

Submission

1/23/10

REPUBLIC OF SOUTH AFRICA

PROMOTION OF NATIONAL UNITY AND RECONCILIATION BILL

(As submitted by the Portfolio Committee on Justice (National Assembly))

(MINISTER OF JUSTICE)

[B 30-95]

REPUBLIEK VAN SUID-AFRIKA WETSONTWERP OP DIE BEVORDERING VAN
NASIONALE

EENHEID EN VERSOENING

(Soos voorgele deur die Portefeuljekomitee oor Justisie (Nasionale
Vergadering))

(MINISTER VAN JUSTISIE)

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BILL

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

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

class, belief or sex;

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

AND SINCE the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society; AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization;

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

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

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 associated with a political objective" has the meaning ascribed thereto in section 21(2) and (3); (ii)

(ii) "article" includes any evidence, book, document, file, object, writing, recording or transcribed computer printout produced by any mechanical or electronic device or any device by means of which information is recorded or stored; (xix)

(iii) "Commission" means the Truth and Reconciliation Commission established by section 2; (ix)

(iv) "commissioner" means a member of the Commission appointed in terms of

section 8(2)(a); (viii)

(v) "committee" means the Committee on Human Rights Violations, the Committee on Amnesty or the Committee on Reparation and Rehabilitation, as the case may be; (vii)

(vi) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (iv)

(vii) "cut-off date" means the latest date allowed as the cut-off date by the provisions of the Constitution set out under the heading "National Unity and Reconciliation"; (i)

(viii) "former state" means any state or territory which was established by an Act of Parliament or by proclamation in terms of such an Act prior to the commencement of the Constitution and the territory of which now forms part of the Republic; (xvii)

(ix) "gross violation of human rights" means the violation of human rights through-

(a) the killing, abduction, torture or severe ill-treatment of any person;
or

(b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive; (v)

(x) "joint committee" means a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament for the purpose of considering matters referred to it in terms of this Act; (iii)

(xi) "Minister" means the Minister of Justice; (x)

(xii) "prescribe" means prescribe by regulation made in terms of section 41; (xviii)

(xiii) "President" means the President of the Republic; (xi)

(xiv) "reparation" includes any form of compensation, ex gratia payment, restitution or recognition; (vi)

(xv) "Republic" means the Republic of South Africa referred to in section 1(2) of the Constitution; (xii)

(xvi) "security forces" includes-

(a) any full-time or part-time member or agent of the South African Defence Force, the South African Police, the National Intelligence Service, the Bureau of State Security, the Department of Correctional Services, or any of their organs;

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

(xvii) "State" means the State of the Republic; (xiv)

(xviii) "subcommittee" means any subcommittee established by the Commission in terms of section 5(d); (xv)

(xix) "victims" includes-

(a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights-

(i) as a result of a gross violation of human rights; or

(ii) as a result of an act associated with a political objective for which amnesty has been granted; and

(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and

(c) such relatives or dependants of victims as may be prescribed. (xiii)

(2) For the purposes of sections 11(1), (2), (3), and (4) and 12 and Chapters 6 and 7 "Commission" shall be construed as including a reference to "committee" or "subcommittee", as the case may be, and "Chairperson", "Vice-Chairperson" or "commissioner" shall be construed as including a reference to the chairperson or the vice-chairperson of a committee or subcommittee.

CHAPTER 2

Truth and Reconciliation Commission

Establishment and seat of Truth and Reconciliation Commission

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

(2) The seat of the Commission shall be determined by the President.

Objectives of Commission

3. (1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by-

(a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the motives and perspectives of the victims and of the persons responsible for the commission of the violations, by instituting investigations and holding hearings;

(b) facilitating the granting of amnesty to persons who make full disclosure of acts associated with a political objective and comply with the requirements of this Act;

(c) establishing and making known the fate or whereabouts of the victims of gross violations of human rights and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

(d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.

(2) The provisions of subsection (1) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act.

(3) In order to achieve the objectives of the Commission-

(a) the Committee on Human Rights Violations, shall deal inter alia with matters pertaining to investigations of gross violations of human rights as contemplated in Chapter 3;

(b) the Committee on Amnesty shall deal with matters relating to amnesty, as contemplated in Chapter 4;

(c) the Committee on Reparation and Rehabilitation shall deal with matters referred to it relating to reparations, as contemplated in Chapter 5;

(d) the investigating unit, referred to in section 5(k), shall perform the

investigations contemplated in section 29(4); and

(e) the subcommittees shall exercise, perform or carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.

Functions of Commission

4. The functions 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) facilitate, and where necessary initiate or coordinate, inquiries into-

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

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

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

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

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

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

(c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the Gazette;

(d) determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;

(e) prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;

(f) make recommendations to the President with regard to-

(i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;

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

(g) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Powers of Commission

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

(a) to enter into an agreement with any person, including any department of State, in terms of which the Commission will be authorized to make use of any facility, equipment or staff belonging to or under the control or in the employment of such person or department;

(b) 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;

(ii) persons appointed by it 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);

(c) to establish such offices as it may deem necessary for the purposes of its functions;

(d) to establish subcommittees to exercise, carry out or perform any of the powers, duties and functions of the Commission assigned to it by the Commission;

(e) to give guidance and instructions to, or to review the decisions of, any committee or subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions, the carrying out of its duties and the working procedures which should be followed, and the divisions which should be set up by a committee in order to deal effectively with the work of the committee: Provided that no guidance or instruction may be given and no decision may be reviewed with regard to the procedure or decision to be followed or given by the Committee on Amnesty with regard to any application for amnesty;

(f) on its own initiative, or at the request of any committee or subcommittee, to direct that any committee or subcommittee make information which it has in its possession available to another committee or subcommittee;

(g) to refer specific or general matters to any of the committees or to direct the Committee on Human Rights Violations to conduct specific investigations into gross violations of human rights;

(h) to receive reports or to direct that interim reports be submitted to it by any subcommittee, committee or the investigating unit;

(i) to determine the seat of each committee;

(j) to recommend to the President that steps be taken to obtain an order declaring a person to be dead;

(k) to establish the investigating unit contemplated in section 29;

(l) through diplomatic channels, to negotiate with the government of, or any authority or persons in, a foreign country in order to gather information and receive evidence in that foreign country or to request and receive information.

Additional powers of Commission and committees

6. Subject and in addition to the provisions referred to in section 5, the Commission and any committee shall have the power-

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

(b) to convene meetings at any place within or outside the Republic for the purpose of hearing evidence with regard to any matter relating to its functions;

(c) on its own initiative or at the request of any interested person, to inquire into any matter with a view to promoting or achieving its objectives.

Consultation by Commission in exercising certain powers

7. (1) Subject to the provisions of section 46, the Commission shall exercise its powers in terms of sections 5(c) and 10(1) in consultation with the Minister.

(2) Subject to the provisions of section 46, the Commission shall exercise its powers in terms of sections 6(b), 11(1) and 30(a), in terms of which it may convene meetings or carry out investigations or inspections outside the Republic, in consultation with the Minister.

Constitution of Commission

8. (1) The Commission shall consist of not fewer than 11 and not more than 17 commissioners, as may be determined by the President in consultation with the Cabinet.

(2) (a) The President shall appoint the commissioners in consultation with the Cabinet.

(b) The commissioners shall be South African citizens who are impartial and respected and who do not have a high political profile.

(3) The President shall make the appointment of the commissioners known by proclamation in the Gazette.

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

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

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

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

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

Acting Chairperson of Commission

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

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

10. (1) The persons appointed by the Commission in terms of section 5(b), who are not officials of the State, shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Commission may determine.

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

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

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

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

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

(3) The Commission may, at its request and after consultation with the Public Service Commission, be assisted in the performance of the functions contemplated in section 4 by officers and employees in the Public Service seconded to the service of the Commission in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

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

11. (1) The Commission may meet at any place within or outside the Republic for the purpose of the exercise, carrying out or performance of any of the powers, duties or functions of the Commission.

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

(3) The Commission shall, except in so far as the President has by regulation under section 41 determined otherwise, with due regard to the purpose of this Act and the objectives and functions of the Commission, determine the procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Commission, and the manner in which the Commission shall conduct its affairs: Provided that any subcommittee or committee may, in the absence of such regulation or determination, itself determine such procedure and manner.

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

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

Principles to govern actions of Commission when dealing with victims

12. When dealing with victims the actions of the Commission shall be guided by the following:

(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, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic, or social origin or disability;

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

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

(i) the role of the Commission and the scope of its activities;

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

(e) appropriate measures shall be taken in order to minimize inconvenience to victims, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;

(f) appropriate measures shall be taken to allow victims to communicate in the language of their choice;

(g) informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice and indigenous practices shall

be applied, where appropriate, to facilitate reconciliation and redress for victims.

CHAPTER 3

Investigation of Human Rights Violations

Committee on Human Rights Violations

13. There is hereby established a committee to be known as the Committee on Human Rights Violations, hereinafter in this Chapter referred to as the Committee.

Constitution of Committee

14. (1) The Committee shall consist of-

- (a) a Chairperson;
- (b) two Vice-Chairpersons;
- (c) not more than 10 other members; and
- (d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed by the Commission.

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

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

Powers, duties and functions of Committee

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

(a) the Committee shall-

- (i) institute the inquiries referred to in section 4(a);
- (ii) gather the information and receive the evidence referred to in section 4(b);

(iii) determine the facts contemplated in section 4(d);

(iv) take into account the gross violations of human rights for which indemnity has been granted during the period between 1 March 1960 and the date of commencement of this Act or for which prisoners were released or had their sentences remitted for the sake of reconciliation and for the finding of peaceful solutions during that period;

(v) record allegations and complaints of gross violations of human rights;

(b) the Committee may-

(i) collect or receive from any organisation, commission or person, articles relating to gross violations of human rights;

(ii) make recommendations to the Commission with regard to the matters referred to in section 4(f) or (g);

(iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit;

(iv) may submit to the Commission interim reports indicating the progress made by the Committee with its activities;

(v) exercise the powers referred to in section 6 and Chapters 6 and 7.

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

Referrals to Committee on Reparation and Rehabilitation

16. (1) When the Committee finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 27.

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

CHAPTER 4

Amnesty mechanisms and procedures

Committee on Amnesty

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

Constitution of Committee

18. (1) The Committee shall consist of a Chairperson, a Vice-Chairperson and three other members who are fit and proper persons, suitably qualified, South African citizens and broadly representative of the South African community and vacancies in the Committee shall be filled in accordance with this section.

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

(3) The Chairperson of the Committee shall be-

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

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

Applications for granting of amnesty

19. (1) Any person who wishes to apply for the granting of amnesty to him or her in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in section 8(3), or such extended period as may be prescribed, submit to the Commission for transmission to the Committee an application in the prescribed form, which shall be accompanied by the prescribed particulars.

(2) Notwithstanding the provisions of subsection (1), a number of persons may be allowed to submit their applications jointly in respect of any particular act, omission or offence in which each one of them was involved.

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

Committee shall consider applications for amnesty

20. (1) Upon receipt of any application for amnesty the Committee may return the application to the applicant and give such directions in respect of the completion and submission of the application as may be necessary or

request the applicant to provide such further particulars as it may deem necessary.

(2) The Committee shall investigate the application and may make such enquiries as it may deem necessary: Provided that the provisions of section 31(2) shall mutatis mutandis apply in respect of such investigation.

(3) After such investigation, the Committee may-

(a) if it is satisfied that the application does not disclose an act associated with a political objective, after the Committee has informed the applicant of its views and has afforded him or her the opportunity to make a further submission within a specified time and has considered such further submission (if any), refuse the application in the absence of the applicant without a hearing and deal with the application in terms of section 22; or

(b) grant amnesty in the absence of the applicant without a hearing, if it is satisfied that-

(i) the application complies with the requirements of section 21(1);

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

(iii) the act associated with a political objective does not constitute a gross violation of human rights.

(4) If an application has not been dealt with in terms of subsection (3), the Committee shall conduct a hearing as contemplated in Chapter 6 and shall, subject to the provisions of section 34-

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

(b) inform the applicant, a victim and the said other person in the said manner of his or her right to be present at the hearing and to testify, adduce evidence and submit any article to be taken into consideration;

(c) deal with the application in terms of section 21 or 22 by granting or refusing amnesty.

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

(6) If the act or omission which is the subject of an application under section 19 constitutes the ground of any claim in civil proceedings instituted against the person who submitted that application, the court

hearing that claim may at the request of such person, if it is satisfied that the other parties to such proceedings have been informed of the request and afforded the opportunity to address the court or to make further submissions in this regard, suspend those proceedings pending the consideration and disposal of the application.

(7) If the person who submitted an application under section 19 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, the Committee may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application for amnesty.

(8) (a) Subject to the provisions of section 34, the applications, documentation in connection therewith, further information and evidence obtained before and during an investigation by the Commission, the deliberations conducted in order to come to a decision or to conduct a hearing contemplated in section 34, shall be confidential.

(b) Subject to the provisions of section 34, the confidentiality referred to in paragraph (a) shall lapse when the Commission decides to release such information or when the hearing commences.

Granting of amnesty and effect thereof

21. (1) If the Committee, in considering an application for amnesty, is satisfied that-

(a) the application complies with the requirements of this Act;

(b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

(c) the applicant has made a full disclosure of all relevant facts,

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

(a) any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of such organisation or movement, bona fide in furtherance of a political struggle waged by such organisation or movement against the State or any former state or another

publicly known political organisation or liberation movement;

(b) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against any members or supporters of such organisation or movement, and which was committed bona fide with the object of countering or otherwise resisting the said struggle;

(c) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed-

(i) in the case of the State, against any former state; or

(ii) in the case of a former state, against the State or any other former state, whilst engaged in a political struggle against each other or against any employee of the State or such former state, as the case may be, and which was committed bona fide with the object of countering or otherwise resisting the said struggle;

(d) any employee or member of a publicly known political organisation or liberation movement in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against the State or any former state or any publicly known political organisation or liberation movement engaged in a political struggle against that political organisation or liberation movement or against members of the security forces of the State or any former state or members or supporters of such publicly known political organisation or liberation movement, and which was committed bona fide in furtherance of the said struggle;

(e) any person in the performance of a coup d' état to take over the government of any former state, or in any attempt thereto;

(f) any person referred to in paragraphs (b), (c) and (d), who on reasonable grounds believed that he or she was acting in the course and scope of his or her duties and within the scope of his or her express or implied authority;

(g) any person who associated himself or herself with any act or omission committed for the purposes referred to in paragraphs (a), (b), (c), (d), (e) and (f).

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

(a) The motive of the person who committed the act, omission or offence;

(b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;

(c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;

(d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;

(e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and

(f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued,

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

(i) for personal gain: Provided that an act, omission or offence by any person who acted and received money or anything of value as an informer of the State or a former state, political organisation or liberation movement, shall not be excluded only on the grounds of that person having received money or anything of value for his or her information; or

(ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed.

(4) In applying the criteria contemplated in subsection (3), the Committee shall take into account the criteria applied in the Acts repealed by section 49.

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

(6) The Committee shall by proclamation in the Gazette make known the full names of any person to whom amnesty has been granted, together with

sufficient information to identify the act or omission in respect of which amnesty has been granted.

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

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

(8) If any person-

(a) has been charged with and is standing trial in respect of an offence constituted by the act or omission in respect of which amnesty is granted in terms of this section; or

(b) has been convicted of, and is awaiting the passing of sentence in respect of, or is in custody for the purpose of serving a sentence imposed in respect of, an offence constituted by the act or omission in respect of which amnesty is so granted,

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

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

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

Refusal of amnesty and effect thereof

22. (1) If the Committee has refused any application for amnesty, it shall

as soon as practicable notify-

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

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

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

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

Referrals to Committee on Reparation and Rehabilitation

23. (1) Where amnesty is granted to any person in respect of any act, omission or offence and the Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 27.

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

(a) the act, omission or offence concerned constitutes a gross violation of human rights; and

(b) a person is a victim in the matter,

it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 27.

CHAPTER 5

Reparation and rehabilitation of victims

Committee on Reparation and Rehabilitation

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

Constitution of Committee

25. (1) The Committee shall consist of-

(a) a Chairperson;

(b) a Vice-Chairperson;

(c) not more than five other members; and

(d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed to the Committee by the Commission.

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

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

Powers, duties and functions of Committee

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

(a) the Committee shall-

(i) consider matters referred to it by-

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

(bb) the Committee on Human Rights Violations in terms of section 16(1);
and

(cc) the Committee on Amnesty in terms of section 23(1);

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

(b) the Committee may-

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

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

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

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

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

Applications for reparation

27. (1) Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form, which shall be accompanied by the prescribed particulars.

(2) (a) The Committee shall consider an application contemplated in subsection (1) and may exercise any of the powers conferred upon it by section 26.

(b) In any matter referred to the Committee, and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations to deal with the matter in terms of section 15.

(3) If upon consideration of any matter or application submitted to it under subsection (1) and any evidence received or obtained by it concerning such matter or application, the Committee is of the opinion that the applicant is a victim, it shall, having regard to criteria as prescribed, make recommendations as contemplated in section 26(1)(b)(i) in an endeavour to restore the human and civil dignity of such victim.

Parliament to consider recommendations with regard to reparation of victims

28. (1) The recommendations referred to in section 4(f)(i) shall be considered by the President with a view to making recommendations to Parliament and making regulations.

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

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

(a) shall-

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

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

(b) may-

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

(ii) prohibit the cession, assignment or attachment of any reparation in terms of the regulations, or the right to any such reparation;

(iii) determine that any reparation received in terms of the regulations shall not form part of the estate of the recipient should such estate be sequestrated; and

(iv) provide for any other matter which the President may deem fit to prescribe in order to ensure an efficient application of the regulations.

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

CHAPTER 6

Investigations and hearings by Commission

Constitution of investigating unit

29. (1) The investigating unit referred to in section 5(k) shall consist of such persons as the Commission may appoint for the period determined by it.

(2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.

(3) The Commission shall appoint a commissioner to head the investigating unit and may designate one or more commissioners to serve on the investigating unit.

(4) (a) The investigating unit shall, subject to the directions of the Commission, investigate such matters as the Commission may assign to it and follow such procedure during the performance of its functions as the Commission may direct: Provided that the purpose of the investigating unit shall be to establish and gather the facts and evidence in a manner similar to that of an investigating officer in a criminal case.

(b) The investigating unit shall at the request of a committee investigate a matter under the jurisdiction of such a committee and such investigation shall be conducted under the direction of the committee concerned.

Powers of Commission with regard to investigations and hearings

30. For the purpose of conducting an investigation or a hearing in terms of this Act the Commission shall, subject to the provisions of this Act and in addition to any other powers conferred upon it by this Act, have the power-

(a) to carry out local inspections within, or outside, the Republic with regard to any matter relating to the functions of the Commission;

(b) to require any person by notice in writing under the hand of a commissioner and delivered by a member of the staff of the Commission or a sheriff, in relation to an investigation, to appear before the Commission at a time and place specified in such notice and to produce to it all articles in the possession or custody or under the control of any such person and which may provide proof to the Commission of gross violations of human rights, or which relates to any matter relating to the functions and powers of the Commission: Provided that any such notice shall contain the reason why the presence of any such person, or the production of any such article, is required;

(c) to require by notice in writing under the hand of a commissioner, addressed and delivered by a member of the staff of the Commission or a sheriff, the production of any article in the custody or under the control of the State, any department of State, the Auditor-General, any Attorney-General or any person in the service or acting on behalf of the State, which, in the opinion of the Commission, relates to any matter pertaining to its functions and powers: Provided that if the Commission is of the opinion that the production of such an article may adversely affect existing, instituted or pending judicial procedures or investigations which may lead to the institution of judicial procedures, such an article shall be dealt with by the Commission in such a manner that such procedures or investigations are not adversely affected;

(d)

to require any person who gives evidence before the Commission, to take the oath or to make an affirmation;

(e) to administer the oath to or accept an affirmation from any such person through the Chairperson, a commissioner or any member of the staff so authorized;

(f) subject to the provisions of section 33, to cause to be seized any article referred to in paragraphs (b) and (c);

(g) after having afforded the person who brought the matter to its attention an opportunity to state his or her case and to submit representations, to refuse to inquire into any matter brought to its notice under this Act if in the opinion of the Commission the matter is of a vexatious, trivial or frivolous nature or on any other reasonable grounds, and shall, if it is of such opinion, inform the person concerned

accordingly;

(h) having due regard to the principles of openness and transparency and the purpose of this Act, to declare any information or article to be confidential.

Procedures to be followed by Commission at investigations and hearings

31. (1) The Commission shall, except in so far as the President has prescribed otherwise, with due regard to the purpose of this Act and the objectives and functions of the Commission, determine fair procedures to be followed during the investigations and hearings of the Commission: Provided that any subcommittee or committee may, in the absence of such regulation or determination, itself determine such procedure.

(2) If during an investigation or hearing before the Commission-

(a) any person is implicated in a manner which may be to his or her detriment;

(b) the Commission contemplates to make a decision that may be to the detriment of a person who has been so implicated; or

(c) it appears that any person may be a victim,

the Commission shall, if such a person is available and willing to do so, afford such a person the opportunity to submit representations regarding the matter under consideration within a specified time or to give evidence before a hearing of the Commission.

(3) (a) Subject to the provisions of section 34, the documentation, further information and evidence obtained by the investigating unit and the deliberations in this regard shall be confidential.

(b) Subject to the provisions of section 34, the confidentiality referred to in paragraph (a) shall lapse when the Commission decides to release such information or at the commencement of a hearing.

Compellability of witnesses and inadmissibility of incriminating evidence given before Commission

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

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

(a) has consulted with the attorney-general who has jurisdiction;

(b) has satisfied itself that to require such information from such a person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and

(c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.

(3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 40(d)(ii) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

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

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

Entering upon and search of premises with or without warrant and seizure and removal of articles

33. (1) Any commissioner or any member of the staff of the Commission or a police officer, authorized thereto by a commissioner may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is suspected to be.

(2) The entering upon and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to-

(a) a person's right to, respect for, and protection of, his or her dignity;

(b) the right to freedom and security of the person; and

(c) the right to his or her personal privacy.

(3) Any commissioner, member or police officer referred to in subsection (1) may, subject to the provisions of this section-

(a) inspect and search the premises referred to in that subsection, and there make such enquiries as he or she may deem necessary;

(b) examine any article found on or in the premises;

(c) request from the owner or person in control of the premises or from any person in whose possession or control that article is, information regarding that article;

(d) make copies of or take extracts from any article found on or in the premises;

(e) request from any person whom he or she suspects of having the necessary information, an explanation regarding that article;

(f) seize anything on or in the premises which in his or her opinion has a bearing on the investigation concerned;

(g) if he or she wishes to retain anything on or in the premises contemplated in paragraph (f) for further examination or for safe custody, against the issue of a receipt, remove it from the premises: Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished.

(4) (a) Subject to the provisions of subsection (5), the premises referred to in subsection (1) shall only be entered by virtue of an entry warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article referred to in subsection (3) is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(b) Subject to the provisions of subsection (5), the functions referred to in subsection (3) shall only be performed by virtue of a search warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article referred to in subsection (3) is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(c) A warrant issued in terms of this subsection shall authorize any commissioner or any member of the staff of the Commission or a police

officer to perform the functions referred to in subsection (3) and shall to that end authorize such person to enter and search any premises identified in the warrant.

(d) A warrant issued in terms of this subsection shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night at times which are reasonable in the circumstances.

(e) A warrant issued in terms of this subsection may be issued on any day and shall be of force until-

(i) it is executed; or

(ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or

(iii) the expiry of one month from the day of its issue; or

(iv) the purpose for the issuing of the warrant has lapsed,

whichever may occur first.

(f) A person executing a warrant under this section shall, at the commencement of the search, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant: Provided that if such person is not present, the person executing the warrant shall affix a copy of the warrant to the premises at a prominent and visible place.

(g) A person executing a warrant under this subsection or an entry or search under subsection (5) shall, at the commencement of such execution, identify himself or herself and if that person requires authorization to execute a warrant under this section, the particulars of such authorization shall also be furnished.

(5) Subject to the provisions of subsections (2), (3)(g), (6), (7) and (8), any commissioner or any member of the staff of the Commission or a police officer upon the request of a commissioner may, without an entry and search warrant, enter and search any premises, other than a private dwelling, for the purpose of attaching and removing, if necessary, any article-

(a) if the person or persons who are competent to consent to the entering and search for and seizure and removal of an article consent to such entering, search, seizure and removal of the article concerned; or

(b) if he or she, on reasonable grounds believes-

(i) that a warrant will be issued to him or her under subsection (4) if he or she were to apply for such warrant; and

(ii) that the delay in obtaining such a warrant would defeat the object of the entry and search.

(6) An entry and search in terms of subsection (5) shall be executed by day unless the execution thereof by night is justifiable and necessary.

(7) (a) A person who may lawfully under this section enter and search any premises may use such force as may be reasonably necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

(8) If during the execution of a warrant or search in terms of this section, a person claims that an article found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or search shall, if he or she is of the opinion that the article contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

Hearings of Commission to be open to public

34. (1) (a) Subject to the provisions of this section, the hearings of the Commission shall be open to the public.

(b) If the Commission, in any proceedings before it, is satisfied that-

(i) it would be in the interest of justice; or

(ii) there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

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

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

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

(2) Where the Commission under subsection (1)(b) on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the Commission may, subject to the provisions of section 21(6)-

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

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

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

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

Legal representation

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

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

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

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

Protection of witnesses

36. (1) When the Commission is satisfied that any person who testifies or who has been requested to testify on any matter dealt with by it, has reason to believe that his or her safety or the safety of any member of his or her family or household is being threatened by any person or by any group or category of persons, whether known to him or her or not, who have-

(a) caused or wish to cause him or her harm as a result of the evidence which he or she has given;

(b) attempted to prevent or wish to prevent him or her from giving evidence; or

(c) attempted to persuade or wish to persuade him or her to give evidence to a particular effect,

as the case may be, the Commission may, on the written application of any such person, and in the prescribed manner, request a person in charge of any police station or prison as defined in section 1 of the Correctional Services Act, 1959 (Act No. 8 of 1959), to detain such applicant, such member or any dependant of such applicant or such member in, or to place such applicant, such member or such dependant under, protective custody.

(2) If a witness or prospective witness referred to in subsection (1), a member of his or her family or household or a dependant of his or hers or of such member or, where such witness, member or dependant is a minor, his or her parent or guardian has completed and signed an authorization, on the form prescribed by regulation under this section-

(a) to be detained in protective custody, such witness, member or dependant shall forthwith be taken to a place of safety similarly prescribed for that purposes and detained there in accordance with regulations under this section; or

(b) to be placed under protective custody, such witness, member or dependant shall forthwith be placed under protective custody in such manner as may be prescribed by the said regulations:

Provided that any person in respect of whom an authorization has been completed and signed-

(i) to be detained in protective custody and who is so being detained under paragraph (a), may at any time be placed under protective custody in terms of paragraph (b); and

(ii) to be placed under protective custody and who has been so placed in terms of paragraph (b), may at any time be detained in protective custody under paragraph (a).

(3) Any person who is detained in or has been placed under protective custody under this section shall so remain in or under custody until the Commission submits a discharge from detention or he or she or, where he or she is a minor, his or her parent or guardian submits a waiver of protection, on the form prescribed by regulation under this section, to the person in charge of the place where he or she is being detained or to the person who is responsible for his or her custody in terms of any regulation under this section, as the case may be.

(4) (a) The President may make regulations as to-

- (i) the detention in or the placing under protective custody of persons;
 - (ii) the protection of the identity of such persons;
 - (iii) any matter required or permitted to be prescribed under this section by regulation; and
 - (iv) in general, any matter which the President may consider necessary or expedient to prescribe or regulate in order that the objects of this section may be achieved.
- (b) Different regulations may be made under paragraph (a) in respect of different categories of persons, witnesses or prospective witnesses.
- (c) Regulations made under paragraph (a) may prescribe for any contravention thereof or failure to comply therewith penalties of a fine or imprisonment for a period not exceeding five years.
- (d) A magistrate's court shall have jurisdiction to impose any penalty provided for by regulations made under paragraph (a).
- (5) The State, or any person in the service of the State, shall not be liable in respect of anything done in good faith under the provisions of this section or any regulation made thereunder.
- (6) Any person who in, or in connection with, a request to be detained in or placed under protective custody wilfully furnishes information or makes a statement which is false or misleading shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.
- (7) For the purpose of subsections (1) and (2) "the person in charge of a police station or prison" means the senior person in charge of the police station or prison at the relevant time.

CHAPTER 7

General provisions

Independence of Commission

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

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

personnel will be accountable solely to the Commission.

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

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

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

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

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

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

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

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

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

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

Commission to decide on disclosure of identity of applicants and witnesses

38. Subject to the provisions of sections 21(6), 34 and 36 the Commission

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

Confidentiality of matters and information

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

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

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

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

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

(4) Subject to the provisions of subsection (3) and sections 21(6) and 34, no person shall disclose or make known any information which is confidential by virtue of any provision of this Act.

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

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

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

Offences and penalties

40. Any person who-

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

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

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

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

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

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

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

(f) fails to perform any act as required in terms of sections 37(6) and 39;

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

(h) destroys any article relating to or in anticipation of any investigation or proceedings in terms of this Act,

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

Regulations

41. (1) The President may make regulations-

- (a) prescribing anything required to be prescribed for the proper application of this Act;
- (b) prescribing the remuneration and allowances and other benefits, if any, of commissioners: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa;
- (c) determining the persons who shall for the purposes of this Act be regarded as the dependants or relatives of victims;
- (d) providing, in the case of interim measures for urgent reparation payable over a period of time, for the revision, and, in appropriate cases, for the discontinuance or reduction of any reparation so paid;
- (e) prohibiting the cession, attachment or assignment of any such reparation so granted;
- (f) determining that any such reparation received in terms of a recommendation shall not form part of the estate of the recipient, should such estate be sequestrated;
- (g) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation by persons attending any hearing of the Commission in compliance with a subpoena issued in terms of this Act;
- (h) with regard to any matter relating to the affairs of the Fund, established in terms of section 43;
- (i) with regard to any matter which the President deems necessary or expedient to prescribe in order to achieve the objects of this Act.

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

Liability of Commission, commissioners and members of staff

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

(2) No-

(a) commissioner;

(b) member of the staff of the Commission; or

(c) person who performs any task on behalf of the Commission,

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

President's Fund

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

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

(b) all money donated or contributed to the Fund or accruing to the Fund from any source.

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

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

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

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

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

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

Completion of report by Commission and dissolution of Commission

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

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

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

Publication of final report of Commission

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

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

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

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

(c) The joint committee may at any time review any regulation made under section 41 and request the President to amend certain regulations or to make further regulations in terms of that section.

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

(a) it deems it necessary;

(b) it deems it in the public interest;

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

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

Chief executive officer, secretaries, expenditure and estimates of Commission

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

(2) The chief executive officer-

(a) shall for the purposes of section 15 of the Exchequer Act, 1975 (Act No. 66 of 1975), be the accounting officer in respect of all State moneys received in respect of and paid out of the account of the Commission referred to in subsection (4), and shall keep proper accounting records of all financial transactions of the Commission;

(b) shall carry out such duties and perform such functions as the Commission may from time to time impose upon or assign to him or her in order to achieve the objectives of the Commission.

(3) The expenses in connection with the exercise of the powers, the performance of the functions and the carrying out of the duties of the Commission shall be defrayed out of money appropriated by Parliament for that purpose.

(4) The Commission shall, in consultation with the Minister of Finance, open an account with a banking institution, into which shall be deposited all moneys appropriated as mentioned in subsection (3) and from which all money required to pay for the expenses so mentioned shall be paid.

(5) (a) The Commission shall within three months from the date referred to in section 8(3), for the first financial year, in a format determined by the Audit Commission established by section 2 of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), prepare the necessary estimate of revenue and expenditure of the Commission, which shall, after consultation with the said Audit Commission, be tabled in Parliament for its consideration in terms of subsection (3): Provided that the initial estimate of revenue and expenditure of the Commission shall, in order to establish the bodies contemplated in this Act and to enable the Commission to begin exercising its powers and performing its functions in terms of this Act, be prepared by the Minister and tabled in Parliament for its consideration in terms of subsection (3).

(b) After the first financial year referred to in paragraph (a), the Commission shall in the same manner as provided for in paragraph (a) for each ensuing financial year, if necessary, prepare an estimate of revenue and expenditure of the Commission.

(6) As from the date on which the Commission is dissolved in terms of section 44(3) and after all the expenses referred to in subsection (3) have been paid, the account opened in terms of subsection (4) shall be closed and the balance of the moneys deposited into that account, if any, shall be transferred to the fiscus.

Consequences of dissolution

48. (1) As from the date on which the Commission is dissolved in terms of

section 44(3), all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund-raising Act, 1978 (Act No. 107 of 1978), and shall vest in the Disaster Relief Fund.

(2) After the date referred to in subsection (1), all the funds and property which would have accrued to the President's Fund, if the Commission had not been dissolved, shall vest in the Disaster Relief Fund.

(3) Any funds or property which, by trust, donation or bequest were vested in, or would have accrued to, the President's Fund, and which vest in the Disaster Relief Fund in terms of subsection (1), shall be dealt with by the board of the Disaster Relief Fund in accordance with the conditions of such trust, donation or bequest. (4) As from the date referred to in subsection (1) the liabilities incurred by the Commission or the President's Fund in terms of this Act, shall pass to the Disaster Relief Fund: Provided that such a liability shall be defrayed only from funds or property which vest in the Disaster Relief Fund in terms of this section.

(5) No transfer duty, stamp duty or registration fees shall be payable in respect of the acquisition of any funds or property in terms of this section.

Acts repealed

49. (1) The Indemnity Act, 1990 (Act No. 35 of 1990), the Indemnity Amendment Act, 1992 (Act No. 124 of 1992), and the Further Indemnity Act, 1992 (Act No. 151 of 1992), are hereby repealed.

(2) Any indemnity granted under the provisions of the Indemnity Act, 1990, the Indemnity Amendment Act, 1992, or the Further Indemnity Act, 1992, shall remain in force notwithstanding the repeal of those Acts.

(3) Any temporary immunity or indemnity granted under an Act repealed in terms of subsection (1) shall remain in force for a period of 12 months after the constitution of the Commission notwithstanding the repeal of that Act.

Short title and commencement

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

MEMORANDUM ON THE OBJECTS OF THE NATIONAL UNITY AND RECONCILIATION BILL,
1995

The provisions of the Constitution of the Republic of South Africa, 1993

(Act No. 200 of 1993), set out under the heading "National Unity and Reconciliation", hereinafter referred to as the "Unity and Reconciliation Clause", provide that in order to advance national unity and the reconstruction of the society "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". Parliament is to that end enjoined to adopt "a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993, and providing for mechanisms, criteria and procedures, including tribunals, if necessary, through which such amnesty shall be dealt with at any time after such law has been passed". In terms of section 232(4) of the Constitution the provisions of the "Unity and Reconciliation Clause" have the same legal status as that of any other provision of the Constitution. According to the said clause the divisions and strife of the past have generated the commission of gross violations of human rights, and the legal institution of amnesty is in terms of the said clause to be invoked as a method of reuniting the South African people who were deeply divided as a result of the commission of such violations. As will appear from the provisions of the laws of twenty or more countries the legal institution of amnesty has in recent years been invoked by the countries concerned for differing reasons. The objective of this Bill is the promotion of national unity and reconciliation and the granting of amnesty to be provided for in terms of this Bill, is directed at the achievement of this objective. The granting of amnesty per se cannot, however, have a reconciliatory effect and could in fact lead to a perpetuation of existing divisions, unless it is granted with due regard to certain requirements and principles.

International experience has shown that in order to achieve a lasting unity and a morally acceptable reconciliation it is necessary that the following requirements be complied with: First, that the truth about gross violations of human rights (hereinafter referred to as "gross violations") be established by official investigations which are conducted with due observance of fair procedures, secondly, that the truth about gross violations be fully and unreservedly acknowledged by those responsible for the commission thereof and, thirdly, that the truth about such violations, and the identity of the planners or perpetrators and the victims of such violations be made publicly known. International human rights norms accordingly today demand of any newly established Government to deal with gross violations of the past by adopting measures that will ensure that the requirements of investigation, acknowledgement (of guilt or participation) and publication is fully complied with. (See "State Crimes: Punishment or Pardon, Papers and Report of the Conference, November 4-6, 1988", p. 30 et seq.). The Bill provides for the establishment of bodies and the introduction of procedures aimed at a full and complete compliance with the said requirements.

Clause 2 of the Bill provides for the establishment of a commission to be known as the Truth and Reconciliation Commission. In clause 3 the objectives of the Commission are stated in that section to be as follows:

To promote national unity and reconciliation in a spirit of understanding which transcends the divisions of the past by-

(a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date;

(b) the granting of amnesty to persons who make a full disclosure of facts associated with a political objective and who comply with the other requirements of this Act;

establishing and making known the fate or whereabouts of the victims of gross violations and by restoring the human and civil dignity of such victims, by granting them an opportunity to relate the violations of which they are the victims and by recommending reparation measures in respect of them and

(d) by compiling a report providing as comprehensive a report as possible of the activities of the Commission to the said matters, and which contains recommendations of measures aimed at the prevention of the future commission of human rights violations.

In order to achieve the said objectives various powers, functions and duties are conferred upon, assigned to or imposed upon the Commission (clauses 4, 5, 6 and 7 of the bill).

The Commission will consist of between 11 and 17 members, as may be determined by the President of the Republic in consultation with the Cabinet, and such members will be required to be impartial and respected South African citizens. Persons who have a high political profile will, however, be disqualified from being members of the Commission. By this requirement an attempt is being made to ensure that persons who are appointed as members of the Commission will be persons who from a position of political neutrality will be well placed to take objective decisions with regard to acts claimed to have been inspired by political objectives or motives.

The Commission will be assisted in the performance of its functions by three Committees, to each of which will be allotted a specified portion of the field of activities of the Commission, referred to above. The committees are the working arms of the Commission. The Commission will also be granted the power to establish subcommittees which will be entitled and obliged to exercise, perform or carry out such of the Commission's powers, functions and duties as are assigned to them. Provision is also made for an investigation unit to assist the committees. The Commission will in this way be enabled to carry on its activities in different localities simultaneously and it is expected that the Commission will thereby be enabled to complete its task expeditiously and within the time-limit envisaged by clause 44 of the Bill.

Clause 13 of the Bill establishes a committee to be known as the Committee on Human Rights Violations. This Committee will be charged with the duty of establishing the identity of the victims of gross violations and of recording all allegations of gross violations committed in or outside the Republic during the period from 1 March 1960 to the cut-off date, and made by "victims" (as defined in the Bill) or by other persons professing to have personal knowledge or reliable information of such violations. The Committee will be charged and authorised to perform in relation to gross violations such functions and powers as will enable it to carry out its duties. The Committee will be obliged to submit to the Commission, at the conclusion of the Committee's investigations, a report containing particulars of all gross violations investigated by it, the names and other particulars establishing the identity of the victims of such violations, as well as their fate or their present whereabouts. This report will, eventually, in terms of clause 45 of the Bill, as part of the report of the President, be brought to the notice and knowledge of the entire South African nation.

Chapter 4 of the Bill sets out the "amnesty mechanisms and procedures". The provisions of this Chapter constitute an attempt to comply with the requirements of the Unity and Reconciliation clause, which, as will have been observed from its provisions quoted above, envisages and compels the granting of amnesty "through mechanisms, criteria and procedures". A committee to be known as the "Committee on Amnesty" is established by clause 17 of the Bill. The chairperson of the Committee shall be a Judge or a former Judge of the Supreme Court of South Africa (clause 18(3)). In terms of clause 19 of the Bill provision is being made for the submission of an application for the granting of amnesty in respect of any act, omission or offence on the ground that it is an "act associated with a political objective", as defined in clause 1 of the Bill. In terms of the said clause any such application will be required to be submitted within a period of twelve months from the date on which the appointment of the commissioners is made known by the President by proclamation in the Gazette. It is considered necessary that the entire process of making application for and of granting amnesty should be completed as soon as possible so as to finally close this chapter of South Africa's history.

In terms of clause 21 the Committee shall grant amnesty to an applicant if it is satisfied that the act to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past, as defined in the Bill, and that the applicant has made a full disclosure of all the relevant facts. The hearing of applications for amnesty will in terms of clause 20 of the Bill be conducted along formal lines. The applicant is to be informed of the place where and the time when his or her application is to be heard and of his or her right to be present and to be represented thereat. In terms of clause 20(5) it is proposed to confer upon the Committee, for the purpose of considering and deciding upon applications, the same powers as those conferred upon the Commission by clause 6 and Chapters 6 and 7, i.e. the

power to carry out investigations, to convene meetings at any place within or outside the Republic for the purpose of hearing evidence with regard to applications, to carry out local inspections ("inspections in loco"), within or outside the Republic, to subpoena persons, i.e. private individuals as well as persons in the employment of the State, the Auditor-General or any Attorney-General, to give evidence before the Committee or to produce to it any book, document, file, writing, etc., and to cause to be seized any book, etc. relating to the subject-matter of the application. The act, omission or offence in respect of which amnesty may be granted is required to have been performed during the period from 1 March 1960 to the cut-off date. No act, omission or offence performed or committed after the cut-off date (or prior to 1 March 1960) can in terms of the Bill, as envisaged and required by the Constitution, therefore be the subject of an application for amnesty. The provisions of the Constitution in this regard are clear and are of a peremptory nature and cannot, therefore, be deviated from. The said provisions, which entrust the power to grant amnesty to a decision-making body, properly constituted, acting without any bias and independently from any party or government (see the provisions of clause 37(1)) and which is to decide with due observance of specified principles (clause 21(3)), should be seen as an attempt to satisfy the mandatory legal principles applying in the case a constitutional state ("regstaat") such as the Republic. The arbitrary granting of amnesty to persons, generally, or to categories of persons ("amnesty per category"), and without the proper consideration of all the relevant facts of each case, would be in direct conflict with the said principles: See: "Anmerkungen zum Begnadigungsrecht, MDR2/1991 p. 102: "The

former view that a person gifted with a charismatic personality (God-given qualities) may in his discretion extend an act of mercy (such as amnesty) is in conflict with the Constitution . . . which provides for the separation of powers". As far as the Republic of South Africa is concerned, see the relevant provisions of the Constitution, and compare "constitutional principle VI", contained in Schedule 4 to the Constitution.

Clause 21 requires, as already mentioned, a full disclosure by the applicant of all the relevant facts of the act in question. Such a disclosure is not only required in terms of the relevant provisions of the International Law, but is a necessity brought about by the relevant provisions of the Constitution itself which demand an enquiry into a subjective or personal element viz. the state of mind of the person who performed or committed the act in question. Such person's state of mind can be explained and told only by the person himself. The Committee on Amnesty will be able to pass a judgment on the existence, at the critical stage when the act was committed, of political objectives only if the person concerned makes a full disclosure of all the facts surrounding the commission of the act. Clause 21 consequently makes a full disclosure of such facts by such person a condition precedent to the granting of amnesty. Subclause (7)(a) of clause 21 states the legal effect of the granting of amnesty as follows:

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

Chapter 5 of the Bill deals with the granting of reparation in respect of the harm suffered by, the rehabilitation of, and the restoration of the human and civil dignity of the victims of gross violations. Clause 24 to that end establishes a committee to be known as the Committee on Reparation and Rehabilitation. The members of the Committee are to be appointed by the Commission. A member of the Commission is required to be the Chairperson of the Committee. The Committee is required to receive, consider and make recommendations with regard to applications for reparation submitted to it by victims (as defined in the Bill). The Committee will 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, i.e. the power to carry out investigations, to appoint researchers and experts to assist it, to hold meetings at any place within or outside the Republic, to carry out local inspections, etc. In terms of clause 12 of the Bill the Committee will be obliged to observe certain principles designed, inter alia, to protect the dignity and personal values, beliefs and convictions of the victims, and the Committee will furthermore be obliged to apply procedures which are fair, inexpensive and accessible. Clause 27 extends the right to any person who as the result of the commission of any gross violation of human rights, or of an act associated with a political objective has suffered loss, to submit to the Committee an application for the granting of reparation, and the Committee will be empowered, if it is of the opinion that the applicant has indeed suffered any such loss, to make a recommendation to the Commission for the taking of such steps as are necessary to grant restitution or make reparation to the applicant. Clause 28(1) provides that the President shall consider the recommendations of the Commission with respect to reparation and rehabilitation with a view to prescribing recommendations to Parliament and the making of regulations.

The International Law relating to the payment of compensation in respect of losses suffered as a result of the commission of gross violations is in a state of development and uncertainty and it was therefore considered advisable to enable a joint Committee of Parliament to consider the matter. Clause 43 makes provision for the establishment of a Fund to be known as the President's Fund, which will largely be funded by means of appropriations by Parliament for the said purpose, and out of which funds necessary for the implementation of such recommendations will be made available. Private contributions to this Fund may also be accepted.

Chapter 6 of the Bill contains provisions relating to general and diverse matters such as the appointment of a chief executive officer and other staff of the Commission and the committees. In terms of section 47(4) the Commission will be required to open an account with a banking institution, in consultation with the Minister of Finance. Clause 36 makes provision for

the protection of persons who gave evidence before the Commission, any subcommittee or committee. In terms of that clause the Commission is to decide to what extent, if at all, the identity of such persons may be disclosed in any report of the Commission, any subcommittee or committee. Provision is made for the preservation of secrecy, and the compellability of persons to give evidence before the Commission, a subcommittee or a committee.

Clause 40 prohibits, on pains of substantial penalties, the performance of any act which may prejudicially affect the proper functioning of the Commission, any subcommittee or committee.

In clause 45 the President is charged with the duty of bringing the final report of the Commission, which is required to contain certain details of all gross violations during the period in question committed in the Republic or elsewhere, and of the victims and perpetrators of such violations, to the knowledge of the South African Nation. In this way it is intended to satisfy a principle which has been internationally recognised and accepted, viz. that the truth about such violations, victims and perpetrators be publicly revealed (see "State Crimes," op. cit., p 5, and compare "Normative Frame Work for a Policy on Past Human Rights Violations", p 31).

The intended effect of the Bill could be described as an attempt to make a contribution towards the recognition of human rights and the establishment and development of a human rights culture which may be the best possible safeguard against the future commission of gross violations of human rights. To this end the Portfolio Committee on Justice has afforded a broad spectrum of individuals, experts, organisations, bodies institutions, and government institutions the opportunity to make written submissions or bring oral evidence for the improvement of the Bill. All submissions received were, and all the evidence heard was, taken into account in the deliberations of the Committee.