided that every political party represented in Parliament shall be entitled to be represented by one person on such joint Committee: Provided further that two of the persons so nominated shall be persons who are qualified as is mentioned in subsection (4)(b).

(4) (a) The President shall subject to paragraph (b) designate one of the members of the Commission as the Chairperson of the Commission.

(b) The person so designated shall be a person who is qualified to be admitted as an advocate or attorney and shall have at least 10 years experience as an advocate or attorney or in the administration of justice.

(5) The Chairperson shall manage and conduct the affairs of the Commission and shall determine the scheme of activities and the working procedures.

(6) A member of the Commission appointed in terms of subsection (3) shall, subject to the provisions of subsections (7) and (8), hold office for a period of twelve months or for such longer period as the Minister may determine in consultation with the President.

(7) A member of the Commission may resign as such member by tendering his or her written resignation to the President.

(8) The President may remove a member of the Commission from office on the grounds of misbehaviour, incapacity or incompetence, as determined by a joint committee of the National Assembly and the Senate, constituted in accordance

with the Rules of Parliament, and upon receipt of an address from the National Assembly as well as the Senate.

(9) If any member of the Commission tenders his resignation under subsection (7), or is removed from office under subsection (8), or dies, the President, acting on the advice of the National Assembly and the Senate, may fill the vacancy by appointing a person qualified, where necessary, as required by subsection (3)(b), for the unexpired portion of the term of office of his predecessor or may allow the seat vacated as a result of the resignation, removal from office or death, to remain vacant.

Vice-chairperson and Acting Chairperson of Commission

6. (1) The members of the Commission shall from among their own number elect a Vice-Chairperson of the Commission.

(2) If both the Chairperson and Vice-Chairperson are absent or unable to perform their duties the other members of the Commission shall from among their own number nominate an Acting Chairperson for the duration of such absence or inability.

Conditions of service, remuneration, allowances and other benefits of members of Commission

The conditions of service, remuneration, allowances and other benefits of members of Commission shall be as determined by the President.

Meetings of Commission

7. (1) The Commission may meet at any place within, or with the approval of the Minister, outside the Republic for the purpose of exercising its powers, performing its functions or carrying out its duties.

(2) A meeting of the Commission shall be held at a time and place determined by the Chairperson or in his or her absence the Vice-Chairperson of the Commission.

(3) The majority of the total number of members of the Commission shall be the quorum for any meeting of the Commission.

(4) The Commission shall determine the procedure at a meeting of the Commission and shall cause record of the proceedings at such meeting to be kept.

(5) (a) The meetings of the Commission shall subject to the provisions of paragraph (b) and (c) be open to the public.

(b) The Commission may in its discretion exclude from the proceedings or any part of the proceedings at a meeting of the Commission any person or category of persons whose presence is not necessary and is in the opinion of the Commission not desirable.

(c) When a person who has been summoned or called upon to appear before the Commission alleges in an affidavit or affirmed statement, or when it is so alleged on behalf of a person so summoned, that there is reason to believe that such person or any of his or her relatives may be injured or killed or that his or her property or other interests may be damaged or prejudicially affected if it becomes known that such person is giving or has given evidence before the Commission, the Commission shall exclude from the proceedings all persons whose presence is not necessary and is in the opinion of the Commission not desirable.

(6) Any person who has been summoned or called upon to appear before the Commission or who has submitted an application to the Commission, shall be entitled to be represented by a legal representative when he appears or when his application is heard.

(7) The Commission shall decide whether and if so to what extent a legal representative may address the Commission.

Independence of Commission and its members

8. (1) The Commission 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.

(2) To the extent that any of the personnel in 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 or any committee it appears that a member has or may have a financial or personal interest which may cause a substantial conflict of interest on his or her part, such a member shall forthwith and fully disclose the nature of his or her interest and absent himself from that meeting so as to enable the remaining members to decide whether the member is precluded

from participating in the meeting by reason of that interest.

(b) Such a disclosure and the decision taken by the remaining members shall be recorded in the minutes of the proceedings.

(4) If a member fails to disclose any conflict of interest as required by subsection (3) and is present at a meeting of the Commission or a committee or in any manner participates in the proceedings, such proceedings in relation to the relevant matter shall be reviewed, varied or set aside by the Commission or committee without the participation of the member in question.

(5) Every member of the Commission shall -

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

(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.

(6) No member shall -

(a) by his or her membership 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;

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

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

CHAPTER 3

INVESTIGATION OF HUMAN RIGHTS VIOLATIONS

Establishment of Committee on Human Rights Violations

9. There shall be established, as soon as the Commission has been constituted and all the members of the Commission have been appointed, a Committee on Human Rights Violations, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

10. (1) The Committee shall consist of such number of members as may be determined by the Commission.

(2) A member of the Commission designated by the Chairperson shall be the Chairperson of the Committee.

(3) The Commission shall appoint the members of the Committee and shall when making such appointments give preference to persons possessing knowledge of the content and application of human rights or of investigative and fact finding procedures.

Meetings of Committee and remuneration of members

11. (1) The Committee shall meet at such times and places as may be determined by the Chairperson of the Committee, and the procedure at and quorum for meetings of the Committee shall be as determined by that Chairperson.

(2) A member of the Committee who is not a member of the staff of the Committee shall receive such remuneration, allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance.

Powers, duties and functions of Committee

12. (1) The Committee -

(a) shall endeavour to establish the identity of all victims, and may to that end collect or receive from any organisation, commission or person evidence, information, documentation, archive material and all other material relating to human rights violations;

(b) shall record all allegations or complaints of human rights violations committed within or outside the Republic and involving South African citizens, during the period from 1 March 1960 to 6 December 1993, made by victims or the dependants or relatives of victims or by other persons professing to have personal knowledge or reliable information of such violations;

(c) may convene and hold meetings of the Committee at any place within, or with the approval of the Minister, outside the Republic;

(d) may appoint, on such conditions as may be approved by the Minister, researchers, persons who have expert knowledge on the subject of human rights, and other persons to assist the Committee in the performance of its functions;

(e) may summon any person believed by it upon reasonable grounds to have relevant knowledge of or of having in his or her possession or custody or under his control any book, document, file, object or writing affording evidence of or of containing information of human rights violations, to give evidence before or to produce such book, document, file, object or writing to the Committee;

(f) may issue research warrants to any person, authorizing such person to enter upon any premises and to inspect and seize any book, document, file, object or writing found in or upon such premises which affords evidence or contains information of human rights violations;

(g) may exercise or perform in relation to human rights violations powers and functions similar to those conferred upon or assigned to the Commission in relation to its functions in paragraphs (b), (c), (d), (e), (f), (g), (h), (j) and (k) of section 4(1);

(h) may submit to the Commission interim reports indicating the progress made by the Committee with its tasks and, at the conclusion of its activities, a final report containing particulars of all human rights violations referred to in paragraph (a), every victim of such violations, the fate or whereabouts of such

victims, the persons who committed or are responsible for the Commission of such violations and the measures which in the opinion of the Committee will prevent a recurrence of such violations.

(2) The Commission may refer any report submitted to it under paragraph (h) of subsection (1) back to the Committee and direct it to make such further inquiries as may be determined in order to elucidate any matter in the report or to perform in respect thereof such further acts as may be so directed.

CHAPTER 4

AMNESTY

Establishment of Committee on Amnesty

13. There shall be established, as soon as Commission has been constituted and all the members of the Commission have been appointed, a Committee on Amnesty, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

14. (1) The Committee shall consist of six members, who shall be appointed as required by subsection (2).

(2) The Commission shall appoint to the Committee -

(a) three of its own members, and

(b) three other persons, who shall be so appointed in consultation with the Minister of Justice.

(2) One of the persons appointed to the Committee shall be a person who is qualified to be admitted as an advocate or attorney, and shall have at least 10 years experience as an advocate or attorney or in the administration of justice.

Chairperson of Committee

15. The Commission shall designate one of members of the Commission appointed on the Committee as the Chairperson of the Committee.

Meetings of Committee and remuneration of members

16. (1) The Committee shall meet at such times and places as may be determined by the Chairperson of the Committee, and the procedure at and quorum for meetings of the Committee shall be as determined by that Chairperson.

(2) A member of the Committee who is not a member of the staff of the Committee shall receive such remuneration,

allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance. .

Applications for Amnesty

17. Any person who wishes to apply for the granting to him or her of amnesty in respect of any act or omission or offence on the ground that is an act with a political object, shall submit to the Commission within the period specified by the President by proclamation in the *Gazette* an application in the prescribed form, which is accompanied by the prescribed particulars.

Committee shall consider applications for amnesty and shall report to Commission

18. (1) The Commission shall transmit to the Committee all applications for amnesty submitted to it in terms of section 17. .

(2) The Committee shall upon receipt of any such application determine and notify the applicant of the place where and the time when the application will be heard and considered by it and shall inform the applicant of his or her right to be present and to be represented at the hearing and to testify, to adduce evidence and to submit documentary support of the application.

(3) (a) The Committee may summon or call upon any person who in its opinion is able to give evidence relevant to the application under consideration, to be present at the hearing of the application and to give evidence or to produce any book, document, file, object or writing which is so relevant and which is in the possession or custody or under the control of such person.

(b) The Committee may for the purpose of considering and deciding upon an application referred to in paragraph (a) have powers conferred upon the Commission by paragraphs (b), (c), (d), (e), (f), (h), (i), (j) and (k) of section 4(1).

(4) (a) Whenever the Committee deems it necessary to do so, it may direct any person giving evidence before the Committee to give such evidence on oath or affirmation.

(b) The Chairperson of the Committee or any member of the Committee or staff assisting the Committee designated by the Chairperson may administer the oath to, or accept an affirmation from, any such person.

(5) The Committee may if after considering an application for amnesty, the particulars which accompanied application, the evidence adduced and the arguments delivered at the hearing, it is satisfied that the application complies with the requirements of this Act, that the act or omission

to which the application relates is in its opinion an act with a political object and that the applicant has made a full disclosure of all the relevant facts and has acknowledged the Commission by him or her of that act, make a recommendation that the applicant should be granted amnesty in respect of that act or omission, and shall submit to the Commission a report containing such recommendation, an account of the facts relevant to and the circumstances surrounding the act or omission together with a record of such evidence and an account of such arguments.

(6) The Commission may upon receipt of such report require the Committee to make further inquiries or to hear further evidence with regard to any aspect of the report, and shall include the Committee's recommendation and report in the Commission's report to the President.

(7) If the person who submitted an application under section 17 is serving a sentence imposed in respect of a conviction of an 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 Commission may request the appropriate authority to release such person or to stay the proceedings pending the consideration and disposal of the application.

(8) If the act or omission which is the subject of an application under section 17 forms 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, suspend those proceedings pending the consideration and disposal of the application.

Granting of amnesty and effect thereof

19. (1) If the President after consideration of the Committee's recommendation referred to in subsection (5) of section 18 is of the opinion that amnesty should be granted in respect of the act or omission to which the recommendation relates, he shall by proclamation in the *Gazette* make known his decision specifying in that proclamation the full name of the person and the act or omission in respect of which amnesty is granted.

(2) (a) No person shall be criminally or civilly liable in respect of any act or omission in respect of which amnesty is granted under subsection (1).

(b) Where amnesty is granted to any person in respect of any act or omission such amnesty shall extend to and extinguish the criminal and civil liability of any other person which depends upon the liability of the first-mentioned person.

(3) 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

(b) has been convicted of and is awaiting the passing of sentence, or is detained for the purpose of serving a sentence imposed in respect of the conviction of an offence constituted by the act or omission in respect of which amnesty is so granted, the criminal proceedings shall forthwith upon publication of the proclamation referred to in subsection (1) be abandoned and the sentence so imposed shall upon publication lapse and the person so detained shall forthwith be released.

(4) If any person is 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 granting of the amnesty shall not affect the operation of the judgment in so far as it applies to that person.

(5) Where any person has been convicted of any offence constituted by an act with a political object in respect of which amnesty is granted in terms of this Act, any entry or record of the conviction shall 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.

CHAPTER 5

REPARATION OF DAMAGE AND REHABILITATION OF VICTIMS

Establishment of Committee on Reparation and Rehabilitation

20. There shall be established, as soon as all the members of the Commission have been appointed, a Committee on Reparation and Rehabilitation, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

21. (1) The Committee shall consist of such number of members as may be determined by the Commission.

(2) A member of the Commission designated by the Chairperson of the Commission shall be the Chairperson of the Committee.

(3) The Commission shall appoint the members of the Committee and shall when making such appointments give preference to persons possessing knowledge of the content and

application of human rights investigative and fact-finding procedures.

Meetings of Committee and remuneration of members

22. (1) The Committee shall meet at such times and places as may be determined by the Chairperson of the Committee, and the procedure at and quorum for meetings of the Committee shall be as determined by that Chairperson.

(2) A member of the Committee shall receive such remuneration or allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance.

Functions of Committee

23. The Committee shall -

(a) receive and investigate all applications submitted to it under section 25 by victims or the dependants of victims;

(b) consider all applications referred to in paragraph (a) and make recommendations to the Commission;

(c) shall for the purpose of investigating and deciding upon any such application have the same powers as those conferred upon the Commission in respect of its functions by paragraphs (b), (c), (d), (e), (f), (h), (i), (j) and (k) of subsection (1) of section 4.

Principles to govern actions of Committee

24. In dealing with victims of human rights violations, the Committee shall be guided by the following principles:

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

(b) victims shall be treated equally and without distinctions of any kind such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin and disability;

(c) procedures for dealing with victims shall be expeditious, fair, inexpensive and accessible;

(d) victims shall be informed, through the press and other communications media, of their rights in seeking redress through the Commission including information of -

(i) the Commission's role and scope of activities,

(ii) the right of the victims to have their views presented and considered at appropriate stages of the inquiry;

(e) the committee shall take appropriate measures to minimize inconvenience to victims, protect their privacy, when necessary, to ensure their safety as well as that of their families and witnesses on their behalf, and protect them from intimidation.

(f) informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice and indigenous practices shall be applied where appropriate to facilitate conciliation and redress of victims.

Applications for compensation or reparation

25. (1) Any victim or dependant of a victim who claims to have suffered pecuniary loss, or any other loss of a nature specified in the regulations, as a result of the commission of any gross violation of human rights, may submit to the Committee an application in the prescribed form which shall be accompanied by the prescribed particulars.

(2) The Committee shall consider a application submitted to it under subsection (1) and may call upon the person who submitted the application to appear before it to give evidence and to answer questions and may exercise any of the powers conferred upon it by section 23(c).

(3) If upon consideration of any application submitted to it under subsection (1) and any evidence received or obtained by it concerning such application the Committee is of the opinion that the applicant has suffered pecuniary or any other loss of a nature specified in the regulations as a result of the commission of a gross violation of human rights, it may make a recommendation that compensation in an amount specified by it be paid to the applicant or that, having regard to the consequences of commission for the applicant, any other step specified by it be taken in order to grant restitution to or to rehabilitate the applicant.

(4) If the Minister approves the recommendation of the Committee, as affirm or altered and affirmed by the Commission, the compensation in question or the costs of any step recommended by the Committee shall be paid from a fund established by the President in terms of section 33.

CHAPTER 6

STAFF OF COMMISSION AND COMMITTEES, FINANCIAL MATTERS,
REGULATIONS, OFFENCES AND GENERAL PROVISIONS

26. (1) The Commission shall appoint a person in its service as the Chief Executive Officer of the Commission and four other such persons as secretaries to the Commission, the Committee on Human Rights Violations, the Committee on Amnesty, and the Committee on Reparation and Rehabilitation.

(2) The Chief Executive Officer -

(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 section 27(2), and shall keep proper accounting records of all financial transactions of the Commission and the committees;

(b) carry out such duties perform such functions and 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 and the committees.

Expenditure and estimates of Commission

27. (1) 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 and the Committees shall be paid out of money appropriated by Parliament for the purpose.

(2) The Commission shall open an account with a banking institution approved by the Minister in consultation with the Minister of Finance into which shall be deposited all moneys appropriated as mentioned in subsection (1) and from which all moneys required to pay for the expenses so mentioned shall be paid.

Disclosure of identity of certain persons in reports of Commission

28. The Commission shall with due regard to the purposes of this Act and the objectives and functions of the Commission and the committees decide to what extent, if it all, the identity of any person who made an application under this Act or gave evidence at the hearing of such application may be disclosed in any report of the Commission or a committee.

Secrecy

29. (1) Every member of the Commission or any committee and every member of the staff of the Commission shall with regard to any matter dealt with, 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 member, preserve and assist in the preservation of secrecy.

(2) No member of the Commission or a committee 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 as such a member or while attending any meeting of the Commission or a committee.

Compellability of witnesses and inadmissibility of incriminating evidence given before Commission and committees

30. (1) Any person questioned by the Commission or a committee in the exercise of its powers under section 4, 18 or 23, respectively, or who has been summoned to give evidence or to produce any book, document, file, object or writing at a hearing of the Commission or a committee, shall be obliged to answer any question put to him or her with

regard to the subject-matter of the enquiry or hearing notwithstanding the fact that his or her answer may incriminate him or her or expose him or her to any liability.

(2) Any answer, book, document, file, object or writing mentioned in subsection (1) shall not be admissible as evidence against the person concerned in any proceedings in any court of law.

Offences and penalties

31. Any person who -

(a) insults, disparages or belittles any member of the Commission or a committee or prejudices, influences or anticipates the proceedings, findings or recommendations of the Commission or a committee;

(b) during a meeting of the Commission or a committee wilfully interrupts the proceedings of the Commission or such committee or misconducts himself or herself in any other manner in the place where such meeting is held;

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

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

(ii) wilfully furnishes the Commission, a committee or any such member any information which is false or misleading;

(e) (i) having been summoned under section 4 or 18 or 23, without sufficient cause (the onus of proof whereof shall rest upon him or her) fails to attend at the time and place specified in the summons, or fails to remain in attendance until the conclusion of the meeting in question or until excused by the person presiding at that meeting from further attendance, or fails to produce any book, document, file, object or writing in his possession or custody or under his or her control;

(ii) having been summoned under section 4, 18 or 23 without sufficient cause (the onus

of proof whereof shall rest upon him or her) refuses to be sworn or to make . . affirmation as a witness or fails to refuses to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him,

(f) fails to perform any act as required in terms of section 4, 18 or 23;

(g) discloses any information in contravention of section 29,

shall be guilty of offence and liable on conviction to a fine not exceeding R10,000,00 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Regulations

31. The President may make regulations -

(a) prescribing anything necessary to prescribed for the application of the Act;

(b) specifying the nature of loss suffered in consequence of the commission of gross violations of human rights in respect of which application for the payment of compensation may be made;

(c) determining the persons who shall for the purposes of compensation be regarded as dependants of victims,

(d) providing, in the case of compensation payable over a period time, for the revision, and in appropriate cases, for the discontinuance or reduction of any compensation so paid;

(e) prohibiting the cession, attachment or assignment of any compensation so paid;

(f) determining that any compensation received in terms of a recommendation shall not form part of the estate of the recipient, should such estate be sequestrated;

(g) providing that if the opinion of the Minister it is for any reason undesirable to pay the whole of the amount of any compensation directly to the person entitled thereto the Minister may direct that such compensation, or any part thereof, be paid to some other person, on such conditions as to its administration for the benefit of such first-mentioned person; of his dependance as may determine;

(h) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation

by person attending any hearing of the Commission or a committee in response to a summons issued in terms of this Act;

(i) as an applicator prescribing the form of any summons issued in terms of this Act;

Limitation of liability of Commission, committees and members of staff

32. The Commission, a committee or any member of the staff of the Commission shall not be liable in respect of anything done in good faith under the provisions of this Act.

President's Fund

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

(a) all moneys appropriated by Parliament for the purposes of the Fund;

(b) all moneys 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 in terms of recommendations of the Committee on Reparation and Rehabilitation approved by the Minister as required by section 25(4).

Completion of report by Commission and dissolution
of Commission and Committees

34. (1) The Commission shall within a period of twelve months from its constitution or such further period but not exceeding six months as the President may determine complete its final report.

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

(3) The Committees shall be dissolved on the date determined under subsection (2).

Publication of final report of Commission

35. The President shall in such manner as he may deem fit bring the final report of the Commission to the notice of the nation *inter alia* laying such report upon the Tables of Parliament, by publishing it in the *Gazette* or by causing it to be disseminated throughout the Republic.

Short title and commencement

36. This Act shall be called the Promotion of National Unity and Reconciliation Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

Criteria

4

- (ca) for personal gain; or
- (cb) out of personal malice, ill-will, or spite directed against the victim of the acts performed; or
- (cc) in furtherance of deliberate acts which objectively have no reasonable relationship between the act committed and the objective pursued, or where the act is out of proportion with the objective pursued.

Notes: What has to be considered in this context would include the directness or proximity of the relationship, or the proportionality between the offence and the objective. The means used i.e. the crime and the manner in which it was performed, must be commensurate to the political purpose, goal, or objective to be served.

- (d) the definition set out in section 1(i) shall be applied in conjunction with the following criteria:

*

- (i) the motive of the applicant in relation to the offence in question;

Notes: whether the offence was committed for political or personal motive. The act

Political
crime

claimed must not only have a political motive and object, but it must be capable of realizing that object, in the sense that, the means and the objectives must be in such a relationship that the idealistic motives connected with the objectives are strong enough. For instance, murder should not be indemnified unless it was the only means available of attaining the objective. In this regard one must also take into account the degree of political involvement of the applicant in the movement on behalf of which he acted, his personal commitment to and belief in the cause (on behalf of which he acted), and his personal conviction that the offence was justified or necessitated by the objectives and purposes of the ideological or political cause.

(if) the context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance;

Notes: The immediate implication of this principle is the requirement that the act must be a consequence of reprisals in general political uprising and struggle for power and not a consequence of personal motives or

private aims. Thus, purely terrorist activities which are not part of an action aimed at the immediate overthrow of the government would not qualify as political offences and are therefore not indemnifiable.

- (iii) the nature of the political objective sought to be achieved;

Notes: Although this is a relevant factor to be considered, it must nevertheless be seen in the broader context of national reconciliation. Undoubtedly, acts or offences committed in defence of apartheid would not under international law qualify as political offences. However, this issue was resolved in favour of amnesty to facilitate the return of exiles, negotiation for a democratic transition, and now for national reconciliation. While the principle is an acceptable one given the present South African situation, it can not be used to cover all acts supposedly done in defence of apartheid and irrespective of the perpetrators. It would therefore, be overstretching the concept of political offence if private persons who support the Government or government policy and for

political motives attacked government's opponents or their property were to be considered political offenders.

- (iv) the legal and factual nature of the offence, including its gravity;

Notes: This is an important consideration particularly where the incidence of the offence is indiscriminate in nature. For instance perpetrators of acts which had civilians as their main targets and which caused indiscriminate injury and destruction should not qualify for indemnity.

- (v) the object of the offence and whether it was committed against the government property or personnel or directed primarily against private property or individuals;

- (vi) whether or not the act was in the execution of an order or with the approval of the organisation, institution, or body of which the applicant was allegedly a member or supporter.

- (vii) the fact that granting of indemnity or amnesty shall be considered in the context of the promotion of national reconciliation.

6.4. Committee on Compensation and Rehabilitation of Victims

The Committee would be primarily responsible for advising the Commission on all matters relating to compensation, reparations, and rehabilitation of victims. The powers, functions, and duties of the Committee should be;

- to receive and document and investigate applications for reparations from victims;
- identify persons entitled to compensation and recommend accordingly to the Commission
- gather details that identify the victims and establish their fate or whereabouts;
- prepare a report for consideration by the Commission.

6.4.1. Definition of victim should include:

- (a) persons who individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights through acts or omissions that constituted human rights violations as defined in the present legislation.
- (b) where appropriate, the immediate family or dependants of the direct victims and persons who have suffered harm in intervening to assist victims in distress or to prevent

victimisation;

NOTES: It may be necessary to consider whether the definition of victims should be broadened to include not only those who were the direct casualties of the contest between the apartheid apparatus and the liberation movements and organisations, but also those who might have cooperated with regime under threat either to themselves or to their families.

6.4.2. In dealing with victims of human rights violations, the Commission should be guided by the following principles:

- (a) victims shall be treated with compassion and respect for their dignity;
- (b) victims shall be treated equally and without distinction of any kind such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin and disability;
- (c) procedures for dealing with victims should be expeditious, fair, inexpensive and accessible;
- (d) victims will have to be informed, through the press and other communications media, of their rights in seeking redress through the Commission including;

- (i) informing victims of the Commission's role and scope of its activities,

(ii) allowing the views of the victims to be presented and considered at appropriate stages of the inquiry.

(e) the Commission should take appropriate measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety as well as that of their families and witnesses on their behalf, from intimidation.

(f) informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice and indigenous practices should be utilized where appropriate to facilitate conciliation and redress of victims.

6.4.3. The Commission should have power to recommend any of the following forms of reparations:

6.4.3.1. Restitution

In cases where public officials or other agents were acting in official capacity their victims should receive restitution from the state for the harm inflicted. However, in those situations where the offences do not fall within the political offence category but at the sametime constitute gross human rights violations, the perpetrators should be under the legal obligation to give restitution or compensation to the victims in accordance with the normal rules governing civil liability.

6.4.3.2. **Compensation**

Where compensation will not be fully available from the offender or other sources, the state should try to give financial compensation to:

- (i) victims who have sustained significant bodily injury or impairment of physical or mental health as result of serious crimes;
- (ii) the family, in particular dependants of persons who have died, or become physically or mentally incapacitated as result of such victimization. In this regard the Commission may also recommend the establishment, strengthening or/and expansion of national funds for the compensation of victims.

6.4.3.3. **Assistance**

The Commission should have power to;

- (a) to recommend that victims receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous organisations;
- (b) where such support systems are commendable, victims should be informed of their availability and should be afforded access to them;
- (c) to recommend that police, justice, health, and social service and other personnel concerned

should be given further training to enable them to cope better with the needs of the victims.

7. **STAFF**

- 7.1. There should be established an office of the Commission on truth and Reconciliation. This office should be assisted by a common staff consisting of legally and judicially trained assistants, and any other professionals who in the opinion of the commission may assist it in carrying out its mandate. They should be recruited on the basis of their ability and efficiency. These would be responsible for the collection of all the necessary information, conducting interviews, preparing drafts and other relevant reports for consideration by the commission. The Commission should also be allowed in consultation with the Minister responsible for State Expenditure to determine the conditions of service, remuneration, allowances, including other benefits.
- 7.2. The expenditure in connection with the powers and the performance of its duties and functions should be paid out of money appropriated by Parliament for such purpose. Thus, the Ministry of Justice will have to budget for the necessary resources to enable the Commission to carry out its functions. At one of its initial meetings the Commission will have to appoint a Chief Executive Officer who will be responsible for the financial management and administration of the Commission.

Purpose
Rough first. Date 1960 - Package.

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BILL

To regulate matters incidental to the establishment of the Truth and Reconciliation Commission and to provide for matters connected therewith.

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

CHAPTER I

Interpretation and Application

1. Definitions

1 (1) In this Act with a political object unless the Context otherwise indicates

(i) "Acts with a political object" means any act or omission constituting a criminal offence or delict which has been advised, directed, commanded, ordered or performed -

(i) by a member of a political organisation or liberation movement on behalf of and with the express or implied authority of such organisation or movement, bona fide in furtherance of a struggle being waged by such organisation or movement to overthrow the State by civil war, insurrection or political turmoil.

(ii) by a member of the security forces in the course and scope of his or her duties and within the scope of his or her express or

implied authority or at the instance of such member acting as aforesaid which was directed against a political organisation or liberation movement engaged in a political struggle to overthrow the State by civil war, insurrection or political turmoil, or against members or supporters of such organisation or movement, and which was committed bona fide with the object of countering or otherwise resisting such struggle, but shall not include any act or omission performed by any person referred to in (a) and (b) above who has acted:

- (i) for personal gain; or
- (ii) out of personal malice, ill-will, or spite directed against the person or property of the victim of the acts performed; or
- (iii) in a manner and in circumstances which constitute indiscriminate and gratuitous acts of violence, destruction, intimidation or terrorism.

- (ii) "Chairperson" means the Chairperson of the Commission.
- (iii) "Commission" means the Truth and Reconciliation Commission established by Section 2.

- (iv) "Committee" means Committee established in terms of section.
- (v) "Gross human rights violation" shall be understood to mean situations of those persons who were murdered, who disappeared after arrest or disappeared under suspicious circumstances, who were executed, or who were severely tortured in which the moral responsibility of the state, political organisation or liberation movement was compromised as a result of actions by its agents or persons in its service, as well as murders, kidnappings and attempts on the life of persons committed by private person, for political organisations.
- (vi) "Minister" means the Minister of Justice.
- (vii) "President" means president of the republic of South Africa.
- (viii) "Republic" means the Republic of South Africa including the former self-governing and independent territories.
- (ix) "Victims" ^{shall} ~~should~~ include
- (a) persons who individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights through acts or omissions that constitute gross human rights violations as defined sub-section 1(4) of

this section;

- (b) where appropriate, the immediate family or dependants of the direct victims and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

CHAPTER II

Truth and Reconciliation Commission

2. Establishment and Objective of the Commission

2(1) There is hereby established a body to be known as the Truth and Reconciliation Commission.

(2) The Commission shall have the following objectives:

- (a) To establish in accordance with the principles of international law and the Constitution as complete a picture as possible of gross human rights violations, which took place between April 1960 - 6 December 1993, as well as their antecedents and circumstances in order to achieve national reconciliation.
- (b) To gather evidence that will help make it possible to identify the victims by name and determine their fate or whereabouts.
- (c) To recommend such measures of reparations which will lead to the restoration of the human and civil

dignity of the victims of human rights violation.

- (d) To receive applications for amnesty and indemnity in terms of disclosure and make recommendations to the President.
- (e) To prepare a report that contains the finding of the investigations conducted, offers objective information about what transpired during this period and includes all the factors.
- (f) To recommend legal and administrative measures to be adopted in order to prevent future gross human rights violations.

3. Constitution of the Commission

3(1) The Commission shall consist of not fewer than 8 and not more than 10 persons who shall be appointed by the President upon the advise of a joint Committee of the House of Parliament, and who shall be impartial, respected, do not have a high party political profile, and represent a broad cross-section of the population. may

(2) The President shall appoint as Commissioners persons:-

- (a) nominated by a joint committee of the Houses of Parliament provided that at least composed of one member of each party represented in Parliament and willing to serve in the Committee; and

- (b) approved by the National Assembly and the Senate by a resolution adopted by a majority of the members present and voting at a joint meeting.
- (3) (a) The President shall upon the advise of Parliament, designate two members of the Commission as Chairperson and Vice-Chairperson respectively: Provided that the Chairperson shall be a person qualified to be admitted as either an advocate or an attorney of at least 10 years experience or 10 years experience in the administration of justice.
- (b) In the absence of both the Chairperson and Vice-Chairperson, the remaining members shall by simple majority nominate another member as acting Chairperson of the Commission.
- (4) The Chairperson of the Commission shall be responsible for the administration of the Commission, and shall decide on the scheme of activities and working procedures ...
- (5) Every member of the Commission shall
- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently, and perform his or her functions in good faith and without fear, favour, bias or prejudice.

- (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 any other office.

(6) No member shall:

- (a) by his or her membership, association, statement, conduct or in any other manner, place in jeopardy his or her perceived independence, or in any manner harm the credibility, impartiality, independence or integrity of the Commission.
- (b) make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such a member;
- (c) divulge any such information to any third party save in the course and scope of his or her official functions and with the prior approval of the Commission.

4. Independence of the Commission

- 4(1) The Commission shall function without political or other bias or interference and shall, save as may in this Act be expressly otherwise provided, be independent and separate from any party, government and its administration or any other functionary or body, whether directly representing the interests of any such entity.

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

5. Functions of the Commission

5(1) The Commission shall subject to the provisions of subsections....

- (a) inquire into gross human rights violations committed between 1st April 1960 - 6 December 1993 in the Republic, the nature and causes thereof and which persons were involved therein.
- (b) to gather details that identify the victims of gross human rights violations and establish their fate and whereabouts.
- (c) receive evidence provided by the alleged victims, their representatives, successors or relatives within the time period stipulated in the Act and in the manner determined by the Commission.
- (d) receive and consider applications for indemnity and make appropriate recommendations to the President.
- (e) make recommendations to the President regarding
 - (i) the general policy which ought to be followed in respect of compensation and rehabilitation of

victims,

- (ii) institutional, administrative and legal measures that must be instituted to prevent any future human rights violations.

- (f) prepare a report on the basis of the evidence at its disposal, setting out the findings of the investigation as well as its conclusions.

Notice: Review

- (2) Any person may by way of an affidavit or affirmed statement or in any such other manner as the Chairperson may determine or allow request the Commission to deal with a matter which relates to gross human rights violations.
- (3) The Commission shall not be obliged to inquire into any matter brought to its notice under subsection (2) when in its opinion, the request in question is of a vexatious or trivial nature, and shall in such a case inform the person who addressed such request to it accordingly.

6. Powers of the Commission

- 6(1) When the Commission performs its duties and functions in terms of this Act, it shall have power:
 - (a) to carry out as much investigation as it may determine suitable for accomplishing its mandate including requesting reports, documents or evidence from governmental authorities and agencies.

- (b) to receive and consider reports from Committees established under this Act.
- (c) to interview freely and in private, any individuals, groups or members of organisations or institutions.
- (d) to request, through the Chairperson or a member of staff designated by the Chairperson, from any person such particulars and information as it may deem necessary in connection with its mandate.
- (e) to search and seize documentation and other items relevant to its functions.
- (f) to subpoena and issue warnings concerning allegations of interference with its functions.
- (g) to enter upon and inspect any premises and demand and seize any document on or kept on such premises.
- (h) to visit any establishment or place freely without giving prior notice. *if it has reason to believe that the giving of advance warning would frustrate the object of the visit,*
- (i) to give instructions to the Committees in respect of matters concerning their functions.
- (j) to establish such other committees as it may consider necessary for the effective exercise and performance

of its powers, duties and functions, and determine the composition, quorum for a meeting, decision, procedure and functions thereof.

- (2) Any person questioned under subsection (1) shall, notwithstanding the provisions of any law or the common law to the contrary, but subject to the provisions of subsection (3)
- (a) be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the commission notwithstanding that the answer may incriminate him or her; *Subject to...*
- (b) be compelled to produce to the Commission any document or thing in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.
- (3) The provisions of subsection (2) shall not be interpreted as meaning that an incriminating answer referred to in subsection (2)(a) shall be admissible as evidence against the person concerned in any proceedings in a court of law or before any body or institution established by or under any law.
- (4) The Chairperson, or any member of the staff of the Commission authorised thereto in writing by a member of the

Commission, and provided that reasonable grounds thereof exist, may, for the purposes of investigation, at all reasonable times enter upon and inspect any premises and demand and seize any documents reasonably required for the purposes of such investigation on or kept on such premises.

7. Dissolution of the Commission

The Commission shall be dissolved upon the completion of its mandate on a date fixed by the President by Proclamation in the *Gazzette*.

8. Terms of office of members of Commission

The members appointed to the Commission in terms of section (3)(i) of this Act shall hold office for a period of twelve months: Provided that the Minister may in consultation with the President extend their term of office for a specified period.

9. Vacancies in the Commission

9(1) A member of the Commission may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence, determined by a joint Committee of the Houses of Parliament, composed as provided in Section 3(2), and upon receipt of an address from both the National Assembly and Senate requesting such removal.

(2) If a member of the Commission tenders his or her resignation in writing to the President, is removed from

office in terms of this section, or dies, the President shall upon the advice of Parliament either:

- (a) allow such appointment to lapse, provided there remains a minimum member of members provided for in section 3(1); or
- (b) appoint some other suitably qualified person as a member for the unexpired portion of the term of the Commission.

10. Conditions of Service, remuneration and allowances of members of the Commission

The conditions of service, remuneration, allowances and other benefits of members of the Commission shall be determined by the President in consultation with the Cabinet and Minister of Finance.

11. Meetings of the Commission

- 11(1) The Commission may meet at any place in the Republic determined by the Chairperson or Vice-Chairperson as the case may be, for the purposes of performing its functions.
- (2) The quorum for any meeting of the Commission shall be the majority of the total number of the members.
- (3) The decision of the majority of the members of the Commission present at a meeting thereof shall be a decision of the Commission.

- (4) The Commission shall determine its own procedure and shall keep a record of its proceedings.
- (5) (a) Subject to the provisions of paragraph (b) and (c) the proceedings of the Commission shall be open to the public.
- grounds* (b) The Commission may in its discretion exclude any person, any category of persons, or all persons whose presence is, in the opinion of the Commission, not necessary or desirable at its proceedings, from such proceedings or part thereof.
- (c) When a person required in terms of this Act to appear before the Commission alleges by way of an affidavit or affirmed statement or when it is so alleged in respect of such a person that there is on the grounds set out in such an affidavit or affirmed statement reason to suspect that such a person or his/her nearest relatives may be killed, assaulted, injured, caused damage or prejudiced by any other person if it becomes known that such a person has given evidence before the Commission on any matter, the Commission shall exclude from the proceedings of the Commission at the time of the hearing of the evidence of that person or of evidence in

connection with that person all persons whose presence, in its opinion, is not necessary or desirable.

- (6) (a) No persons summoned or required to appear before the Commission in order to be questioned or to produce documents or things shall be entitled to be represented by a legal representative, except with the consent of the Commission and to such an extent as may be determined by the Commission.

12. Staff and Administration of the Commission

12(1) The Commission shall, in addition to the powers conferred upon it by this Act, or any other law, for the purposes of achieving its object, have the power to:-

- (a) appoint staff to assist it or a Chief Executive Officer of Administration Division, or the Secretary in the performance of its or his or her functions, and after consultation with the Minister of State Expenditure determine their conditions of service, remuneration, allowances and other benefits including those of:
- (i) members of Committees who are not members of the Commission
 - (ii) Committee chairpersons; and
 - (iii) other officials

- (b) request the secondment to it of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Commission, the Chief Executive Officer or the Committee Chairpersons, in the performance of his or her functions.

(2) The Chief Executive Officer of the office of the Commission:

- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of subsection (1)(a) and (b) respectively
- (b) shall subject to the Exchequer Act, 1975 (Act 66) 1975
 - (i) be charged with the responsibility of accounting for state money received or paid out for or on account of the Commission, including its Committees.
 - (ii) cause the necessary accounting and other related records to be kept.
- (c) shall perform duties which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of the Commission, and shall for those purposes be accountable to the Commission.

- (3) The staff of the Commission shall be appointed on such terms and conditions and shall receive such remuneration, allowance and other service benefits as the chief executive officer may determine in accordance with the regulations.

13. Expenditure and budget of the Commission

- 13(1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament for such a purpose.

- (2) The Commission shall budget for and be allocated the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions.

CHAPTER III

Investigation of Human Rights Violations

Establishment of the Committee on Human Rights Violation

14. Notwithstanding the provisions of section 2 and without derogating from the generality thereof, there shall be established on the date the Commission is constituted, a Committee to be known as the Committee on Human Rights Violations.

15. Constitution of the Committee on Human Rights Violation

15 (1) The Committee on Human Rights Violations shall consist of a Committee Chairperson, who shall be one of the Commissioners, and such other officials or experts as the Commission may consider necessary and appoint to enable the Committee effectively to perform its functions in terms of this Act.

(2) In effecting the appointments to the Committee, the Commission shall *inter alia* look for persons with expertise in human rights, investigations and fact-finding procedures: Provided that the Commission may also appoint other professional who in its opinion may assist it, effectively to investigate human rights violations.

16. Powers, duties and functions of the Committee

16(1) The Committee shall:

- (a) gather details that identify the victims and establish their fate and whereabouts.
- (b) investigate and document the factual details of human rights.
- (c) collect documentation, archive material relating to human rights.
- (d) appoint and supervise researchers and other assistants to the Commission.
- (e) register all allegations of human rights violations, both from the victims as well as the

relatives of victims.

- (f) issue and execute prescribed research warrants and subpoenas and seize items required in connection with the investigation of alleged violations of human rights.
- (g) report to the Commission upon their findings as required by this Act.
- (h) carry out and have other powers and functions as may from time to time be prescribed by the Commission.

(2) The Committee shall after the conclusion of its functions submit a report to the Commission for its consideration.

(3) The Commission may on receipt of the report referred to in subsection (2) refer the matter back to the Committee:-

- (a) for further inquiry as may be determined by the Commission.
- (b) to perform such further functions as the Commission may deem necessary or desirable.

CHAPTER IV

17. Granting of Indemnity

Establishment of the Committee on Indemnity and Amnesty.

Notwithstanding the provisions of Section 2, and without derogating from the generality thereof, there shall be

established on the date the Commission is constituted, a Committee to be known as the Committee on Indemnity and Amnesty.

18. Constitution of the Committee

18 (1) The Committee on Indemnity and Amnesty shall consist of 6 members three whom, including the Chairman shall be from amongst the members of the Commission.

(2) The non-Commission members of the Committee shall be appointed by the Commission in consultation with the Minister of Justice: Provided that one of the appointees shall be a person qualified to be admitted as advocate or attorney with at least 10 years experience or 10 years in the administration of justice.

Presid.

Qualifies?

19. Functions of the Committee

19 (1) The Committee shall

(a) receive and consider applications for amnesty and indemnity submitted within the date stipulated in this Act.

(b) recommend to the President whether the applicant should be given indemnity or amnesty.

(c) report to the Commission the factual circumstances regarding acts or omissions in

respect of which indemnity or amnesty is being sought.

20. Eligibility for Indemnity

20 (1) No person shall be entitled to indemnity/amnesty under this Act unless:

(a) he or she makes a full disclosure of the acts, or omissions as well as the circumstances in respect of which he or she is applying for indemnity or amnesty.

(b) the act or omission in respect of which he or she is applying for indemnity is in terms of section 1 of this Act an act with a political object.

time period

(2) In considering the application for indemnity, the Committee shall have regard to all relevant consideration which shall include but shall not be confined to the following:

(a) the motive of the applicant in relation to the offence in question;

Notes: whether the offence was committed for political or personal motive. The act claimed must not only have a political motive and object, but it must be capable of realizing that object, in the sense that, the means and the objectives must be

in such a relationship that the idealistic motives connected with the objectives are strong enough. For instance, murder should not be indemnified unless it was the only means available of attaining the objective. In this regard one must also take into account the degree of political involvement of the applicant in the movement on behalf of which he acted, his personal commitment to and belief in the cause (on behalf of which he acted), and his personal conviction that the offence was justified or necessitated by the objectives and purposes of the ideological or political cause.

- (b) the context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance;

Notes: The immediate implication of this principle is the requirement that the act must be a consequence of reprisals in general political uprising and struggle for power and not a consequence of personal motives or private aims. Thus, purely terrorist activities which are not part of an action aimed at the immediate overthrow of the state would not qualify as political offences and therefore indemnifiable.

- (c) the nature of the political objective sought to be achieved;

Notes: Although this is a relevant factor to be considered, it must nevertheless be seen in the broader context of national reconciliation. Undoubtedly, acts or offences committed in defence of apartheid would not under international law qualify as a political offences. However, this issue was resolved in favour of amnesty to facilitate the return of exiles, negotiation for a democratic transition, and now for national reconciliation. While the principle is an acceptable one given the present South African situation, it can not be used to cover all acts supposedly done in defence of apartheid and irrespective of the perpetrators. It would therefore, be overstretching the concept of political offence if private persons who support the Government or governmental policy and for political motives attacked government's opponents or their property as being political offenders.

- (d) the legal and factual nature of the offence, including its gravity;

Notes: This is an important consideration particularly where the incidence of the offence is indiscriminate in nature. For instance

support the Government or governmental policy and for political motives attacked government's opponents or their property as being political offenders.

- (d) the legal and factual nature of the offence, including its gravity;

Notes: This is an important consideration particularly where the incidence of the offence is indiscriminate in nature. For instance perpetrators of acts which had civilians as their main targets and which caused indiscriminate injury and destruction should not qualify for indemnity.

- (e) the object of the offence and whether it was committed against the government property or personnel or directed primarily against private property or individuals;

- (f) the relationship between the offence and the political objective allegedly pursued;

Notes: What has to be considered in this context would include the directness or proximity of the relationship, or the proportionality between the offence and the objective. The means used i.e. the crime and the manner in which it was performed, must be commensurate to the political

purpose, goal, or objective to be served.

- (g) whether or not the act was in the execution of an order or with the approval of the organisation, institution, or body of which the applicant was allegedly a member.

Functions of the Committee.

Power to grant Indemnity

21. (1) Subject to the provisions of this Act, the Committee shall recommend to the President the grant of indemnity to :

- (a) persons who may be liable for prosecution;
- (b) persons who are awaiting trial or undergoing trial;
- (c) persons who have already stood trial but are awaiting sentence;

in relation to acts or omissions committed with the political objective.

- (2) No proceedings, either civil or criminal, shall be continued in any Court of Law against any person in respect of any act for which indemnity has been granted in terms of this Act and such person shall be further detained in respect of that act.

Power to grant Amnesty

22. (1) Subject to the provisions of this Act, the Committee

may recommend the grant of amnesty to:

(a) persons who have been convicted of an offence and who are serving or who have served a period of imprisonment;

(b) persons who have been convicted of an offence and who have received a non- custodial form of punishment;

in relation to acts or omissions committed with political objective.

Applications for Indemnity and Amnesty

23. Any person wishing to apply for indemnity or amnesty by virtue of these provisions of this Act may lodge an application with the Commission in the prescribed manner.

Procedure for Indemnity and Amnesty Applications.

24. (1) The Committee shall consider and investigate every application submitted to it in terms of this Act.

(2) After considering the application as well as any evidence presented to the Committee, the Committee shall in its sole discretion, determine whether the applicant qualifies for indemnity or amnesty.

(3) The Committee shall submit a report containing its findings, conclusions, and recommendations to the

Commission and the President.

25. The report of the Committee shall form part of the final report of the Commission which shall be laid before Parliament. Provided that the names of persons involved in the offences shall not be disclosed in such report.

CHAPTER V

Granting of Compensation and Rehabilitation of Victims.

Establishment of the Committee on Compensation and Rehabilitation of Victims.

26. Notwithstanding the provisions of section 2, and without derogating from the generality thereof, there shall be established on the date the Commission is constituted, a Committee to be known as the Committee on Compensation and Rehabilitation of Victims.

Constitution of the Committee on Compensation and Rehabilitation of Victims

27. The Committee shall consist of a Committee Chairperson, who shall be one of the Commissioners, and such other Commissioners, officials, or experts as the Commission may consider necessary and appoint to enable the Committee effectively to perform its functions in terms of this Act.

Functions of the Committee

29. (1) The Committee shall:

- (a) receive, document and investigate applications for reparations from victims;
 - (b) identify persons entitled to compensation and recommend accordingly to the Commission;
 - (c) make recommendations to the Commission as to the appropriate legal, institutional and administrative measures to deal with compensation and other claims from victims.
- (2) The Committee shall after the conclusion of its functions submit a report to the Commission for its consideration.
- (3) The Commission may on receipt of the report refer a matter back to the Committee for further inquiry or deliberation.

Powers of the Committee

30. (1) The Committee shall have power to :

- (a) recommend that victims receive be given compensation, restitution, and any other assistance that the Committee considering all the circumstances may be appropriate to the victim.
- (b) recommend that police justice, health, and social services and other personnel concerned with the

rehabilitation of victims be given further training to enable the to cope better with the needs of victims.

- (2) The Committee may also recommend to the Minister the legal measures necessary facilitate the rehabilitation of the victims.

Acknowledgement