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TERMS OF REFERENCE FOR TRUTH AND RECONCILIATION COMMISSION

*Quote from Bonet*

1. OBJECTIVES OF THE COMMISSION

1.1. To establish, in accordance with the principles of international law, *and the Constitution*, as complete a picture as possible of the most serious human rights violations committed primarily *during the period of the struggle against apartheid* in defence of apartheid as well as their antecedents and circumstances in order to achieve true national reconciliation;

*In furtherance of these objectives the Commission shall*

1.2. To gather evidence that will help to make it possible to identify the victims by name and to determine their fate or whereabouts;

1.3. To recommend such measures of compensation which will lead to the restoration of the human and civil dignity of the victims of human rights violations;

1.4. To receive and process applications for amnesty and indemnity in terms of disclosure;

1.5. To recommend the legal and administrative measures which should be adopted in order to prevent further grave human rights violations being committed.

2. CONSTITUTION OF THE COMMISSION

2.1. Commission should consist of between 8 - 10 persons who should be appointed by the state *by* on the recommendation of a Joint-Parliamentary committee. The committee should

consist of all parties represented in Parliament and who <sup>sh</sup>with <sup>of</sup>to save on it. The joint Parliamentary committee should work closely with the office of the speaker and President of the Senate.

- 2.2. The Commissioners should be people of integrity and with no visible political affiliations to any of the political parties. The President of the commissioner - should preferably be a lawyer while the other Commissioners should be drawn from the broader spectrum of civil society. At the same time the composition must reflect the demographic characteristics of South Africa.
- 2.3. The Commission should be appointed for an initial period of twelve months. Thereafter, in consultation with the Minister of Justice, the Commission term may be extended.
- 2.4. The Commission's hearings should be held in public unless in the interests of justice, the Commission is of the view that the proceedings be conducted in camera.
- 2.5. Each of the Commissioners should be appointed in his/her individual capacity and would be required to carry out his/her functions impartially and independently and without fear, favour or prejudice.
- 2.6. No Commissioner shall divulge or use for personal gain any information to any third party except in the course and

scope of his/her official functions and with prior permission of the Commission.

2.7. The commission should operate independently and without interference from the Government, political party or other body. To the extent that any of the personell in these bodies may be involved in the activities of the Commission, they will remain solely accountable to the Commission.

2.8. The Commission should be dissolved upon completion of its mandate by the President by Proclamation published in the Gazette.

2.9. The President of the Commission would be responsible for the administration of the Commission, and should decide on the scheme of its activities including appointment of staff. In addition, he would decide on the working procedures or other rules and matters of organisational nature that are essential to the work of the commission.

### 3. JURISDICTION OF THE COMMISSION

#### 3.1. Powers duties and functions of the Commission

3.1.1. The main function of the commission shall be to clarify in a comprehensive manner the truth about the most serious human rights violations committed between 1 April 1960 - 1 December 1993 in the Republic of South Africa, in order to bring about national reconciliation.

3.1.2. Serious violations shall be understood to mean situations of those persons who were murdered, who disappeared after arrest, who were executed, or who were tortured to death in which the moral responsibility of the state was compromised as a result of actions by its agents or persons in its service, as well as kidnappings and attempts on the life of persons committed by private persons, for political organisations.

3.1.3. The Commission should have the following powers:

- (a) assume responsibility for the administration and organisation and conduct of investigations into and documentation of past human rights abuses;
- (b) carry out as much investigations as it may determine suitable for accomplishing its task including requesting reports, documents, or evidence from governmental authorities and agencies;
- (c) receive the evidence provided by the alleged victims, their representatives, successors, or relatives within the time period and in the manner that the Commission itself may determine;
- (d) gather and weigh the information that human rights organisations, inter-governmental and non-governmental organisations may provide on their own initiative or upon request about matters within their own competencies;

- (e) receive and consider applications for indemnity and make recommendations to the appropriate authority;
- (f) prepare a report on the basis of the evidence at its disposal in has to express the conclusions of the Commission with regard to all the matters set out in the Objectives of the Commission.

3.1.4. The Commission should have the a right of access to all official documentation and data bases and no public official should have the right or privilege to refuse to answer the questions of the Commission or decline to give it assistance either during inspection or investigation. Failure to comply, or obstruction of the Commission's work should be made an offence under the legislation.

3.1.5. The Commission should be given powers to search, seize, documentation and other items relevant to its functions. In addition, the Commission should have power to subpoena and issue warnings concerning allegations of interference with its functions.

#### 4. MEETINGS OF THE COMMISSION

4.1. The Commission shall meet at any place, intervals and time determined by the Preside for the purpose of performing its functions. Meetings may be convened at the instance of the President or any other two members. The Commission should

have the power to determine its own procedures to be followed at its meetings.

5. **STAFF**

5.1. There should be established an office of the Commission on truth and Reconciliation. This office should be assisted by a common staff consisting of legally and judicially trained assistants, and any other professionals who in the opinion of the commission may assist it in carrying out its mandate. They should be recruited on the basis of their ability and efficiency. These would be responsible for the collection of all the necessary information, conducting interviews, preparing drafts and other relevant reports for consideration by the commission. The Commission should also be allowed in consultation with the Minister responsible for State Expenditure to determine the conditions of service, remuneration, allowances, including other benefits.

5.2. The expenditure in connection with the powers and the performance of its duties and functions should be paid out of money appropriated by Parliament for such purpose. Thus, the Ministry of Justice will have to budget for the necessary resources to enable the Commission to carry out its functions. At one of its initial meetings the Commission will have to appoint a Chief Executive Officer who will be responsible for the financial management and administration of the Commission.

- 5.3. The division of work within the commission and how investigations have to be carried out should be in accordance with the procedures and rules set out in the legislation, and any other directives which may be issued by the President of the Commission.
- 5.4. Staff would therefore consist of the professional cadre as well as the administrative personnel whose activities would invariably be of an administrative nature. These would consist of registrars, typists, archivists, translators and other personnel who may be necessary to facilitate the smooth of operation of the office of the commission.
- 5.5. The appointment of staff and other personnel of the Office as a whole, including use of experts and advisers should be vested in the President of the Commission. In this regard however, although the Commission is expected to rely overwhelmingly on the efficiency and preparations made by their staff, decisions regarding investigations or finality thereof should remain the the exclusive reserve of the Commission. In this regard, the Commission should also have the power to request secondment of skilled staff from any public service, subject to any law applicable in that regard, to assist it in its functions.
- 5.6. A member of the Commission should only be removed from office by order of the Supreme Court on an application lodged by or on behalf of the State President or

Parliament. The Court should only give such an order if it is satisfied that a member is unfit to continue serving as a Commissioner due to:

- serious misconduct
- physical or mental incapacity
- any other misconduct which in view of the functions of the Commission makes him/her unsuitable to continue sitting as a member of the Commission.

## 6. COMMITTEES OF THE COMMISSION

6.1. The Commission should establish Committees of Experts to assist it in its duties and functions. It is suggested that three Committees be set up for this purpose, namely:

- Committee on Human Rights Violations,
- Committee on Amnesty and Indemnity,
- Committee on Compensation and Rehabilitation of Victims.

### 6.2. Committee on Human Rights Violations

6.2.1. The Commission should establish a Committee to be known as the Committee on Human Rights Violations. The Committee shall consist of experts in human rights, investigations, and fact-finding procedures. In addition, the Commission may also appoint other professionals who in its opinion may contribute to the efficient investigation of human rights abuses.



6.2.2. The powers, functions, and duties of the Committee shall be :

- to investigate and document allegations of human rights abuses for consideration by the Commission.
- to provide research support for members of the Commission.
- to supervise research assistants and other persons who may be employed by the Commission.
- to register all allegations of human rights violations both from the victims as well as relatives of the victims.
- to issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigations.
- to report to the Commission upon their findings as required by it.
- to carry out and have other powers and functions as may from time to time be prescribed by the Commission.

6.2.3. In order to enable the Commission to provide a context in which human rights violations took place, the staff will have to provide concise accounts of these cases and present them in draft form to the Commission.

6.2.4. The Commission should establish schedules and lay down procedures whereby each of the professionals ( preferably lawyers ) would prepare information on the cases he/she may be assigned to investigate under the supervision of the members of the Commission. It must be noted however, that the professional staff would only focus on drawing the report in accordance with the Commission's guidelines. The report would consist of an account of all the evidence he/she will have gathered in each case and suggestions as to the appropriate recommendations to be adopted by the Commission. Only the material contained in the report would constitute the Commission's opinions and consensus. The rest of the report should only serve as the basis of its work.

6.2.5. If at the end of the considerations of the reports the members of the Commission cannot come to any unanimous decision, dissenting views ( unless they relate to fundamental issues of principle ) should be reflected only in the minutes and not be included in the report.

### 6.3. Committee on Indemnity and Amnesty

The Commission should establish a Committee to be known as a Committee on Indemnity and Amnesty. The function of the Committee should be to receive and register all applications for indemnity. In addition, they will be responsible for compiling the final report on indemnity.

by the perpetrators to the Commission.

The Committee should consist of not more than members selected on the basis of their expertise and concern for human rights. They should be persons of integrity and respected members of the civil society. One of the members should be an advocate, attorney, or an academic lawyer of at least seven years standing.

#### 6.4. Committee on Compensation and Rehabilitation of Victims

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

① - Quote from Coetzee

② The proposed legisl. is intended to respond to this constitutional requirement. The legisl. provides for the setting up of a balanced and independent T. Rec. Comm. with the purpose of:

a). Identifying gross violations of human rights committed in the apartheid period;

b). Providing for acknowledgement to the victims and appropriate forms of compensation or other recognition of the injury done.

c). Guaranteeing indemnity against ~~prosecution~~ criminal or civil liability in respect of all offences of a political character disclosed