

## VI. SUDÁFRICA: VIOLENCIA, RACISMO Y TRANSICIÓN

### VI.1. Constitution of the Republic of South Africa of 1993. Constitution of the Republic of South Africa, 1996

#### a) Constitution of the Republic of South Africa Act 200 of 1993

##### *Memorandum of Agreement: 19 April 1994*

PRETORIA 19 APRIL 1994

JOINT STATEMENT BY THE STATE PRESIDENT, MR. F. W. DE KLERK, LEADER OF THE NATIONAL PARTY, MR N. R. MANDELA, PRESIDENT OF THE AFRICAN NATIONAL CONGRESS AND CHIEF MINISTER M. G. BUTHELEZI, PRESIDENT OF THE INKATHA FREEDOM PARTY

Delegations led by the State President, Mr F W de Klerk, Leader of the National Party, Mr N R Mandela, President of the African National Congress and Chief Minister M G Buthelezi, President of the Inkatha Freedom Party, met this morning at the Union Buildings and reached agreement on the attached Memorandum of Agreement.

The Agreement follows intensive discussions between the parties yesterday and during the preceding days. The parties would, in particular, like to extend their warm thanks to Prof W A J Okumu of Kenya who played an important and helpful role in this process.

The parties expressed their satisfaction that the Agreement will substantially contribute to their common goal of creating circumstances which will be conducive to the holding of a free, fair and peaceful election. It will help to ensure much greater inclusivity in the election process and will significantly address the underlying causes of tension and violence, particularly in KwaZulu/Natal and the East Rand.

The repeated the urgent appeal to their followers and to all South Africans which they made after the Skukuza summit on 8 April to end violence, to exercise maximum restraint and to pursue their objectives by peaceful means.

MEMORANDUM OF AGREEMENT FOR RECONCILIATION AND PEACE BETWEEN THE INKATHA FREEDOM PARTY/KWAZULU GOVERNMENT AND THE AFRICAN NATIONAL CONGRESS AND THE SOUTH AFRICAN GOVERNMENT/NATIONAL PARTY.

We, the undersigned, pledge ourselves to Peace and Reconciliation in South Africa and agree to commit ourselves to the following:

1. The Inkatha Freedom Party agrees to participate in the April 26-28, 1994 elections for both the National Assembly and Provincial Legislatures.

2. All the undersigned parties reject violence and will therefore do everything in their power to ensure free and fair elections throughout the Republic of South Africa.

3. The undersigned parties agree to recognise and protect the institution, status and role of the constitutional position of the King of the Zulus and the Kingdom of KwaZulu, which institutions shall be provided for in the Provincial Constitution of KwaZulu/Natal immediately after the holding of the said elections. The 1993 Constitution shall for this purpose be amended before 27 April in accordance with Addendum

4. Any outstanding issues in respect of the King of the Zulus and the 1993 Constitution as amended will be addressed by way of international mediation which will commence as soon as possible after the said elections.

5. The South African Government undertakes to place the necessary facilities at the disposal of the Independent Electoral Commission (IEC) as it may require in order to facilitate the full participation of the IFP in the April 26-28, 1994 election.

6. The undersigned parties will facilitate proper provision for:

- i) Registration of the IFP
- ii) The IFP Candidates list
- iii) Marking by voters of ballot papers.

The undersigned parties hereby undertake to abide by the technical arrangements to be made by the Independent Electoral Commission to implement the matters referred to in subparagraphs (i), (ii) and (iii) above in accordance with the details set out in Addendum B.

This agreement shall be implemented with immediate effect.

SIGNED BY:

MANGOSUTHO G. BUTHELEZI, President: Inkatha Freedom Party and Chief Minister of the KwaZulu Government  
STATE PRESIDENT F. W. DE KLERK, South African Government/National Party

PRESIDENT N. MANDELA, African National Congress

WITNESSED BY: PROF. W. A. J. OKUMU

19 April 1994

#### ADDENDUM A

Amendment of section 160 of Act 200 of 1993.

1. Section 160 of the Constitution is hereby amended by the substitution for the proviso to subsection (3) of the following proviso:

«Provided that a provincial constitution may - (a) provide for legislative and executive structures and procedures different from those provided for in this Constitution in respect of a province; and, (b) where applicable, provide for the institution, role, authority and status of a traditional monarch in the province, and shall make such provision for the Zulu Monarch in the case of the province of KwaZulu/Natal».

Amendment of Schedule 4 to Act 200 of 1993

2. Schedule 4 to the Constitution is hereby amended by the addition of the following paragraph to constitutional principle XIII:

«Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution».

#### b) Constitution of the Republic of South Africa, 1996, was approved by the Constitutional Court (CC) on 4 December 1996 and took effect on 4 February 1997<sup>40</sup>

**Preamble**<sup>41</sup>

We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;

<sup>40</sup> Última modificación: 29 March 2006

<sup>41</sup> Última modificación: 15 October 2004

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- Improve the quality of life of all citizens and free the potential of each person; and
- Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seën Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.

## Chapter 2 - Bill of Rights<sup>42</sup>

### 7. Rights

1. This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
2. The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
3. The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

### 8. Application

1. The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
2. A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
3. When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court
  1.
    - a. in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
    - b. may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36(1).
  2. A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

### 9. Equality

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of

equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

### 10. Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

### 11. Life

Everyone has the right to life.

### 12. Freedom and security of the person

1. Everyone has the right to freedom and security of the person, which includes the right
  - a. not to be deprived of freedom arbitrarily or without just cause;
  - b. not to be detained without trial;
  - c. to be free from all forms of violence from either public or private sources;
  - d. not to be tortured in any way; and
  - e. not to be treated or punished in a cruel, inhuman or degrading way.
2. Everyone has the right to bodily and psychological integrity, which includes the right
  - a. to make decisions concerning reproduction;
  - b. to security in and control over their body; and
  - c. not to be subjected to medical or scientific experiments without their informed consent.

### 13. Slavery, servitude and forced labour

No one may be subjected to slavery, servitude or forced labour.

### 14. Privacy

Everyone has the right to privacy, which includes the right not to have

- a. their person or home searched;
- b. their property searched;
- c. their possessions seized; or
- d. the privacy of their communications infringed.

### 15. Freedom of religion, belief and opinion

1. Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
2. Religious observances may be conducted at state or state-aided institutions, provided that
  - a. those observances follow rules made by the appropriate public authorities;
  - b. they are conducted on an equitable basis; and
  - c. attendance at them is free and voluntary.
3.
  - a. This section does not prevent legislation recognising
    - i. marriages concluded under any tradition, or a system of religious, personal or family law; or

<sup>42</sup> Última modificación: 15 October 2004

- ii. systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- b. Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

#### **16. Freedom of expression**

1. Everyone has the right to freedom of expression, which includes
  - a. freedom of the press and other media;
  - b. freedom to receive or impart information or ideas;
  - c. freedom of artistic creativity; and
  - d. academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to
  - a. propaganda for war;
  - b. incitement of imminent violence; or
  - c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

#### **17. Assembly, demonstration, picket and petition**

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

#### **18. Freedom of association**

Everyone has the right to freedom of association.

#### **19. Political rights**

1. Every citizen is free to make political choices, which includes the right
  - a. to form a political party;
  - b. to participate in the activities of, or recruit members for, a political party; and
  - c. to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right
  - a. to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
  - b. to stand for public office and, if elected, to hold office.

#### **20. Citizenship**

No citizen may be deprived of citizenship.

#### **21. Freedom of movement and residence**

1. Everyone has the right to freedom of movement.
2. Everyone has the right to leave the Republic.
3. Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
4. Every citizen has the right to a passport.

#### **22. Freedom of trade, occupation and profession**

Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

#### **23. Labour relations**

1. Everyone has the right to fair labour practices.
2. Every worker has the right
  - a. to form and join a trade union;
  - b. to participate in the activities and programmes of a trade union; and
  - c. to strike.
3. Every employer has the right

- a. to form and join an employers' organisation; and
- b. to participate in the activities and programmes of an employers' organisation.
4. Every trade union and every employers' organisation has the right
  - a. to determine its own administration, programmes and activities;
  - b. to organise; and
  - c. to form and join a federation.
5. Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
6. National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

#### **24. Environment**

Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - i. prevent pollution and ecological degradation;
  - ii. promote conservation; and
  - iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

#### **25. Property**

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application
  - a. for a public purpose or in the public interest; and
  - b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including
  - a. the current use of the property;
  - b. the history of the acquisition and use of the property;
  - c. the market value of the property;
  - d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
  - e. the purpose of the expropriation.
4. For the purposes of this section
  - a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
  - b. property is not limited to land.
5. The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
6. A person or community whose tenure of land is legal-

ly insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
8. No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
9. Parliament must enact the legislation referred to in subsection (6).

## 26. Housing

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

## 27. Health care, food, water and social security

1. Everyone has the right to have access to
  - a. health care services, including reproductive health care;
  - b. sufficient food and water; and
  - c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

## 28. Children

1. Every child has the right
  - a. to a name and a nationality from birth;
  - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
  - c. to basic nutrition, shelter, basic health care services and social services;
  - d. to be protected from maltreatment, neglect, abuse or degradation;
  - e. to be protected from exploitative labour practices;
  - f. not to be required or permitted to perform work or provide services that
    - i. are inappropriate for a person of that child's age; or
    - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
  - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
    - i. kept separately from detained persons over the age of 18 years; and
    - ii. treated in a manner, and kept in conditions, that take account of the child's age;

h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

- i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
2. A child's best interests are of paramount importance in every matter concerning the child.
3. In this section «child» means a person under the age of 18 years.

## 29. Education

1. Everyone has the right
  - a. to a basic education, including adult basic education; and
  - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
  - a. equity;
  - b. practicability; and
  - c. the need to redress the results of past racially discriminatory laws and practices.
3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
  - a. do not discriminate on the basis of race;
  - b. are registered with the state; and
  - c. maintain standards that are not inferior to standards at comparable public educational institutions.
4. Subsection (3) does not preclude state subsidies for independent educational institutions.

## 30. Language and culture

Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

## 31. Cultural, religious and linguistic communities

1. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community
  - a. to enjoy their culture, practise their religion and use their language; and
  - b. to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
2. The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

## 32. Access to information

1. Everyone has the right of access to
  - a. any information held by the state; and
  - b. any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

**33. Just administrative action**

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must
  - a. provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
  - b. impose a duty on the state to give effect to the rights in subsections (1) and (2); and
  - c. promote an efficient administration.

**34. Access to courts**

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

**35. Arrested, detained and accused persons**

1. Everyone who is arrested for allegedly committing an offence has the right
  - a. to remain silent;
  - b. to be informed promptly
    - i. of the right to remain silent; and
    - ii. of the consequences of not remaining silent;
  - c. not to be compelled to make any confession or admission that could be used in evidence against that person;
  - d. to be brought before a court as soon as reasonably possible, but not later than
    - i. 48 hours after the arrest; or
    - ii. the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
  - e. at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
  - f. to be released from detention if the interests of justice permit, subject to reasonable conditions.
2. Everyone who is detained, including every sentenced prisoner, has the right
  - a. to be informed promptly of the reason for being detained;
  - b. to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
  - c. to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - d. to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - e. to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
  - f. to communicate with, and be visited by, that person's
    - i. spouse or partner;
    - ii. next of kin;
    - iii. chosen religious counsellor; and
    - iv. chosen medical practitioner.
3. Every accused person has a right to a fair trial, which includes the right

- a. to be informed of the charge with sufficient detail to answer it;
  - b. to have adequate time and facilities to prepare a defence;
  - c. to a public trial before an ordinary court;
  - d. to have their trial begin and conclude without unreasonable delay;
  - e. to be present when being tried;
  - f. to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
  - g. to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - h. to be presumed innocent, to remain silent, and not to testify during the proceedings;
  - i. to adduce and challenge evidence;
  - j. not to be compelled to give self-incriminating evidence;
  - k. to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - l. not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - m. not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - n. to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - o. of appeal to, or review by, a higher court.
4. Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
  5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

**36. Limitation of rights**

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
  - a. the nature of the right;
  - b. the importance of the purpose of the limitation;
  - c. the nature and extent of the limitation;
  - d. the relation between the limitation and its purpose; and
  - e. less restrictive means to achieve the purpose.
2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

**37. States of emergency**

1. A state of emergency may be declared only in terms of an Act of Parliament, and only when
  - a. the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
  - b. the declaration is necessary to restore peace and order.
2. A declaration of a state of emergency, and any legis-

- lation enacted or other action taken in consequence of that declaration, may be effective only
- a. prospectively; and
  - b. for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.
3. Any competent court may decide on the validity of
    - a. a declaration of a state of emergency;
    - b. any extension of a declaration of a state of emergency; or
    - c. any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
  4. Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that
    - a. the derogation is strictly required by the emergency; and
    - b. the legislation
      - i. is consistent with the Republic's obligations under international law applicable to states of emergency;
      - ii. conforms to subsection (5); and
      - iii. is published in the national Government Gazette as soon as reasonably possible after being enacted.
  5. No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise
    - a. indemnifying the state, or any person, in respect of any unlawful act;
    - b. any derogation from this section; or
    - c. any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

**Table of Non-Derogable Rights**

Section Number	2 Section Title	3 Extent to which the right is protected
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to: - subsection (1)(d) and (e); - the rights in subparagraphs (i) and (ii) of subsection (1)(g); and - subsection 1(i) in respect of children of 15 years and younger
35	Arrested, detained and accused persons	With respect to: - subsections (1)(a), (b) and (c) and (2)(d); - the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) - subsection (4); and - subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

6. Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:
  - a. An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
  - b. A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
  - c. The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
  - d. The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
  - e. A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
  - f. A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
  - g. The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
  - h. The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
7. If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.
8. Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

**38. Enforcement of rights**

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are -

- a. anyone acting in their own interest;
- b. anyone acting on behalf of another person who cannot act in their own name;
- c. anyone acting as a member of, or in the interest of, a group or class of persons;
- d. anyone acting in the public interest; and
- e. an association acting in the interest of its members.

**39. Interpretation of Bill of Rights**

1. When interpreting the Bill of Rights, a court, tribunal or forum

- a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
  - b. must consider international law; and
  - c. may consider foreign law.
2. When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
  3. The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

1. See Sch 6 item 23 (1).
2. Sub-s. (1) deemed to read as set out in item 23 (2) (a) of Sch 6 until the legislation envisaged in sub-s. (2) is enacted. See Sch 6 item 23 (1) for enactment provisions and item 23 (3) for lapsing provisions.
3. Sub-ss. (1) and (2) deemed to read as set out in item 23 (2) (b) of Sch 6 until the legislation envisaged in sub-s. (3) is enacted. See Sch 6 item 23 (1) for enactment provisions and item 23 (3) for lapsing provisions.

## VI.2. Legislación<sup>43</sup>

No. 205 of 1993: Regulation of Gatherings Act, 1993.  
*Government Gazette*. 28 January 1994 No. 132

**No. 22 of 1994: Restitution of Land Rights Act, 1994.**  
*Government Gazette* 25 November 1994 No. 2011

**No. 54 of 1994: Human Rights Commission Act, 1994.**  
*Government Gazette* 7 December 1994 No. 2095

**No. 34 of 1995: Promotion of National Unity and Reconciliation Act, 1995.**  
*Government Gazette* 26 July 1995 No. 1111

**No. 84 of 1995: Restitution of Land Rights Amendment Act, 1995**  
*Government Gazette* 6 October 1995 No. 1545.

**No. 87 of 1995: Promotion of National Unity and Reconciliation Amendment Act, 1995.**  
*Government Gazette* 16 October 1995 No. 1616.

No. 3 of 1996: Land Reform (Labour Tenants) Act, 1996.  
*Government Gazette* 22 March 1996 No. 486

**No. 27 of 1996: National Education Policy Act, 1996.**  
*Government Gazette* 24 April 1996 No. 697

No. 78 Of 1996: Land Restitution And Reform Laws Amendment Act, 1996.  
*Government Gazette* 20 November 1996 No. 1878

**No. 84 Of 1996: South African Schools Act, 1996.**  
*Government Gazette* 15 November 1996 No. 1867

No. 18 of 1997: Promotion of National Unity and Reconciliation Amendment Act, 1997  
*Government Gazette* 27 June 1997 No. 18105

No. 33 of 1997: Abolition of Corporal Punishment Act. 1997.  
*Government Gazette* 5 September 1997 No. 1164

No. 84 of 1997: Promotion of National Unity and Reconciliation Second Amendment Act, 1997.  
*Government Gazette* 10 December 1997 No. 1640

No. 19 of 1998: Prevention Of Illegal Eviction from Unlawful Occupation of Land Act, 1998  
*Government Gazette* 5 June 1998 No. 18964

**No. 55 of 1998: Employment Equity Act, 1998**  
*Government Gazette* 19 October 1998 No. 19370

No. 18 of 1999: Land Restitution and Reform Laws Amendment Act, 1999.  
*Government Gazette* 23 April 1999 No. 1998

No. 48 of 1999: Education Laws Amendment Act, 1999  
*Government Gazette* 24 November 1999 No. 22653

**No. 4 of 2000: Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.**  
*Government Gazette* 9 February 2000 No. 20876

No. 11 of 2000: Land Affairs General Amendment Act, 2000.  
*Government Gazette* 24 March 2000 No. 21028

No. 53 of 2000: Education Laws Amendment Act, 2000  
*Government Gazette* 22 November 2000 No. 21783

No. 51 of 2001: Land Affairs General Amendment Act, 2001  
*Government Gazette* 5 December 2001 No. 22894

No. 57 of 2001: Education Laws Amendment Act, 2001  
*Government Gazette* 5 December 2001 No. 22895

**No. 19 of 2002: Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002.**  
*Government Gazette* 30 July 2002 No. 23676

No. 50 of 2002: Education Laws Amendment Act, 2002.  
*Government Gazette* 28 November 2002 No. 24113

No. 23 of 2003: Promotion of National Unity and Reconciliation Amendment Act, 2003.  
*Government Gazette* 7 October 2003 No. 25544

No. 48 of 2003: Restitution of Land Rights Amendment Act, 2003.  
*Government Gazette* 4 February 2004 No. 25972

No. 1 of 2004: Education Laws Amendment Act, 2004.  
*Government Gazette* 26 April 2004 No. 26292

No. 11 of 2004: Communal Land Rights Act, 2004.  
*Government Gazette* 20 July 2004 No. 26590

No. 24 of 2005: Education Laws Amendment Act, 2005.  
*Government Gazette* 26 January 2006 No. 28426

### NO. 22 OF 1994: RESTITUTION OF LAND RIGHTS ACT, 1994.

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

<sup>43</sup> Las normas que aparecen en negrita se reproducen íntegramente.

## ACT

To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

WHEREAS the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

AND WHEREAS legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of persons disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

(Afrikaans text signed by the President.)

(Assented to 17 November 1994.)

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

## CHAPTER I

## Introductory Provisions

## Definitions

1. In this Act, unless the context indicates otherwise-
  - (i) «claim» means any application lodged with the Commission in terms of this Act; (iii)
  - (ii) «claimant» includes a community; (iv)
  - (iii) «Commission» means the Commission on Restitution of Land Rights established by section 4; (ix)
  - (iv) «community» means any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group; (v)
  - (v) «Court» means the Land Claims Court established by section 22; (vii)
  - (vi) «direct descendant» of a person includes the spouse or partner in a customary union of such person whether or not such customary union has been registered; (ii)
  - (vii) «Minister» means the Minister of Land Affairs or an officer in his or her department designated by him or her; (x)
  - (viii) «person» includes a community or part thereof; (xii)
  - (ix) «prescribed» means prescribed by or under this Act; (xiv)
  - (x) «public land» means all land owned by any organ of state as defined in section 233 of the Constitution, and includes land owned by a local authority, the Land Bank and any institution in which the State is the majority or controlling shareholder; (xi)
  - (xi) «right in land» means any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question; (xiii)
  - (xii) «Supreme Court» means the Supreme Court

- of South Africa referred to in section 101 of the Constitution; (viii)
- (xiii) «the rules» means the rules made under sections 16 and 32; (i)
- (xiv) «this Act» includes the rules and the regulations made under section 40. (vi)

*Enforcement of claim for restitution*

2. (1) A person shall be entitled to enforce restitution of a right in land if-
  - (a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and
  - (b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette.
- (2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.
- (3) The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.

*Claims against nominees*

3. Subject to the provisions of this Act a person shall be entitled to claim title in land if such claimant or his, her or its antecedent-
  - (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and
  - (b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his, her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

## CHAPTER II

## Commission on Restitution of Land Rights

*Establishment of Commission on Restitution of Land Rights*

4. (1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights.
- (2) The Commission shall have a head office and such other offices, with such areas of jurisdiction, as the Minister may determine.
- (3) The Commission shall consist of a Chief Land Claims Commissioner appointed by the Minister, after inviting nominations from the general public, a Deputy Land Claims Commissioner similarly appointed and as many regional land claims commissioners as may be appointed by
- (4) The Chief Land Claims Commissioner, the Deputy Land Claims Commissioner and a regional land claims commissioner, shall-
  - (a) be fit and proper persons to hold such offices;
  - (b) be South African citizens; and
  - (c) have skills and knowledge relevant to the work of the Commission or such legal knowledge or qualifications as the Minister may deem necessary.



- (5) The Minister may terminate any appointment made under subsection (3)-
  - (a) if he or she is satisfied that such appointed person no longer complies with the requirements of subsection (4); or
  - (b) if the appointed person requests the Minister in writing to terminate the appointment.

#### *Meetings of Commission*

5. (1) The Commission shall meet at least three times each year.
- (2) Meetings of the Commission shall be held at the time and place determined by the Chief Land Claims Commissioner.
- (3) The majority of the members of the Commission shall form a quorum for a meeting of the Commission.
- (4) The decision of the majority of the members of the Commission present at any meeting thereof shall be a decision of the Commission: Provided that, in the event of an equality of votes, the Chief Land Claims Commissioner shall have a casting vote in addition to his or her deliberative vote.

#### *General functions of Commission*

6. (1) The Commission shall, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner-
  - (a) subject to the provisions of section 2, receive and acknowledge receipt of all claims for the restitution of rights in land lodged with it in terms of this Act;
  - (b) take reasonable Steps to ensure that claimants are assisted in the preparation and submission of claims;
  - (c) advise claimants of the progress of their claims at regular intervals and upon reasonable request;
  - (d) subject to the provisions of section 14, report to the Court on the terms of settlement in respect of successfully mediated claims;
  - (e) define any issues which may still be in dispute between the claimants and other interested parties with a view to expediting the hearing of claims by the Court; at regular intervals, take appropriate steps to make public information regarding the persons entitled to claim restitution of rights in land in terms of section 121 of the Constitution, the limitations imposed by section 2, and the manner in which claims may be lodged with the Commission.
- (2) The Commission may, at a meeting or through the Chief Land Claims Commissioner, a regional land claims commissioner or a person designated by any such commissioner-
  - (a) monitor and make recommendations concerning the implementation of orders made by the Court under section 35;
  - (b) Minister regarding the most appropriate form of alternative relief, if any, for those claimants who do not qualify for the restitution of rights in land in terms of this Act;
  - (c) refer questions of law and interpretation to the Court;
  - (d) ensure that priority is given to claims which affect a substantial number of persons, or

persons who have suffered substantial losses as a result of dispossession or persons with particularly pressing needs;

- (e) generally, do anything necessarily connected with or reasonably incidental to the expeditious finalisation of claims. Delegation of powers and performance of functions
7. (1) The Commission may delegate any power conferred upon it by or under this Act to a subcommittee of the Commission or to a member of the Commission or to a person contemplated in section 8 or 9 subject to such directions or conditions as the Commission may give or determine from time to time: Provided that the powers referred to in section 6(2)(b), (c) and (d) may not be delegated.
    - (2) The Chief Land Claims Commissioner may delegate any power conferred upon him or her by or under this Act except the power of delegation to the Deputy Land Claims Commissioner or any regional land claims commissioner, either generally or with regard to a specific claim.
    - (3) If the Chief Land Claims Commissioner is absent or unable to perform any or all of his or her functions, the Deputy Land Claims Commissioner shall act in his or her stead and whilst the Deputy Land Claims Commissioner so acts, he or she shall perform all the functions of the Chief Land Claims Commissioner.
    - (4) A regional land claims commissioner may, instead of performing any function in any particular case, refer the matter to the Commission for the Commission to perform such function at a meeting contemplated in section 5.

#### *Performance of administrative work of Commission*

8. (1) The administrative work incidental to the performance of the functions of the Commission shall be performed by officers appointed in terms of the provisions of section 15(3)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and designated in general or for a specific purpose by the Minister after consultation with the Commission.
  - (2) In making a designation in terms of subsection (1), the Minister and the Commission shall seek to ensure that the staff of the Commission shall be broadly representative of the South African population.
  - (3) Designated officers shall perform their functions under the control and supervision of the Chief Land Claims Commissioner or regional land claims commissioner,, as the case may be.

#### *Appointment of persons to assist Commission on ad hoc basis*

9. (1) The Chief Land Claims Commissioner may from time to time-
  - (a) appoint one or more persons with particular knowledge or specific expertise relevant to the achievement of the Commission's objects to advise the Commission regarding any matter connected with the performance of its functions;
  - (b) appoint one or more persons with specific expertise in relation to dispute resolution to facilitate meetings of interested parties, mediate and settle disputes, and report to the Commission in writing on the outcome of such negotiations;

- (c) request any government department, provincial administration, local authority or person in the service of the State, a province or local authority who has particular knowledge or specific expertise to advise the Commission regarding any matter connected with the performance of its functions.
- (2) A person appointed in terms of subsection (1) who is not in the full-time service of the State may, from moneys appropriated by Parliament for this purpose, be paid such remuneration and allowances in respect of the services performed by him or her as may be determined by the Minister in consultation with the Minister of Finance.

*Lodgement of claims*

- 10. (1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question and the nature of the right being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16.
- (2) The Commission shall make claim forms available at all its offices.
- (3) If a claim is lodged on behalf of a community the basis on which it is contended that the person submitting the form represents such community, shall be declared in full and any appropriate resolution or document supporting such contention shall accompany the form at the time of lodgement: Provided that the regional land claims commissioner having jurisdiction in respect of the land in question may permit such resolution or document to be lodged at a later stage.

*Procedure after lodgement of claim*

- 11. (1) If the regional land claims commissioner having jurisdiction is satisfied that
  - (a) the claim has been lodged in the prescribed manner;
  - (b) the claim is not precluded by the provisions of section 2(1);
  - (c) the claim is not frivolous or vexatious; and
  - (d) no order has been made by the Court in terms of section 35 in respect of rights relating to that land, he or she shall cause notice of the claim to be published in the Gazette and shall take steps to make it known in the district in which the land in question is situated.
- (2) The regional land claims commissioner concerned may, on such conditions as he or she may determine, condone the fact that a claim has not been lodged in the prescribed manner.
- (3) A frivolous or vexatious claim may be dismissed by the regional land claims commissioner concerned.
- (4) If the regional land claims commissioner decides that the criteria set out in paragraphs (a), (b), (c) and (d) of subsection (1) have not been met, he or she shall advise the claimant accordingly, and of the reasons for such decision.
- (5) If an order has been made by the Court as contemplated in section 35 the claimant may, subject to the provisions of section 2(1), make application

- to the Court for permission to lodge a claim in respect of that land.
- (6) Immediately after publishing the notice referred to in subsection (1), the regional land claims commissioner shall-
  - (a) advise any other party which, in his or her opinion, might have an interest in the claim; and
  - (b) direct the relevant Registrar, as contemplated in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), for the area in which the land in question is situated to note in his or her records the fact that a claim for restitution of a right in the land has been instituted in terms of this Act.
- (7) Once a notice has been published in respect of any land and a temporary note has been made in the records as contemplated in subsection (6)(b)-
  - (a) no person may in an improper manner obstruct the passage of the claim;
  - (b) no claimant who was resident on the land in question at the date of commencement of this Act may be evicted from the said land without the written authority of the Chief Land Claims Commissioner;
  - (c) no person shall in any manner whatsoever remove or cause to be removed, destroy or cause to be destroyed or damage or cause to be damaged, any improvements upon the land without the written authority of the Chief Land Claims Commissioner;
  - (d) no claimant or other person may enter upon and occupy the land without the permission of the owner or lawful occupier.
- (8) The regional land claims commissioner may, at any time after the publication of a notice contemplated in subsection (1), if he or she has reason to believe that any improvement on the land is likely to be removed, damaged or destroyed or that any person resident on such land may be adversely affected as a result of the publication of such notice, authorise any person contemplated in section 8 or 9 to enter upon such land for the purpose of drawing up an inventory of any assets on the land, a list of persons employed or resident on the land, or a report on the agricultural condition of the land and of any excavations, mining or prospecting thereon.

*Commission's power of investigation*

- 12. (1) The Commission may, through a member of the Commission or any person authorised thereto in writing, in order to carry out its functions-
  - (a) conduct an investigation;
  - (b) demand from any person including any government department such particulars, documents and information as may be necessary in connection with any investigation;
  - (c) by notice in writing, addressed and delivered by a member of the staff of the Commission or a sheriff to any person, direct such person, in relation to an investigation, to appear before a member of the Commission at a time and place mentioned in such notice and to produce to such member all documents or objects in the possession or custody or under the control of such person and which are relevant to that investigation.

- (2) Any person directed to produce documents or objects in terms of subsection (1)(c) shall not be compelled to produce any document or object which could be used in evidence against him or her in a criminal trial.
- (3) If a claimant is not able to provide all the information necessary for the adequate submission or investigation of a claim, the regional land claims commissioner concerned shall direct an officer contemplated in section 8 to take all reasonable steps to have this information made available.
- (4) If at any stage during the course of an investigation by the Commission, the Chief Land Claims Commissioner is of the opinion that the resources of the Commission or the Court would be more effectively utilised if all claims for restitution in respect of the land, or area or township in question, were to be investigated at the same time, he or she shall cause to be published in the Gazette and in such other manner as he or she deems appropriate, a notice advising potential claimants of his or her decision and inviting them, subject to the provisions of section 2(1), to lodge claims within a period specified in such notice.
- (5) No claim in respect of a matter contemplated in subsection (4) shall be lodged after the expiry of the period specified in the said notice: Provided that the Commission may allow a claimant on good cause shown, to lodge a claim after the expiry of such period, but not later than three years after the date fixed in terms of section 2(1)(b).

#### Mediation

13. (1) If at any stage during the course of the Commission's investigation it becomes evident that-
  - (a) there are two or more competing claims to a particular right in land;
  - (b) in the case of a community claim, there are competing groups within the claimant community making resolution of the claim difficult; (c) where the land which is subject to the claim is not state-owned land, the owner or holder of rights in such land is opposed to the claim; or
  - (d) there is any other issue which might usefully be resolved through mediation and negotiation, the Chief Land Claims Commissioner may direct the parties concerned to attempt to settle their dispute through a process of mediation and negotiation.
- (2) (a) A direction contemplated in subsection (1) shall be made in a written notice specifying the time when and the place where such process is to start.
- (b) The Chief Land Claims Commissioner shall appoint a mediator to chair the first meeting between the parties: Provided that the parties may at any time during the course of mediation or negotiation by agreement appoint another person to mediate the dispute.
- (3) A person appointed by the Chief Land Claims Commissioner in terms of subsection (2)(b) shall either be an officer contemplated in section 8 who is a fit and proper person to conduct such a process of mediation and negotiation or an independent mediator contemplated in section 9(1)(b).
- (4) All discussions taking place and all disclosures and submissions made during the mediation process

shall be privileged, unless the parties agree to the contrary.

#### Referral of claims to Court

14. (1) If upon completion of an investigation by the Commission-
  - (a) the parties to any dispute arising from the claim agree in writing that it is not possible to settle the claim by mediation and negotiation;
  - (b) the regional land claims commissioner certifies that it is not feasible to resolve any dispute arising from such claim by mediation and negotiation;
  - (c) the parties to any dispute arising from such claim reach agreement as to how the claim should be finalised and the regional land claims commissioner is satisfied that such agreement is appropriate; or
  - (d) the regional land claims commissioner is of the opinion that the claim is ready for hearing by the Court, the Chief Land Claims Commissioner shall certify accordingly and refer the matter to the Court.
- (2) Any claim referred to the Court as a result of a situation contemplated in subsection (1)(a), (b) or (d) shall be accompanied by a document-
  - (a) setting out the results of the Commission's investigation into the merits of the claim;
  - (b) reporting on the failure of any party to accede to mediation;
  - (c) containing a list of the parties who ought to have the right to make representations to the Court in respect of the claim; and
  - (d) setting out the Commission's recommendation as to the most appropriate manner in which the claim can be resolved.
- (3) A referral made as a result of an agreement contemplated in subsection (1)(c) shall be accompanied by a document setting out the results of the Commission's investigation into the merits of the claim and a copy of the relevant deed of settlement together with a request signed by the parties concerned and endorsed by the Chief Land Claims Commissioner requesting that such agreement be made an order of Court.
- (4) If the Chief Land Claims Commissioner is not satisfied that a settlement referred to in subsection (1)(c) is appropriate, he or she shall refer the matter to the Court for a hearing in accordance with subsection (1)(d).
- (5) Any interested party shall be entitled, upon payment of the prescribed fee, to copies of the documents contemplated in this section, including the submissions of other interested parties in relation to any matter contemplated in this section.
- (6) The Court shall not make any order in terms of section 35 unless the Commission has, in respect of the claim in question, acted in accordance with the provisions of this section.
- (7) If a claim has not been referred to the Court within nine months from the date of its lodgement, the regional land claims commissioner concerned shall report in writing to the Commission, giving the reasons for the delay.

#### Certificate of feasibility

15. (1) Upon referral of a claim contemplated in sec-

- tion 121(2) of the Constitution to the Court in terms of section 14, the Chief Land Claims Commissioner shall request the Minister to certify whether-
- (a) in the case of land contemplated in section 123(1)(a) of the Constitution, restoration of the right in question is feasible;
  - (b) in the case of land contemplated in section 123(1)(b) of the Constitution, acquisition of the right in question is feasible.
- (2) Upon referral of a claim for an order contemplated in section 123(3)(a) of the Constitution to the Court in terms of section 14, the Chief Land Claims Commissioner shall request the Minister to certify whether it is feasible to designate alternative state-owned land.
  - (3) If the Minister certifies under subsection (1) that restoration or acquisition is not feasible, the Chief Land Claims Commissioner shall forthwith request the Minister to certify whether it is feasible to designate alternative state-owned land.
  - (4) When submitting a request contemplated in subsections (1), (2) or (3), the Chief Land Claims Commissioner shall advise the Minister as to whether or not restoration, acquisition or designation is feasible in the case in question.
  - (5) All interested parties shall be given the opportunity to make submissions to the Minister on the question of feasibility.
  - (6) In considering whether restoration or acquisition by the State is feasible in terms of subsection (1), the Minister shall, in addition to any other factor, take into account-
    - (a) whether the zoning of the land in question has since the dispossession been altered and whether the land has been transformed to such an extent that it is not practicable to restore the right in question;
    - (b) any relevant urban development plan;
    - (c) any other matter which makes the restoration or acquisition of the right in question unfeasible; and
    - (d) any physical or inherent defect in the land which may cause it to be hazardous for human habitation.
  - (7) In considering whether designation of alternative state-owned land is feasible in terms of subsections (2) and (3), the Minister shall, in addition to any other factor, take into account-
    - (a) what land is owned by the State, in particular land which is situated in the area in which the dispossession took place; and
    - (b) the suitability of such land to meet the needs of the claimant.
  - (8) Nothing in this section shall be construed to mean that the Minister shall be required or entitled to consider whether restoration, acquisition or designation is just or desirable.
  - (9) The Minister shall issue the relevant certificate of feasibility, or refuse to do so, within 30 days of receipt of a request, and the Chief Land Claims Commissioner or the regional land claims commissioner concerned shall communicate the Minister's decision to every person affected by it.
  - (10) The decision of the Minister shall be subject to review by the Court, the hearing of which review may, at the discretion of the Court, be conducted at the same time as the hearing of the claim in

question.

- (11) The decision of the Minister in respect of the issue of a certificate of feasibility, and the reasons for such decision, shall be public documents.
- (12) If the Minister certifies in terms of subsection (2) or (3) that it is feasible to designate alternative state-owned land he or she may make such designation at the same time or at any time thereafter.

#### *Rules regarding procedure of Commission*

16. (1) After consultation with the Minister, the Chief Land Claims Commissioner may make rules regarding-
  - (a) any matter which, in terms of this Chapter, is required or permitted to be prescribed;
  - (b) the filing of claims;
  - (c) any steps which may be taken to give public notice of claims and notice to persons who have an interest in any matter under investigation by the Commission;
  - (d) the giving of notice to parties to attend a meeting for the purpose of mediating or negotiating the settlement of disputes;
  - (e) the giving of notice to parties and public notices giving notice that the Commission will consider any related claims in respect of specific land, a neighbourhood or township within a stipulated period; the order of preference to be given to claims or categories of claims in order to achieve the result contemplated in section 6(2)(d); and
  - (g) generally, with regard to any other matter which he or she considers it necessary or expedient to prescribe in order to achieve or promote the objects of this Act.
- (2) The generality of subsection (1) shall not be limited by the preceding sections of this Chapter.
- (3) Rules made under the provisions of subsection (1) shall be published in the Gazette.

#### *Offences and penalties*

17. Any person who-
  - (a) contravenes the provisions of section 11(7)(a), (b), (c), or (d);
  - (b) having been directed to appear before a member of the Commission and to produce documents or objects in terms of section 12(1)(c), fails to appear at the specified time and place or to produce such documents or objects;
  - (c) hinders or obstructs the Commission in the performance of its functions;
  - (d) prevents or attempts to prevent a duly authorised officer contemplated in section 8, or a person appointed in terms of section 9, from performing a function 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 three months.

#### *Limitation of liability*

18. The Commission, members of the Commission, any person appointed under section 9 or any officer contemplated in section 8, shall not be liable in respect of any act or omission in good faith while performing a function in terms of any provision of this Act.

#### *Expenditure of Commission*

19. (1) All expenditure in connection with the performance of the Commission's functions shall be de-

frayed from moneys appropriated by Parliament for such purpose.

- (2) A person appointed in terms of section 4(3) who is not in the full-time service of the State may, from moneys appropriated by Parliament for such purpose, be paid such remuneration and allowances in respect of services performed in connection with the functions of the Commission, as may be determined by the Minister in consultation with the Minister of Finance.

#### *Annual estimates of expenditure*

20. The estimates of expenditure in respect of each financial year shall, after being prepared by the Chief Land Claims Commissioner or an official contemplated in section 8(1) and designated by the Chief Land Claims Commissioner, be submitted, not later than the first day of August of the preceding financial year to the Director-General of Land Affairs, who shall be the accounting officer.

#### *Annual report*

21. The Commission shall annually not later than the first day of June submit to Parliament a report on all its activities during the previous year, up to 31 March.

### CHAPTER III

#### **The Land Claims Court**

##### *Land Claims Court*

22. (1) There shall be a court of law to be known as the Land Claims Court which, in addition to the powers contemplated in section 123 of the Constitution, shall have the power-
- (a) to determine restitution of any right in land in accordance with this Act;
  - (b) to determine compensation in terms of this Act;
  - (c) in respect of a claim in terms of section 3, to determine the person entitled to ownership;
  - (d) to determine all other matters which require to be determined in terms of sections 121, 122 and 123 of the Constitution.
- (2) The Court shall have jurisdiction throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts.
- (3) There shall be a President of the Court, who shall be appointed by the President of the Republic, acting on the advice of the Judicial Service Commission.
- (4) The President of the Republic may, after consultation with the President of the Court and the Judicial Service Commission, appoint additional judges of the Court.
- (5) The President of the Court and the additional judges of the Court may be appointed for a fixed term.
- (6) A judge of a provincial or local division of the Supreme Court may be seconded to serve as a judge of the Court.

##### *Qualifications of judges of Court*

23. No person shall be qualified to be appointed President of the Court or a judge of the Court unless he or she-
- (a) is a South African citizen;

(b) is a fit and proper person to be a judge of the Court; and

- (c) (i) is a judge of the Supreme Court or is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least ten years, practised as an advocate or an attorney or lectured in law at a university; or  
(ii) by reason of his or her training and experience, has expertise in the fields of law and land matters relevant to the application of this Act and the law of the Republic. Law of procedure and rules

24. Until such time as rules of Court are made in terms of section 32, the rules of procedure applicable in civil actions and applications in a provincial division of the Supreme Court shall apply mutatis mutandis in respect of any proceedings in the Court.

##### *Holding of office*

25. The provisions of section 104 of the Constitution with regard to the making of an oath or solemn affirmation and the removal or suspension of judges shall apply to judges and assessors of the Court.

##### *Remuneration and conditions of employment of judges*

26. A judge of the Court shall receive such remuneration and shall, subject to section 22(5), be appointed subject to such conditions of employment as may be prescribed by or under the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), and his or her remuneration shall, subject to the provisions of section 7(4) of the said Act, not be reduced during his or her continuance in office.

##### *Appointment of assessors*

27. (1) The Court shall be assisted by assessors appointed by the Minister after inviting nominations from the general public.
- (2) No person shall be appointed as an assessor of the Court unless he or she, in the opinion of the Minister, has skills and knowledge relevant to the work of the Court: Provided that it shall not be a requirement of appointment that an assessor shall have any legal qualifications.
- (3) An assessor shall receive such remuneration and be entitled to such vacation and other benefits as may be determined by the Minister of Justice in consultation with the Minister of Finance and the President of the Court.

##### *Seat and hearings of Court*

28. (1) The seat or seats of the Court shall be determined by the Minister of Justice in consultation with the President of the Court.
- (2) The Court may notwithstanding the provisions of subsection (1) conduct hearings at any other place in the Republic with a view to making the Court accessible to claimants.
- (3) Hearings of the Court shall be presided over by a single judge unless the President of the Court or in his or her absence the most senior available judge decides to the contrary.
- (4) At least one assessor shall participate at the hearing of any disputed case.
- (5) At every hearing, a participating assessor shall have a vote equal to that of a judge hearing the

matter, except in relation to questions of law: Provided that decisions in respect of the matters referred to in sections 33 and 34(6) shall be deemed not to be questions of law: Provided further that in the event of an equality of votes the presiding judge shall have a casting vote in addition to his or her deliberative vote.

*Locus standi and legal representation*

29. (1) Any party listed in the document referred to in section 14(2), or any interested party in relation to an application in terms of section 34, may appear before the Court, either in person or represented by an advocate or attorney: Provided that the State shall have the right to be heard in all cases and that a person or community not listed in the document referred to in section 14(2) may apply to the Court for permission to appear before it.
- (2) Where a party can not afford to pay for legal representation itself, the Chief Land Claims Commissioner may take steps to arrange legal representation for such party, either through the State legal aid system or, if necessary, at the expense of the Commission.

*Admissibility of evidence*

30. (1) The Court may admit any evidence, including oral evidence, which it considers relevant and cogent to the matter being heard by it, whether or not such evidence would be admissible in any other court of law.
- (2) Without derogating from the generality of the foregoing subsection, it shall be competent for any party before the Court to adduce-
  - (a) hearsay evidence regarding the circumstances surrounding the dispossession of the land right or rights in question and the rules governing the allocation and occupation of land within the claimant community concerned at the time of such dispossession; and
  - (b) expert evidence regarding the historical and anthropological facts relevant to any particular claim.
- (3) The Court shall give such weight to any evidence adduced in terms of subsections (1) and (2) as it deems appropriate.

*Pre-trial conference*

31. (1) The Court may, at its own instance or at the request of any party before it, at any stage prior to the hearing of a matter convene a pre-trial conference of the parties with a view to clarifying the issues in dispute, identifying those issues on which evidence will be necessary and, in general, expediting a decision on the claim in question.
- (2) The Court may, after the holding of such a pre-trial conference, issue such orders and directions as to the procedure to be followed before and during the trial as it deems appropriate.

*Rules governing procedure*

32. (1) The President of the Court may make rules to govern the procedure of the Court, including rules providing for the circumstances under which oral evidence may be submitted to the Court.
- (2) The rules contemplated in subsection (1) shall be published in the Gazette.

- (3) Notwithstanding anything to the contrary in this Act or in the rules contemplated in subsection (1)-
  - (a) the Court may, at any stage after a claim has been referred to it, refer the claim back to the Commission with directives as to matters which are to be investigated and reported on by the Commission; and
  - (b) the Court may conduct any part of any proceedings on an informal or inquisitorial basis.
- (4) The rules contemplated in subsection (1) shall make provision for the expeditious hearing of an application in terms of section 34.

*Factors to be taken into account by Court*

33. In considering its decision in any particular matter, excluding the review of a decision in terms of section 15, the Court shall, in addition to the matters referred to in sections 121, 122 and 123 of the Constitution, have regard to the following factors:
  - (a) The desirability of providing for restitution of rights in land or compensation to people who were dispossessed of their rights in land as a result of or in pursuance of racially based discriminatory laws;
  - (b) the desirability of remedying past violations of human rights;
  - (c) the requirements of equity and justice;
  - (d) the desirability of avoiding major social disruption;
  - (e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to achieve the goals contemplated in section 8(3)(a) of the Constitution; any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of section 8 of the Constitution.

*Ruling by Court on restoration before final determination of claim*

34. (1) Any national, provincial or local government body may, in respect of land which is owned by it or falls within its area of jurisdiction, make application to the Court for an order that the land in question or any rights in it shall not be restored to any claimant or prospective claimant.
- (2) Notice of any such application shall be given to the Commission, which shall investigate and submit a report to the Court on the desirability of making an order referred to in subsection (1).
- (3) Any party making an application to the Court in terms of subsection (1) shall, at its own expense, take such steps as the relevant regional land claims commissioner may direct in order to bring the application to the attention of other persons who may have an interest therein, in order that they may make submissions to and appear before the Court on the hearing of the application.
- (4) The regional land claims commissioner concerned shall take such further steps as he or she deems appropriate to bring the application to the attention of persons who may have an interest.
- (5) After hearing an application contemplated in subsection (1), the Court may-
  - (a) dismiss the application; or
  - (b) order that when any claim in respect of the

- land in question is finally determined, the rights in the land in question, or in part of the land, or certain rights in the land, shall not be restored to any claimant.
- (6) The Court shall not make an order in terms of subsection (5)(b) unless it is satisfied that-
    - (a) it is in the public interest that the rights in question should not be restored to any claimant; and
    - (b) the public or any substantial part thereof will suffer substantial prejudice unless an order is made in terms of subsection (5)(b) before the final determination of any claim.
  - (7) If the Court makes an order in terms of subsection (5) (b), the regional land claims commissioner shall direct the relevant Registrar to remove any note made in his or her records in terms of section 11(6)(b).
  - (8) Any order made in terms of subsection (5)(b) shall be binding on all claimants to the rights in question, whether such claim is lodged before or after the making of the order.

#### *Court orders*

35. (1) A person in whose favour an order contemplated in section 123(3)(c) of the Constitution has been made may, instead of accepting such alternative relief, within 30 days after the date on which the order was made, apply in writing to the Minister to be registered as a preferential claimant to benefit from any State support programme for housing and the allocation and development of rural land.
- (2) The Court may in addition to the orders contemplated in section 123 of the Constitution-
  - (a) determine conditions which must be fulfilled before a right in land can be restored or granted to a claimant;
  - (b) if a claimant is required to make any payment before the right in question is restored or granted, determine the amount to be paid and the manner of payment, including the time for payment;
  - (c) if the claimant is a community, determine the manner in which the rights are to be held or the compensation is to be paid or held;
  - (d) recommend to the Minister that a claimant be given priority access to State resources in the allocation and development of housing and land in the appropriate development programme;
  - (e) give any other directive as to how its orders are to be carried out, including the setting of time limits for the implementation of its orders; make an order in respect of compensatory land granted at the time of the disposition of the land in question;
  - (g) make such orders for costs as it deems just.
- (3) An order contemplated in subsection (2)(c) shall be subject to such conditions as the Court considers necessary to ensure that all the dispossessed members of the community concerned shall have access to the land or the compensation in question, on a basis which is fair and non-discriminatory towards any person, including a woman and a tenant, and which ensures the accountability of the person who holds the land or compensation on behalf of the community to the members of such community.

- (4) The Court's power to order the restitution of a right in land or to grant a right in alternative state-owned land shall include the power to adjust the nature of the right previously held by the claimant, and to determine the form of title under which the right may be held in future.
- (5) If the Court orders the State to expropriate land or a right in land in order to restore it to a claimant, the Minister shall expropriate such land or right in accordance, mutatis mutandis, with the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975): Provided that the owner of such land or right shall be entitled to the payment of just and equitable compensation, determined either by agreement or by the Court according to the principles laid down in section 28(3) of the Constitution: Provided further that the procedure to be followed by the Court in the determination of such compensation shall be as provided in sections 24 and 32 of this Act.
- (6) In making any award of land, the Court may direct that the rights of individuals to that land shall be determined in accordance with the procedures set out in the Distribution and Transfer of Certain State Land Act, 1993 (Act No. 119 of 1993).
- (7) An order of the Court shall have the same force as an order of the Supreme Court for the purposes of the Deeds Registries Act, 1937 (Act No. 47 of 1937).
- (8) Upon making an order, the Court shall direct the Registrar concerned to remove any temporary note entered in his or her records in respect of the land in terms of section 11(6)(b).
- (9) Any state-owned land which is held under a lease or similar arrangement shall be deemed to be in the possession of the State for the purposes of section 123(1)(a) of the Constitution: Provided that, if the Court orders the restitution of a right in such land, the lawful occupier thereof shall be entitled to just and equitable compensation determined either by agreement or by the Court according to the principles laid down in section 28(3) of the Constitution.
- (10) An interested party which is of the opinion that an order of the Court has not been fully or timely complied with may make application to the Court for further directives or orders in that regard.

#### *Review of decisions of Commission*

36. (1) Any party aggrieved by any act of or decision of the Commission or any functionary acting or purportedly acting in terms of this Act may apply to have such act or decision reviewed by the Court.
- (2) The Court shall exercise all of the Supreme Court's powers of review with regard to such matters, to the exclusion of the provincial and local divisions thereof.

#### *Appeals from Court*

37. (1) Appeals against decisions by the Court shall lie either to the Constitutional Court or to the Appellate Division of the Supreme Court.
- (2) The Court shall in each case determine the court to which an appeal shall lie.

#### *Decisions of Court a matter of public record*

38. The decisions of the Court shall be a matter of public

record on the same basis as decisions of the Supreme Court.

CHAPTER IV

Miscellaneous Provisions

*Register of public land*

39. In order to facilitate the work of the Commission and the Court, the Minister may take all necessary steps to compile a register of public land, which register shall be open to inspection by claimants and prospective claimants.

*Regulations*

40. The Minister may make regulations regarding-

- (a) any matter required or permitted to be prescribed in terms of this Act; and
- (b) generally, all matters which in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this Act.

*Repeal of laws, and savings*

41. (1) Sections 88A up to and including 96A of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991), and the Abolition of Racially Based Land Measures Amendment Act, 1993 (Act No. 110 of 1993), are hereby repealed.

(2) If an application was, before the commencement of this Act, lodged with the Commission on Land Allocation established in terms of section 89 of the Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991), and that Commission has, before the commencement of this Act-

- (a) made a recommendation in respect of such application, such application shall on request of any interested party; or
- (b) not made any order or recommendation in respect of such application such application shall, subject to the provisions of subsection (3), be deemed to have been lodged with the Commission in accordance with the provisions of section 10(1).

(3) The regional land claims commissioner having jurisdiction may-

- (a) direct any applicant in respect of an application referred to in subsection (2) to provide the Commission with any further information relevant to the application; and
- (b) in respect of an application referred to in subsection (2), waive compliance with any or all of the procedures prescribed by or under this Act.

*Transfer duty and fees*

42. (1) The Minister may direct that any transfer duty or other fees payable by a claimant in respect of any transfer of land or of a right in land in terms of this Act shall be defrayed in full or in part from money appropriated by Parliament for that purpose.

(2) The Minister may, in consultation with the Minister of Finance, direct that no transfer duty, stamp duty or other fees contemplated in subsection (1) shall be paid in respect of a particular transfer under this Act.

*Short title and commencement*

43. (1) This Act shall be called the Restitution of Land Rights Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be fixed in respect of different Chapters of this Act.

**NO. 54 OF 1994: HUMAN RIGHTS COMMISSION ACT, 1994.**

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

ACT

To regulate matters incidental to the establishment of the Human Rights Commission by the Constitution of the Republic of South Africa, 1993; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)  
(Assented to 23 November 1994.)

PREAMBLE

WHEREAS sections 115 up to and including 118 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provide for the establishment of a Human Rights Commission; the appointment of the members of the Commission; the conferring of certain powers on and assignment of certain duties and functions to the Commission; the appointment of a chief executive officer of the Commission; and the tabling by the President in the National Assembly and the Senate of reports by the Commission;

AND WHEREAS the Constitution provides that the Human Rights Commission shall, inter alia, be competent and obliged to promote the observance of, respect for and the protection of fundamental rights; to develop an awareness of fundamental rights among all people of the Republic; to make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and the Constitution; to undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions; to request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights; and to investigate any alleged violation of fundamental rights and to assist any person adversely affected thereby to secure redress;

AND WHEREAS the Constitution envisages further powers, duties and functions to be conferred on or assigned to the Human Rights Commission by law, and that staff of the Commission be appointed on such terms and conditions of service as may be determined by or under an Act of Parliament;

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



*Definitions*

1. In this Act unless the context otherwise indicates-
  - (i) «Chairperson» means the chairperson of the Commission referred to in section 115(1) and (5) of the Constitution; (viii)
  - (ii) «Commission» means the Human Rights Commission established by section 115(1) of the Constitution; (iii)
  - (iii) «committee» means a committee established under section 5; (ii)
  - (iv) «fundamental rights» includes the fundamental rights contained in Chapter 3 of the Constitution; (i)
  - (v) «investigation» means an investigation under section 9; (iv)
  - (vi) «organ of state» includes any statutory body or functionary; (vii)
  - (vii) «premises» includes land, any building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container; (v) and
  - (viii) «private dwelling» means any part of any building or structure which is occupied as a residence or any part of any building or structure or outdoor living area which is accessory to, and used wholly or principally for, the purposes of residence. (vi)

*Seat of Commission*

2. (1) The seat of the Commission shall be determined by the President.
- (2) The Commission may establish such offices as it may consider necessary to enable it to exercise its powers and to perform its duties and functions conferred on or assigned to it by the Constitution, this Act or any other law.

*Term of office of members of Commission*

3. (1) The members of the Commission referred to in section 115(1) of the Constitution may be appointed as full-time or part-time members and shall hold office for such fixed term as the President may determine at the time of such appointment, but not exceeding seven years: Provided that not less than five members are appointed on a full-time basis: Provided further that the President shall remove any member from office if-
  - (a) such removal is requested by a joint committee composed as contemplated in section 115(3)(a) of the Constitution; and
  - (b) such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting.
- (2) The President may, in consultation with the Commission, appoint a part-time member as a full-time member for the unexpired portion of the part-time member's term of office.
- (3) Any person whose term of office as a member of the Commission has expired, may be reappointed for one additional term.
- (4) A member of the Commission may resign from office by submitting at least three months' written notice thereof to Parliament, unless Parliament by resolution allows a shorter period in a specific case. Independence and impartiality
4. (1) A member of the Commission or a member of the staff of the Commission shall serve impartially and

independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.

- (2) No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions.
- (3) All organs of state shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.
- (4) No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in a fair, unbiased and proper manner.
- (5) If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation, while having an interest so contemplated in the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

*Committees of Commission*

5. (1) The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and 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 designate a chairperson for every committee and, if it deems it necessary, a vice-chairperson.
- (4) A committee shall, subject to the directions of the Commission, exercise such powers and perform such duties and functions of the Commission as the Commission may confer on or assign to it and follow such procedure during such exercising of powers and performance of duties and functions as the Commission may direct.
- (5) On completion of the duties and functions assigned to it in terms of subsection (4), a committee shall submit a report thereon to the Commission.
- (6) The Commission may at any time dissolve any committee.

*Commission may approach President or Parliament*

6. The Commission may, at any time, approach either the President or Parliament with regard to any matter relating to the exercising of its powers or the performance of its duties and functions.

*Powers, duties and functions of Commission*

7. (1) In addition to any other powers, duties and functions conferred on or assigned to it by section 116 of the Constitution, this Act or any other law, the Commission-

(a) shall develop and conduct information programmes to foster public understanding of this Act, Chapter 3 of the Constitution and the role and activities of the Commission;

(b) shall maintain close liaison with institutions, bodies or authorities similar to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction;

(c) may consider such recommendations, suggestions and requests concerning fundamental rights as it may receive from any source;

(d) shall carry out or cause to be carried out such studies concerning fundamental rights as may be referred to it by the President and the Commission shall include in a report referred to in section 118 of the Constitution a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate;

(e) may bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.

(2) All organs of state shall afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its duties and functions.

#### *Mediation, conciliation or negotiation by Commission*

8. The Commission may, by mediation, conciliation or negotiation endeavour-

(a) to resolve any dispute; or

(b) to rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right.

#### *Investigations by Commission*

9. (1) Pursuant to the provisions of section 116(3) of the Constitution the Commission may, in order to enable it to exercise its powers and perform its duties and functions-

(a) conduct or cause to be conducted any investigation that is necessary for that purpose;

(b) through a member of the Commission, or any member of its staff designated in writing by a member of the Commission, require from any person such particulars and information as may be reasonably necessary in connection with any investigation;

(c) require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by a member of its staff or a sheriff, in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced;

(d) through a member of the Commission, administer an oath to or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in paragraph (c), irrespective of whether or, not such person has been required under the said paragraph (c) to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.

(2)(a) Any person questioned under subsection (1) shall, subject to the provisions of paragraph (b) and subsections (3) and (4)-

(i) be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the Commission notwithstanding that the

answer may incriminate him or her;

(ii) be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.

(b) A person referred to in paragraph (a) shall only be competent and compelled to answer a question or be compelled to produce any article or document contemplated in that paragraph if-

(i) the Commission, after consultation with the attorney-general who has jurisdiction, issues an order to that effect; and

(ii) the Commission is satisfied that to require such information from such person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and

(iii) in the Commission's judgement, such person has refused or is likely to refuse to answer a question or to produce any article or document on the basis of his or her privilege against self-incrimination.

(3) (a) 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 stands trial on a charge of perjury or a charge contemplated in section 18(b) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(b) Subject to the provisions of subsection (2)(a)(i), 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).

(4) Any person appearing before the Commission by virtue of the provisions of subsection (1)(c) and (d) may be assisted at such examination by an advocate or an attorney, or both, and shall be entitled to peruse such of the documents referred to in subsection (1)(c) or minutes as are reasonably necessary to refresh his or her memory.

(5) If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions and such person or his or her legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of this section.

(6) Subject to the provisions of this Act, the procedure to be followed in conducting an investigation shall be determined by the Commission with due regard to the circumstances of each case.

(7) The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection (6).

(8) The Commission may direct that any person or category of persons or all persons the presence of whom is not desirable, shall not be present at the proceedings during the investigation or any part thereof.

#### *Entering and search of premises and attachment and removal of articles*

10. (1) Any member of the Commission, or any member of the staff of the Commission or a police officer authorised thereto by a member of the Commission, 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 entry 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) A member or police officer contemplated 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 or document 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 or document is, information regarding that article or document;

(d) make copies of or take extracts from any book or document 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 or document; attach 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) Any person from whom information is required in terms of subsection (3)(a), (c) and (e) may be assisted at such enquiry by an advocate or an attorney, or both, and shall at the commencement of such enquiry be so informed.

(5)(a) Subject to the provisions of subsection (6), 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 any article or document, which has a bearing on the investigation concerned, 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 (6), 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 or document referred to in paragraph (a) 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 authorise any member of the Commission 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 authorise 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 authorises 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 such execution, 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, he or she 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 (6) shall, at the commencement of such execution, identify himself or herself and if that person requires authorisation to execute a warrant under this section, the particulars of such authorisation shall also be furnished.

(6) Subject to the provisions of subsections (2), (3), (4), (5)(g), (7) and (8), any member of the Commission, or any member of the staff of the Commission or a police officer upon request by a member of the Commission, may, without an entry and search warrant, enter and search any premises, other than a private dwelling, for the purposes of attaching and removing, if necessary, any article or document-

(a) if the person or persons who may consent to the entering and search for and attachment and removal of an article or document consents or consent to such entering, search, attachment and removal of the article or document concerned; or

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

(i) that a warrant will be issued to him or her under subsection (5) if he or she applies for such warrant; and

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

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

(8)(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 or document which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

(9) If during the execution of a warrant in terms of section 10(5)(b) or a search in terms of section 10(6), a person claims that an article or document found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search shall, if he or she is of the opinion that the article or document 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 or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

#### *Vacancies in Commission*

11. (1) A vacancy in the Commission shall occur-

(a) when a member's term of office expires;

- (b) when a member dies;
- (9) If during the execution of a warrant in terms of section 10(5)(b) or a search in terms of section 10(6), a person claims that an article or document found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search shall, if he or she is of the opinion that the article or document 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 or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

*Vacancies in Commission*

- 11. (1) A vacancy in the Commission shall occur-
  - (a) when a member's term of office expires;
  - (b) when a member dies;
  - (c) when a member is removed from office in terms of the second proviso to section 3(1); or
  - (d) when a member's resignation, submitted in accordance with section 3(4), takes effect.
- (2) A vacancy in the Commission shall-
  - (a) not affect the validity of the proceedings or decisions of the Commission; and
  - (b) be filled as soon as practicable in accordance with section 115(3) of the Constitution.

*Meetings of Commission*

- 12. (1) The meetings of the Commission shall be held at the times and places determined by the Commission: Provided that the first meeting shall be held at the time and place determined by the Minister of Justice.
- (2) If the Chairperson is absent from a meeting of the Commission, the Deputy Chair-person referred to in section 115(5) of the Constitution shall act as chairperson, and if both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the members present shall elect one from among their number to preside at that meeting.
- (3) The quorum for any meeting of the Commission shall be a majority of the total number of members.
- (4) The decision of the majority of the members of the Commission present at a meeting thereof shall be the decision of the Commission, and in the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote.
- (5) The Commission shall determine its own procedure and shall cause minutes to be kept of the proceedings.
- (6) The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection (5).

*Remuneration and allowances of members of Commission*

- 13. (1) The remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission

- shall be determined by the President in consultation with the Cabinet and the Minister of Finance.
- (2) The remuneration of the members of the Commission shall not be reduced during their continuation in office.
- (3) A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, performs additional duties and functions, be paid such additional remuneration as may be determined by the President in consultation with the Cabinet and the Minister of Finance.

*Compensation for certain expenses and damage*

- 14. (1) Subject to the provisions of subsection (2), the Commission may, with the specific or general concurrence of the Minister of Finance, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an investigation by the Commission, be paid from State funds.
- (2) Any person appearing before the Commission in terms of section 9(1)(c) who is not in the public service, shall be entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.
- (3) If a person has suffered damage in the course of the execution of an entry or search warrant in terms of section 10(5) (a) or (b) or an entry or search contemplated in section 10(6), under circumstances where no person responsible for the premises was present at the time of the causing of the damage and the damage was caused by force used to gain entry as contemplated in section 10(8)(a), the Commission may order that such damage be made good from State funds.

*Reports by Commission*

- 15. (1) The Commission may, subject to the provisions of subsection (3), in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it.
- (2) In addition to the report contemplated in section 118 of the Constitution, the Commission shall submit to the President and Parliament quarterly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it during that quarter: Provided that the Commission may, at any time, submit a report to the President and Parliament if it deems it necessary.
- (3) The findings of an investigation by the Commission shall, when it deems it fit but as soon as possible, be made available to the complainant and any person implicated thereby. Staff, finances and accountability
- 16. (1) The Commission shall at its first meeting or as soon as practicable thereafter appoint a director as chief executive officer of the Commission in accordance with section 117(1) of the Constitution, who-
  - (a) shall, in consultation with the Public Service Commission and the Minister of Finance

- and subject to subsection (5), appoint such staff in accordance with section 117(1) of the Constitution as may be reasonably necessary to assist him or her with the work incidental to the performance by the Commission of its functions;
- (b) shall be responsible for the management of and administrative control over the staff appointed in terms of paragraph (a), and shall for those purposes be accountable to the Commission;
- (c) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)-
- (i) be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission;
- (ii) cause the necessary accounting and other related records to be kept;
- (d) may exercise the powers and shall perform the duties and functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of the Commission, and shall for those purposes be accountable to the Commission.
- (2) The records referred to in subsection (1)(c)(ii) shall be audited by the Auditor-General.
- (3) The defrayal of expenditure in connection with matters provided for in this Act or in sections 115 up to and including 118 of the Constitution shall be subject to-
- (a) requests being received *mutatis mutandis* in the form as prescribed for the budgetary processes of departments of State; and
- (b) the provisions of the Exchequer Act, 1975, and the regulations and instructions issued in terms thereof, as well as the Auditor-General Act, 1989 (Act No. 52 of 1989).
- (4) The chief executive officer of the Commission shall be appointed on such terms and conditions and shall receive such remuneration, allowances and other service benefits as the Commission may determine in accordance with the regulations under section 19.
- (5) The other staff of the Commission shall be appointed on such terms and conditions and shall receive such remuneration, allowances and other service benefits as the chief executive officer may determine in accordance with the regulations under section 19.
- (6) The Commission may, in consultation with the Public Service Commission, in the exercise of its powers or the performance of its duties and functions by or under this Act, the Constitution or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and with the concurrence of the Minister of Finance, determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

#### *Legal proceedings against Commission*

17. (1) The Commission shall be a juristic person.
- (2) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Commission, and in such application a refer-

ence in that Act to «the Minister of the department concerned» shall be construed as a reference to the Chairperson.

- (3) No-
- (a) member of the Commission;
- (b) member of the staff of the Commission;
- (c) person contemplated in section 16(6); or
- (d) member of any committee, not being a member 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 to Parliament or made known in terms of this Act or the Constitution.

#### *Offences and penalties*

##### 18. A person who-

- (a) without just cause refuses or fails to comply with a notice under section 9(1)(c) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 9(1)(d) or refuses to answer any question put to him or her under section 9(1)(d) or refuses or fails to furnish particulars or information required from him or her under that section;
- (b) after having been sworn or having made an affirmation contemplated in section 9(1)(d), gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;
- (c) wilfully interrupts the proceedings at an investigation or misbehaves himself or herself in any manner in the place where such investigation is being held;
- (d) defames the Commission or a member of the Commission in his or her official capacity;
- (e) in connection with any investigation does anything which, if such investigation were proceedings in a court of law, would have constituted contempt of court; anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;
- (g) 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;
- (h) contravenes any provision of section 4(2);
- (i) fails to afford the Commission the necessary assistance referred to in section 4(3) or 7(2);
- (j) acts contrary to the authority of an entry warrant issued under section 10(5)(a) or a search warrant issued under section 10(5)(b) or, without being authorised thereto under section 10, enters or searches any premises or attaches any article or document or performs any act contemplated in section 10(3), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

#### *Regulations*

19. (1) The President may, after the Commission has made a recommendation and after consultation with the Public Service Commission, make regulations regarding the following matters in relation to the staff of the Commission:

- (a)
- (i) The different categories of salaries and

- scales of salaries which shall be applicable to the different categories of members of staff;
- (ii) the requirements for appointment and the appointment, promotion, discharge and disciplinary steps;
  - (iii) the recognition of appropriate qualifications and experience for the purposes of the determination of salaries;
  - (iv) the procedure and manner of and criteria for evaluation, and the conditions or requirements for the purposes of promotion;
- (b) the powers, duties, conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and any other condition of service;
  - (c) the creation of posts on the establishment of the Commission;
  - (d) the training of staff, including financial assistance for such training;
  - (e) a code of conduct to be complied with by staff;
  - (f) the provision of official transport;
  - (g) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid;
  - (h) subject to section 17, the legal liability of any member of staff in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport;
  - (i) the circumstances under which and the conditions and manner in which a member of staff may be found to be guilty of misconduct, or to be suffering from continued ill-health, or of incapacity to carry out his or her duties of office efficiently;
  - (j) the procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such members of staff shall be submitted;
  - (k) the membership or conditions of membership of a particular pension fund and the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a pension fund;
  - (l) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of members of staff or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such members of staff and paid to such medical aid scheme or medical aid society;
  - (m) the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a medical aid scheme or medical aid society;
  - (n) in general, any matter which is not in conflict with this Act or the Constitution and

which is reasonably necessary for the regulation of the terms and conditions of service of members of staff.

- (2) Any regulation under this section relating to State expenditure, shall be made in consultation with the Minister of Finance.

*Short title and commencement*

- 20. This Act shall be called the Human Rights Commission Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

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**NO. 34 OF 1995: PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995**

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

ACT

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

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

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

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

AND SINCE the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization;

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

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

(English text signed by the President.)

(Assented to 19 July 1995.)

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

## CHAPTER 1

### Interpretation and application

#### Definitions

1. (1) In this Act, unless the context otherwise indicates-
  - (i) «act associated with a political objective» has the meaning ascribed thereto in section 20(2) and (3); (ii)
  - (ii) «article» includes any evidence, book, document, file, object, writing, recording or transcribed computer printout produced by any mechanical or electronic device or any device by means of which information is recorded, stored or transcribed; (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 7(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 in terms of the Constitution as set out under the heading «National Unity and Reconciliation»; (i)
  - (viii) «former state» means any state or territory which was established by an Act of Parliament or by proclamation in terms of such an Act prior to the commencement of the Constitution and the territory of which now forms part of the Republic; (xvii)
  - (ix) «gross violation of human rights» means the violation of human rights through-
    - (a) the killing, abduction, torture or se-

vere 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 under section 40; (xviii)
- (xiii) «President» means the President of the Republic; (xi)
- (xiv) «reparation» includes any form of compensation, ex gratia payment, restitution, rehabilitation or recognition; (vi)
- (xv) «Republic» means the Republic of South Africa referred to in section 1(2) of the Constitution; (xii)
- (xvi) «security forces» includes any full-time or part-time-
  - (a) member or agent of the South African Defence Force, the South African Police, the National Intelligence Service, the Bureau of State Security, the Department of Correctional Services, or any of their organs;
  - (b) member or agent of a defence force, police force, intelligence agency or prison service of any former state, or any of their organs; (xvi)
- (xvii) «State» means the State of the Republic; (xiv)
- (xviii) «subcommittee» means any subcommittee established by the Commission in terms of section 5(c); (xv)
- (xix) «victims» includes-
  - (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights-
    - (i) as a result of a gross violation of human rights; or
    - (ii) as a result of an act associated with a political objective for which amnesty has been granted;
  - (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to

- assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and
- (c) such relatives or dependants of victims as may be prescribed. (xiii)
- (2) For the purposes of sections 10(1), (2) and (3) and II and Chapters 6 and 7 «Commission» shall be construed as including a reference to «committee» or subcommittee», as the case may be, and «Chairperson», «Vice-Chairperson» or commissioner» shall be construed as including a reference to the chairperson, vice-chairperson or a member of a committee or subcommittee, as the case may be.

## CHAPTER 2

### Truth and Reconciliation Commission

#### *Establishment and seat of Truth and Reconciliation Commission*

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

#### *Objectives of Commission*

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

- (3) In order to achieve the objectives of the Commission-
  - (a) the Committee on Human Rights Violations, as contemplated in Chapter 3, shall deal, among other things, with matters pertaining to investigations of gross violations of human rights;
  - (b) the Committee on Amnesty, as contemplated in Chapter 4, shall deal with matters relating to amnesty;
  - (c) the Committee on Reparation and Rehabilitation, as contemplated in Chapter 5, shall deal with matters referred to it relating to reparations;
  - (d) the investigating unit referred to in section 5(d) shall perform the investigations contemplated in section 28(4)(a); and
  - (e) the subcommittees shall exercise, perform and carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.

#### *Functions of Commission*

4. The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall-
  - (a) facilitate, and where necessary initiate or coordinate, inquiries into-
    - (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;
    - (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;
    - (iii) the identity of all persons, authorities, institutions and organisations involved in such violations;
    - (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 relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the Gazette;
  - (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 ob-



- jective 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 Minister with regard to the development of a limited witness protection programme for the purposes of this Act;
- (h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

#### *Powers of Commission*

5. In order to achieve its objectives and to perform its functions the Commission shall have the power to-
  - (a) determine the seat, if any, of every committee;
  - (b) establish such offices as it may deem necessary for the performance of its functions;
  - (c) establish subcommittees to exercise, carry out or perform any of the powers, duties and functions assigned to them by the Commission;
  - (d) conduct any investigation or hold any hearing it may deem necessary and establish the investigating unit referred to in section 28;
  - (e) refer specific or general matters to, give guidance and instructions to, or review the decisions of, any committee or subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions and the carrying out of its duties, the working procedures which should be followed and the divisions which should be set up by any committee in order to deal effectively with the work of the committee: Provided that no decision, or the process of arriving at such a decision, of the Committee on Amnesty regarding any application for amnesty shall be reviewed by the Commission; direct any committee or subcommittee to make information which it has in its possession available to any other committee or subcommittee;
  - (g) direct the submission of and receive reports or interim reports from any committee or subcommittee;
  - (h) have the administrative and incidental work connected with the exercise of its powers, the execution of its duties or the performance of its functions carried out by persons-
    - (i) employed or appointed by it;
    - (ii) seconded to its service by any department of State at the request of the Commission and after consultation with the Public Service Commission;
    - (iii) appointed by it for the performance of specified tasks;
  - (i) in consultation with the Minister and through diplomatic channels, obtain permission from the relevant authority of a foreign country to receive evidence or gather information in that country;

- (j) enter into an agreement with any person, including any department of State, in terms of which the Commission will be authorized to make use of any of the facilities, equipment or personnel belonging to or under the control or in the employment of such person or department;
- (k) recommend to the President that steps be taken to obtain an order declaring a person to be dead;
- (l) hold meetings at any place within or outside the Republic;
- (m) on its own initiative or at the request of any interested person inquire or investigate into any matter, including the disappearance of any person or group of persons.

#### *Certain powers shall be exercised in consultation with Minister*

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

#### *Constitution of Commission*

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

8. If both the Chairperson and Vice-Chairperson are absent or unable to perform their duties, the other com-

missioners 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*

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

*Meetings, procedure at and quorum for meetings of Commission and recording of Proceedings*

10. (1) A meeting of the Commission shall be held at a time and place determined by the Chairperson of the Commission or, in the absence or inability of such Chairperson, by the Vice-Chairperson of the Commission or, in the absence or inability of both such Chairperson and Vice-Chairperson, by the Acting Chairperson of the Commission.
- (2) Subject to section 40, the Commission shall have the power to determine the procedure for its meetings, including the manner in which decisions shall be taken.
- (3) The Commission shall cause a record to be kept of its proceedings.
- (4) The quorum for the first meeting of the Commission shall be two less than the total number of the Commission.

*Principles to govern actions of Commission when dealing with victims*

11. When dealing with victims the actions of the Commission shall be guided by the following principles:
  - (a) Victims shall be treated with compassion and respect for their dignity;
  - (b) victims shall be treated equally and without discrimination of any kind, including race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability;
  - (c) procedures for dealing with applications by victims shall be expeditious, fair, inexpensive and accessible;
  - (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 and, when necessary, to protect their privacy, to ensure their safety as well as that of their families and of witnesses testifying on their behalf, and to protect them from intimidation;
- (f) appropriate measures shall be taken to allow victims to communicate in the language of their choice;
- (g) informal mechanisms for the resolution of disputes, including mediation, arbitration and any procedure provided for by customary law and practice shall be applied, where appropriate, to facilitate reconciliation and redress for victims.

### CHAPTER 3

#### Investigation of Human Rights Violations

*Committee on Human Rights Violations*

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

*Constitution of Committee*

13. (1) The Committee shall consist of-
  - (a) (i) a Chairperson; and
  - (ii) two Vice-Chairpersons, who shall be commissioners designated by the Commission;
  - (b) such other commissioners as may be appointed by the Commission; and
  - (c) not more than three other members.
- (2) The Commission shall appoint, as the members referred to in subsection (1)(c), South African citizens who are fit and proper persons and broadly representative of the South African community and shall, when making such appointments, give preference to persons possessing knowledge of the content and application of human rights or of investigative or fact-finding procedures.

*Powers, duties and functions of Committee*

14. (1) In addition to the powers, duties and functions conferred on, imposed upon and assigned to it in this Act, and for the purpose of achieving the objectives of the Commission, referred to in section 3(1)(a), (c) and (d)-
  - (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), (g) or (h);
- (iii) make information which is in its possession available to a committee referred to in Chapter 4 or 5, a subcommittee or the investigating unit;
- (iv) submit to the Commission interim reports indicating the progress made by the Committee with its activities or with regard to any other particular matter;
- (v) exercise the powers referred to in Chapters 6 and 7.
- (2) The Committee shall at the conclusion of its functions submit to the Commission a comprehensive report of all its activities and findings in connection with the performance of its functions and the carrying out of its duties in terms of this Act.

#### *Referrals to Committee on Reparation and Rehabilitation*

15. (1) When the Committee finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.
- (2) After a referral to the Committee on Reparation and Rehabilitation has been made by the Committee in terms of subsection (1), it shall, at the request of the Committee on Reparation and Rehabilitation, furnish that Committee with all the evidence and other information relating to the victim concerned or conduct such further investigation or hearing as the said Committee may require.

## CHAPTER 4

### **Amnesty mechanisms and procedures**

#### *Committee on Amnesty*

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

#### *Constitution of Committee*

17. (1) The Committee shall consist of a Chairperson, a Vice-Chairperson and three other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community.
- (2) The President shall appoint the Chairperson, the Vice-Chairperson, one other person and, after consultation with the Commission, two commissioners as members of the Committee.
- (3) The Chairperson of the Committee shall be-
- (a) a judge as defined in section 1(1) of the Judg-

- es' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); or
- (b) a judge who has been discharged from active service in terms of section 3 of the said Act.
- (4) Any vacancies in the Committee shall be filled in accordance with this section.

#### *Applications for granting of amnesty*

18. (1) Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in section 7(3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form.
- (2) The Committee shall give priority to applications of persons in custody and shall prescribe measures in respect of such applications after consultation with the Minister and the Minister of Correctional Services.

#### *Committee shall consider applications for amnesty*

19. (1) Upon receipt of any application for amnesty, the Committee may return the application to the applicant and give such directions in respect of the completion and submission of the application as may be necessary or request the applicant to provide such further particulars as it may deem necessary.
- (2) The Committee shall investigate the application and make such enquiries as it may deem necessary: Provided that the provisions of section 30(2) shall, with the necessary changes, apply in respect of such investigation.
- (3) After such investigation, the Committee may-
- (a) (i) inform the applicant that the application, judged on the particulars or further particulars contained in the application or provided by the applicant or revealed as a result of enquiries made by the Committee, if any, does not relate to an act associated with a political objective;
- (ii) afford the applicant the opportunity to make a further submission; and
- (iii) decide whether the application, judged on the particulars referred to in subparagraph (i), and in such further submission, relates to such an act associated with a political objective, and if it is satisfied that the application does not relate to such an act, in the absence of the applicant and without holding a hearing refuse the application and inform the applicant accordingly; or
- (b) if it is satisfied that-
- (i) the requirements mentioned in section 20(i) have been complied with;
- (ii) there is no need for a hearing; and
- (iii) the act, omission or offence to which the application relates, does not constitute a gross violation of human rights, in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly.
- (4) If an application has not been dealt with in terms

of subsection (3), the Committee shall conduct a hearing as contemplated in Chapter 6 and shall, subject to the provisions of section 33-

- (a) in the prescribed manner, notify the applicant and any victim or person implicated, or having an interest in the application, of the place where and the time when the application will be heard and considered;
  - (b) inform the persons referred to in paragraph (a) of their right to be present at the hearing and to testify, adduce evidence and submit any article to be taken into consideration;
  - (c) deal with the application in terms of section 20 or 21 by granting or refusing amnesty.
- (5) (a) The Committee shall, for the purpose of considering and deciding upon an application referred to in subsection (1), have the same powers as those conferred upon the Commission in section 5(l) and (m) and Chapters 6 and 7.
- (b) Notwithstanding the provisions of section 18(1), the Committee may consider jointly the individual applications in respect of any particular act, omission or offence to which such applications relate.
- (6) If the act or omission which is the subject of an application under section 18 constitutes the ground of any claim in civil proceedings instituted against the person who submitted that application, the court hearing that claim may at the request of such person, if it is satisfied that the other parties to such proceedings have been informed of the request and afforded the opportunity to address the court or to make further submissions in this regard, suspend those proceedings pending the consideration and disposal of the application.
- (7) If the person who submitted an application under section 18 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, the Committee may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application for amnesty.
- (8) (a) Subject to the provisions of section 33, the applications, documentation in connection therewith, further information and evidence obtained before and during an investigation by the Commission, the deliberations conducted in order to come to a decision or to conduct a hearing contemplated in section 33, shall be confidential.
- (b) Subject to the provisions of section 33, the confidentiality referred to in paragraph (a) shall lapse when the Commission decides to release such information or when the hearing commences.

*Granting of amnesty and effect thereof*

20. (1) If the Committee, after considering an application for amnesty, is satisfied that-
- (a) the application complies with the requirements of this Act;
  - (b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

- (c) the applicant has made a full disclosure of all relevant facts, it shall grant amnesty in respect of that act, omission or offence.
- (2) In this Act, unless the context otherwise indicates, «act associated with a political objective» means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date, by-
- (a) any member or supporter of a publicly known political organisation or liberation movement on behalf of or in support of such organisation or movement, bona fide in furtherance of a political struggle waged by such organisation or movement against the State or any former state or another publicly known political organisation or liberation movement;
  - (b) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against a publicly known political organisation or liberation movement engaged in a political struggle against the State or a former state or against any members or supporters of such organisation or movement, and which was committed bona fide with the object of countering or otherwise resisting the said struggle;
  - (c) any employee of the State or any former state or any member of the security forces of the State or any former state in the course and scope of his or her duties and within the scope of his or her express or implied authority directed-
    - (i) in the case of the State, against any former state; or
    - (ii) in the case of a former state, against the State or any other former state, whilst engaged in a political struggle against each other or against any employee of the State or such former state, as the case may be, and which was committed bona fide with the object of countering or otherwise resisting the said struggle;
  - (d) any employee or member of a publicly known political organisation or liberation movement in the course and scope of his or her duties and within the scope of his or her express or implied authority directed against the State or any former state or any publicly known political organisation or liberation movement engaged in a political struggle against that political organisation or liberation movement or against members of the security forces of the State or any former state or members or supporters of such publicly known political organisation or liberation movement, and which was committed bona fide in furtherance of the said struggle;
  - (e) any person in the performance of a coup d'etat to take over the government of any former state, or in any attempt thereto;

- (f) any person referred to in paragraphs (a), (b), (c) and (d), who on reasonable grounds believed that he or she was acting in the course and scope of his or her duties and within the scope of his or her express or implied authority;
- (g) any person who associated himself or herself with any act or omission committed for the purposes referred to in paragraphs (a), (b), (c), (d), (e) and (f).
- (3) Whether a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective, shall be decided with reference to the following criteria:
- (a) The motive of the person who committed the act, omission or offence;
- (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 48.
- (5) The Commission shall inform the person concerned and, if possible, any victim, of the decision of the Committee to grant amnesty to such person in respect of a specified act, omission or offence and the Committee shall submit to the Commission a record of the proceedings, which may, subject to the provisions of this Act, be used by the Commission.
- (6) The Committee shall forthwith by proclamation in the Gazette make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act, omission or offence in respect of which amnesty has been granted.
- (7) (a) No person who has been granted amnesty in respect of an act, commission 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.
- (c) No person, organisation or state shall be civilly or vicariously liable for an act, omission or offence committed between 1 March 1960 and the cut-off date by a person who is deceased, unless amnesty could not have been granted in terms of this Act in respect of such an act, omission or offence.
- (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*
21. (1) If the Committee has refused any application for amnesty, it shall as soon as practicable notify-
- (a) the person who applied for amnesty;

- (b) any person who is in relation to the act, omission or offence concerned, a victim; and
  - (c) the Commission, in writing of its decision and the reasons for its refusal.
- (2) (a) If any criminal or civil proceedings were suspended pending a decision on an application for amnesty, and such application is refused, the court concerned shall be notified accordingly.
- (b) No adverse inference shall be drawn by the court concerned from the fact that the proceedings which were suspended pending a decision on an application for amnesty, are subsequently resumed.

#### *Referrals to Committee on Reparation and Rehabilitation*

22. (1) Where amnesty is granted to any person in respect of any act, omission or offence and the Committee is of the opinion that a person is a victim in relation to that act, omission or offence, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.
- (2) Where amnesty is refused by the Committee and if it is of the opinion that-
- (a) the act, omission or offence concerned constitutes a gross violation of human rights; and
  - (b) a person is a victim in the matter, it shall refer the matter to the Committee on Reparation and Rehabilitation for consideration in terms of section 26.

## CHAPTER 5

### **Reparation and rehabilitation of victims**

#### *Committee on Reparation and Rehabilitation*

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

#### *Constitution of Committee*

24. (1) The Committee shall consist of-
- (a) a Chairperson;
  - (b) a Vice-Chairperson;
  - (c) not more than five other members; and
  - (d) in addition to the commissioners referred to in subsection (2), such other commissioners as may be appointed to the Committee by the Commission.
- (2) Commissioners designated by the Commission shall be the Chairperson and Vice-Chairperson of the Committee.
- (3) The Commission shall for the purpose of subsection (1)(c) appoint as members of the Committee fit and proper persons who are suitably qualified, South African citizens and broadly representative of the South African community.

#### *Powers, duties and functions of Committee*

25. (1) In addition to the powers, duties and functions in his 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(e);
  - (bb) the Committee on Human Rights Violations in terms of section 15(1); and
  - (cc) the Committee on Amnesty in terms of section 22(1);
- (ii) gather the evidence referred to in section 4(b);
- (b) the Committee may-
- (i) make recommendations which may include urgent interim measures as contemplated in section 4(f)(ii), as to appropriate measures of reparation to victims;
  - (ii) make recommendations referred to in section 4(h);
  - (iii) prepare and submit to the Commission interim reports in connection with its activities;
  - (iv) may exercise the powers referred to in section 5(l) and (m) and Chapters 6 and 7.
- (2) The Committee shall submit to the Commission a final comprehensive report on its activities, findings and recommendations.

#### *Applications for reparation*

26. (1) Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form.
- (2) (a) The Committee shall consider an application contemplated in subsection (1) and may exercise any of the powers conferred upon it by section 25.
- (b) In any matter referred to the Committee, and in respect of which a finding as to whether an act, omission or offence constitutes a gross violation of human rights is required, the Committee shall refer the matter to the Committee on Human Rights Violations to deal with the matter in terms of section 14.
- (3) If upon consideration of any matter or application submitted to it under subsection (1) and any evidence received or obtained by it concerning such matter or application, the Committee is of the opinion that the applicant is a victim, it shall, having regard to criteria as prescribed, make recommendations as contemplated in section 25(1) (b) (i) in an endeavour to restore the human and civil dignity of such victim.

#### *Parliament to consider recommendations with regard to reparation of victims*

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

#### *Commission may establish investigating unit*

28. (1) The Commission may establish an investigating unit which shall consist of such persons, including one or more commissioners, as may be determined by the Commission.
- (2) The period of appointment of such members shall be determined by the Commission at the time of appointment, but such period may be extended or curtailed by the Commission.
- (3) The Commission shall appoint a commissioner as the head of the investigating unit.
- (4) (a) The investigating unit shall investigate any matter failing within the scope of the Commission's powers, functions and duties, subject to the directions of the Commission, and shall at the request of a committee investigate any matter failing within the scope of the powers, functions and duties of that committee, subject to the directions of the committee.
- (b) The investigating unit shall in the performance of its functions follow such procedure as may be determined by the Commission or the committee concerned, as the case may be.
- (5) Subject to section 33, no article or information obtained by the investigating unit shall be made public, and no person except a member of the investigating unit, the Commission, the committee concerned or a member of the staff of the Commission shall have access to such article or information until such time as the Commission or the committee determines that it may be made public or until the commencement of any hearing in terms of this Act which is not held behind closed doors.

#### *Powers of Commission with regard to investigations and hearings*

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

- (a) at any time before the commencement or in the course of such investigation or hearing conduct an inspection in loco;
  - (b) by notice in writing call upon any person who is in possession of or has the custody of or control over any article or other thing which in the opinion of the Commission is relevant to the subject matter of the investigation or hearing to produce such article or thing to the Commission, and the Commission may inspect and, subject to subsection (3), retain any article or other thing so produced for a reasonable time;
  - (c) by notice in writing call upon any person to appear before the Commission and to give evidence or to answer questions relevant to the subject matter of the hearing;
  - (d) in accordance with section 32 seize any article or thing referred to in paragraph (b) which is relevant to the subject matter of the investigation or hearing.
- (2) A notice referred to in subsection (1) shall specify the time when and the place where the person to whom it is directed shall appear, shall be signed by a commissioner, shall be served by a member of the staff of the Commission or by a sheriff, by delivering a copy thereof to the person concerned or by leaving it at such person's last known place of residence or business, and shall specify the reason why the article is to be produced or the evidence is to be given.
- (3) If the Commission is of the opinion that the production of any article in the possession or custody or under the control of the State, any department of State, the Auditor-General or any Attorney-General may adversely affect any intended or pending judicial proceedings or the conduct of any investigation carried out with a view to the institution of judicial proceedings, the Commission shall take steps aimed at the prevention of any undue delay in or the disruption of such investigation or proceedings.
- (4) The Commission may require any person who in compliance with a requirement in terms of this section appears before it, to take the oath or to make an affirmation and may through the Chairperson or any member of the staff of the Commission administer the oath to or accept an affirmation from such person.
- (5) No person other than a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information submitted at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced at a hearing in terms of this Act, or at any proceedings in any court of law.

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

30. (1) The Commission and any committee or subcommittee shall in any investigation or hearing follow the prescribed procedure or, if no procedure has

been prescribed, the procedure determined by the Commission, or, in the absence of such a determination, in the case of a committee or subcommittee the procedure determined by the committee or subcommittee, as the case may be.

- (2) If during any investigation by or any hearing before the Commission-
  - (a) any person is implicated in a manner which may be to his detriment;
  - (b) the Commission contemplates making a decision which may be to the detriment of a person who has been so implicated;
  - (c) it appears that any person may have suffered harm as a result of a gross violation of human rights, the Commission shall, if such person is available, afford him or her an opportunity to submit representations to the Commission within a specified time with regard to the matter under consideration or to give evidence at a hearing of the Commission.

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

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

- (2) A person referred to in subsection (1) shall only be compelled to answer a question or to produce an article which may incriminate him or her if the Commission has issued an order to that effect, after the Commission-
  - (a) has consulted with the attorney-general who has jurisdiction;
  - (b) has satisfied itself that to require such information from such a person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
  - (c) has satisfied itself that such a person has refused or is likely to refuse to answer a question or produce an article on the grounds that such an answer or article might incriminate him or her.
- (3) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 39(d)(ii) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).
- (4) Subject to the provisions of this section, the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1).

- (5) 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.

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

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

- (a) which is concerned with or is upon reasonable grounds suspected to be concerned with any matter which is the subject of any investigation in terms of this Act;
- (b) which contains, or is upon reasonable grounds suspected to contain, information with regard to any such matter, is or is upon reasonable grounds suspected to be, and may on the authority of a search warrant, issued in terms of subsection (2)-
  - (i) inspect and search such premises and there make such Inquiries as he or she may deem necessary;
  - (ii) examine any article or thing found in or upon such premises;
  - (iii) request from the person who is in control of such premises or in whose possession or under whose control any article or thing is when it is found, or who is upon reasonable grounds believed to have information with regard to any article or thing, an explanation or information;
  - (iv) make copies of or extracts from any such article found upon or in such premises;
  - (v) seize any article or thing found upon or in such premises which he or she upon reasonable grounds suspects to be an article or thing mentioned in paragraph (a) or (b);
  - (vi) after having issued a receipt in respect thereof remove any article or thing found on such premises and suspected upon reasonable grounds to be an article or thing mentioned in paragraph (a) or (b), and retain such article or thing for a reasonable period for the purpose of further examination or, in the case of such article, the making of copies thereof or extracts therefrom: Provided that any article or thing that has been so removed, shall be returned as soon as possible after the purpose of such removal has been accomplished.

- (2) An entry or search warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the premises in question are situated, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article or thing mentioned in paragraph (a) or (b)



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

*Hearings of Commission to be open to public*

33. (1) (a) Subject to the provisions of this section, the hearings of the Commission shall be open to the public.
- (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 20(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*

34. (1) Any person questioned by an investigation unit and any person who has been subpoenaed or called upon to appear before the Commission is entitled to appoint a legal representative.
- (2) The Commission may, in order to expedite proceedings, place reasonable limitations with regard to the time allowed in respect of the cross-examination of witnesses or any address to the Commission.
- (3) The Commission may appoint a legal representative to appear on behalf of the person concerned if it is satisfied that the person is not financially capable of appointing a legal representative himself or herself, and if it is of the opinion that it is in the interests of justice that the person be represented by a legal representative.
- (4) A person referred to in subsection (1) shall be informed timeously of his or her right to be represented by a legal representative.

*Limited witness protection programme*

35. (1) The Minister shall, in consultation with the Commission, promote the establishment of a witness protection programme in order to provide for the protection and safety of witnesses in any manner when necessary.
- (2) The witness protection programme contemplated in subsection (1) shall be prescribed by the President as soon as possible after the date referred to in section 7(3).
- (3) The regulations providing for a witness protection programme shall-
  - (a) provide for, among others, the appointment of a private person or the secondment of an official or employee of any department of State in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), to act as the witness protector; and
  - (b) be Tabled in Parliament for approval.
- (4) (a) Until such time as the witness protection programme has been established the President may, in consultation with the Minister and the Commission, prescribe interim measures to be followed in order to provide for the protection and the safety of a witness: Provided that the provisions of section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, with the necessary changes, apply in the absence of such interim measures.
- (b) The interim measures contemplated in paragraph (a) shall be Tabled in Parliament for approval.
- (5) In this section «witness» means a person who wishes to give evidence, gives evidence or gave evidence for the purposes of this Act and includes any member of his or her family or household whose safety is being threatened by any person or group of persons, whether known to him or her or not, as a result thereof.

CHAPTER 7

**General provisions**

*Independence of Commission*

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

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

*Confidentiality of matters and information*

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

- (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 20(6) and 33, no person shall disclose or make known any information which is confidential by virtue of any provision of this Act.
- (5) No person who is not authorized thereto by the Commission shall have access to any information which is confidential by virtue of any provision of this Act.
- (6) For the purposes of this section the oath or affirmation shall be in the following form:  
«I, A B, hereby declare under oath/solemnly affirm that I understand and shall honour the obligation of confidentiality imposed upon me by any provision of the Promotion of National Unity and Reconciliation Act, 1995, and shall not act in contravention thereof».

*Offences and penalties*

39. Any person who-

- (a) anticipates any finding of the Commission regard-

ing 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; fails to perform any act as required in terms of sections 36(6) and 38;
- (g) discloses any confidential information in contravention of any provision of this Act;
- (h) destroys any article relating to or in anticipation of any investigation or proceedings in terms of this Act, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*Regulations*

40. (1) The President may make regulations-
- (a) prescribing anything required to be prescribed for the proper application of this Act;
  - (b) prescribing the remuneration and allowances and other benefits, if any, of commissioners: Provided that such remuneration shall not be less than that of a judge of the Supreme Court of South Africa;
  - (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; 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 sequestered;
- (g) providing for the payment or reimbursement of expenses incurred in respect of travel and accommodation by persons attending any hearing of the Commission in compliance with a subpoena issued in terms of this Act;
  - (h) with regard to any matter relating to the affairs of the Fund, established in terms of section 42;
  - (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*

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

42. (1) The President may, in such manner as he or she may deem fit, in consultation with the Minister and the Minister of Finance, establish a Fund into which shall be paid-
- (a) all money appropriated by Parliament for the purposes of the Fund; and
  - (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*

43. (1) Subject to the provisions of subsection (2), the Commission shall within a period of 18 months from its constitution or the further period, not exceeding six months, as the President may determine, complete its work.
- (2) The Commission shall within three months, from the date contemplated in subsection (1), complete its final report.
- (3) The Commission shall be dissolved on a date determined by the President by proclamation in the Gazette.

*Publication of final report of Commission*

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

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

45. (1) (a) The Commission may, at any time, approach the joint committee with regard to any matter pertaining to the functions and powers of the Commission.
- (b) The Minister may at any time approach the joint committee with regard to any matter pertaining to functions and powers which may be performed or exercised by him or her in terms of this Act.
- (c) The joint committee may at any time review any regulation made under section 40 and request the President to amend certain regulations or to make further regulations in terms of that section.
- (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*

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

- (2) The chief executive officer-
- (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 7(3), for the first financial year, and thereafter in each financial year for the following financial year, in a format determined by the Audit Commission established by section 2 of the Audit Arrangements Act, 1992 (Act No. 122 of 1992), prepare the necessary estimate of revenue and expenditure of the Commission, which shall, after consultation with the said Audit Commission, be submitted to the Minister for his or her approval, granted in concurrence with the Minister of Finance, for furtherance in terms of subsection (3).
- (b) The Commission shall not incur any expenditure which exceeds the total amount approved in terms of paragraph (a).
- (6) As from the date on which the Commission is dissolved in terms of section 43(3) and after all the expenses referred to in subsection (3) have been paid, the account opened in terms of subsection (4) shall be closed and the balance of the moneys deposited into that account, if any, shall be transferred to the fiscus.

#### *Consequences of dissolution*

47. (1) As from the date on which the Commission is dissolved in terms of section 43(3), all the funds and property which vested in the President's Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter 11 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*

48. (1) The Indemnity Act, 1990 (Act No. 35 of 1990), the Indemnity Amendment Act, 1992 (Act No. 124 of 1992), and the Further Indemnity Act, 1992 (Act No. 151 of 1992), are hereby repealed.
- (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 date referred to in section 7(3) notwithstanding the repeal of that Act.

#### *Short title and commencement*

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

### **NO. 87 OF 1995: PROMOTION OF NATIONAL UNITY AND RECONCILIATION AMENDMENT ACT, 1995.**

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

#### **GENERAL EXPLANATORY NOTE:**

\*\* \*\* Words between asterisks indicate omissions from existing enactments.

<< >> Words between pointed brackets indicate insertions in existing enactments.

#### **ACT**

To amend the Promotion of National Unity and Reconciliation Act, 1995, to effect improvements in both the English and the Afrikaans texts; and to provide for matters connected therewith.

(English text signed by the President.) (Assented to 11 October 1995.)

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

#### *Amendment of section 1 of Act 34 of 1995*

1. Section 1 of the Promotion of National Unity and Reconciliation Act, 1995 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution in subsection 1 for the definition of «prescribe» of the following definition:

«\*\*prescribe\*\* <<‘prescribed’>> means \*\*prescribe\*\* <<prescribed>> by regulation made under section 40; << ;

(b) by the substitution in the Afrikaans text in subsection 1 for the definition of «veiligheidsmagte» of the following definition:

«veiligheidsmagte’ ook <<enige heelydse of deelydse>>-

(a) \*\*enige heelydse of deelydse\*\* lid of agent van die Suid-Afrikaanse Weermag, die Suid-Afrikaanse Polisie, die Nasionale Intelligensiediens, die Buro vir Staatsveiligheid, die Departement van Korrektiewe Dienste, of enige van hul organe;

(b) \*\*n heelydse of deelydse\*\* lid of agent van ‘n weermag, polisiemag, intelligensie-agentskap of gevangensdiens van enige voormalige staat, of enige van hul organe;»; and

(c) by the substitution in the Afrikaans text of subsection (2) of the following subsection:

«(2) By die toepassing van artikels 10(1), (2) en (3) en 11 en Hoofstukke 6 en 7 word Kommissie uitgele ook as ‘n verwysing na ‘komitee’ of ‘subkomitee’, na gelang van die geval, en word ‘Voorsitter’, ‘Ondervoorsitter’ of ‘kommissaris’ uitgele ook as ‘n verwysing na die voorsitter, ondervoorsitter \*\*of\*\*’, ‘n lid van ‘n komitee of subkomitee, na gelang van die geval.».

#### *Amendment of section 3 of Act 34 of 1995*

2. Section 3 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text for paragraph (c) of subsection (1) of the following paragraph:

«(c) die lot of verblyfplek van \*\*die\*\* slagoffers vas te stel en bekend te maak en deur die menslike en burgerlike waardigheid van daardie slagoffers te herstel deur aan hulle ‘n geleentheid te bied om hul eie relase te gee van die skendings waarvan hulle die slagoffers is, en deur herstelmaatreels ten opsigte van hulle aan te beveel.»; and

(b) by the substitution for paragraph (e) of subsection (3) of the following paragraph:

«(e) the subcommittees, <<referred to in section 5(c),>> shall exercise, perform and carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.».

#### *Amendment of section 4 of Act 34 of 1995*

3. Section 4 of the principal Act is hereby amended by the substitution for paragraph (g) in the Afrikaans text of the following paragraph:

«(g) aanbevelings aan die Minister doen met betrekking tot die ontwikkeling van ‘n beperkte \*\*getuiebeskermingsplan\*\* <<getuiebeskermingsprogram>> vir doeleinde van hierdie Wet;».

#### *Amendment of section 5 of Act 34 of 1995*

4. Section 5 of the principal Act is hereby amended-

(a) by the substitution in the English text for paragraph (e) of the following paragraph:

«(e) refer specific or general matters to, give guidance and instructions to, or review the decisions of, any committee \*\*or\*\* subcommittee or the investigating unit with regard to the exercise of its powers, the performance of its functions and the carrying out of its duties, the working procedures which should be followed and the divisions which should be set up by any committee in order to deal effectively with the work of the committee: Provided that no decision, or the process of arriving at such a decision, of the Committee on Amnesty regarding any application for amnesty shall be reviewed by the Commission;»;

(b) by the substitution for paragraph of the following paragraph:

«(g) direct the submission of and receive reports or inter-

im reports from any committee \*\*or\*\* subcommittee or <<investigating unit;>>-»,

(c) by the substitution for paragraph (i) of the following paragraph:

«(i) in consultation with the Minister and through diplomatic channels, obtain permission from the relevant authority of a foreign country to receive evidence or gather information <<or from>> that country;»;

(d) by the substitution in the Afrikaans text for paragraph (j) of the following paragraph:

«(j) ‘n ooreenkoms aan te gaan met enige persoon, met inbegrip van enige Staatsdepartement, ingevolge waarvan die Kommissie bevoegsal wees om van enige \*\*fasiliteit\*\* <<fasiliteit>>, toerusting of personeel wat behoort aan of onder die beheer van of in diens van sodanige persoon of departement is, gebruik te maak;»; and

(e) by the substitution for paragraph (m) of the following paragraph:

«(m) on its own initiative or at the request of any interested person inquire or investigate into any matter <<in terms of this Act>>, including the disappearance of any person or group of persons.».

#### *Amendment of section 13 of Act 34 of 1995*

5. Section 13 of the principal Act is hereby amended-

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

«(c) not more than \*\*three\*\* <<ten>> other members.»; and

(b) by the addition of the following subsection:

«<<(3) Any vacancies in the Committee shall be filled in accordance with this section.>>».

#### *Amendment of section 14 of Act 34 of 1995*

6. Section 14 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph:

«(ii) die inligting en getuie is bedoel in artikel 4(b) \*\*versamel\*\* <<inwin>> en ontvang;»;

(b) by the substitution for subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph:

«(iv) submit to the Commission interim reports indicating the progress made by the Committee with its activities or with regard to any other particular matter <<in terms of this Act>>; and

(c) by the substitution in the Afrikaans text for subsection (2) of the following subsection:

«(2) Die Komitee moet by die beeindiging van sy \*\*aktiwiteit\*\* <<werkzaamhede>> ‘n omvattende verslag wat besonderhede bevat van al sy bedrywighede en bevindings in verband met die verrigting van sy werkzaamhede en die uitvoering van sy pligte ingevolge hierdie Wet, aandie Kommissie voorle.».

#### *Amendment of section 18 of Act 34 of 1995*

7. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) in the Afrikaans text of the following subsection:

«(1) Enige persoon wat aansoek wil doen \*\*om\*\* <<vir>> amnestie ten opsigte van enige daad, versuim of misdryf op grond daarvan dat dit ‘ndaad is wat met ‘n politieke oogmerk in verband staan, moet binne 12 maande vanaf die datum van die proklamasie in artikel 7(3) vermeld, of sodanige verlengde tydperk as wat voorgeskryf mag word, ‘n aansoek indie voorgeskrewe vorm aan die Kommissie voorle.».

#### *Amendment of section 19 of Act 34 of 1995*

8. Section 19 of the principal Act is hereby amended-

(a) by the deletion of the proviso in subsection (2);

(b) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (3) of the following words:

«(3) After such investigation, **the Committee may**-  
(a) <<the Committee may>>;»;

(c) by the substitution in the Afrikaans text for subparagraph (i) of paragraph (a) of subsection (3) of the following subparagraph:

(i) die aansoeker meedeel dat die aansoek, **geoordeel** <<beoordeel>> op die besonderhede of verdere besonderhede in die aansoek **bevat** <<vervat>> of deur die aansoeker verskaf of geopenbaar as gevolg van navrae deur die Komitee gedoen, indien enige, nie **op** 'n daad wat met 'n politieke oogmerk in verband staan, **betrekking het** <<openbaar>> nie;>;

(d) by the substitution in the Afrikaans text for subparagraph (iii) of paragraph (a) of subsection (3) of the following subparagraph:

«(iii) beslis of die aansoek, **geoordeel** <<beoordeel>> op die besonderhede in subparagraaf (i) bedoel, en in sodanige verdere voorlegging op sodanige daad wat met 'n politieke oogmerk in verband staan, **betrekking het**;>;

(e) by the substitution for the words preceding subparagraph (i) of paragraph (b) of subsection (3) of the following words:

«(b) <<the Committee may,>> if it is satisfied that->;

(f) by the substitution in the Afrikaans text for subsection (4) of the following subsection:

«(4) Indien daar nie met 'n aansoek ingevolge subartikel (3) gehandel is nie, moet die Komitee 'n verhoor soos beoog in Hoofstuk 6 hou en **moet die Komitee**, behoudens die bepaling van artikel 33->;

(g) by the substitution for subsection (6) of the following subsection:

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

(h) by the substitution for subsection (7) of the following subsection:

«(7) If the person who submitted an application under section 18 is charged with any offence constituted by the act or omission to which the application relates, or is standing trial upon a charge of having committed such an offence, <<the Committee in consultation with the attorney-general concerned,>> may request the appropriate authority to postpone the proceedings pending the consideration and disposal of the application.>>».

#### *Amendment of section 20 of Act 34 of 1995*

9. Section 20 of the principal Act is hereby amended by the substitution for paragraph of subsection (2) of the following paragraph:

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

#### *Amendment of section 21 of Act 34 of 1995*

10. Section 21 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text for the words proceeding paragraph

(a) of subsection (1) of the following words:

«(1) Indien die Komitee enige aansoek vir amnestie **afwys** <<weier>>, moet by so gou doenlik->>; and

(b) by the substitution in the Afrikaans text for paragraph (a) of subsection (2) of the following paragraph:

«(a) Indien enige strafregtelike of siviele verrigtinge opgeskort ishangende 'n beslissing oor 'n aansoek om amnestie, en daardie aansoek **afgewys** <<geweier>> word, word die betrokke hof dienooreenkomstigelig.>>».

#### *Amendment of section 24 of Act 34 of 1995*

11. Section 24 of the principal Act is hereby amended-

(a) by the substitution for subsection (3) of the following subsection:

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

(b) by the addition of the following subsection:

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

#### *Amendment of section 25 of Act 34 of 1995*

12. Section 25 of the principal Act is hereby amended by the substitution in the Afrikaans text for subsection (2) of the following subsection:

«(2) Die Komitee moet 'n finale omvattende verslag oor sy **bedrywighede** <<werkzaamhede>>, bevindinge en aanbevelings aan die Kommissie voorle.>>».

#### *Amendment of section 26 of Act 34 of 1995*

13. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

«(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** <<referred to the Committee in terms of section 25(1)(a)(i)>> may apply to the Committee for reparation in the prescribed form.>>».

#### *Amendment of section 29 of Act 34 of 1995*

14. Section 29 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text for paragraph (b) of subsection (1) of the following paragraph:

«(b) by skriftelike kennisgewing enige persoon wat in besit is van of toesig hou oor of beheer het van enige voorwerp of ander ding wat na die mening van die Kommissie betrekking het op die onderwerp van die ondersoek of verhoor, oproep om sodanige voorwerp of ding aan die Kommissie voor te le, en die Kommissie mag enige voorwerp of ander ding aldus voorgede ondersoek en, onderworpe aan subartikel (3) vir 'n <<redelike>> tydperk **wat billik is**, terughou;>>; and

(b) by the substitution in the Afrikaans text for paragraph (d) of subsection (1) of the following paragraph:

«(d) in ooreenstemming met artikel 32, beslag **te** le op enige voorwerp of ding bedoel in paragraaf (b) wat betrekking het op die onderwerp van die ondersoek of verhoor.>>».

#### *Amendment of section 30 of Act 34 of 1995*

15. Section 30 of the principal Act is hereby amended-

(a) by the substitution in the English text for paragraph (a) of subsection

(2) of the following paragraph:

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

(b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

«(c) it appears that any person may **have suffered harm as a result of gross violation of human rights** <<be a victim>>»;>; and

(c) by the substitution in the Afrikaans text for the words following paragraph (c) of subsection (2) of the following words:

«moet die Kommissie indien sodanige persoon beskikbaar is, hom ofhaar die geleentheid bied om binne 'n bepaalde tyd, vertoe aan dieKommissie voor te le met betrekking tot die aangeleentheid onderoorweging of om getuienis af te le \*\*voor\*\* <<by>> 'n verhoor van dieKommissie».

*Amendment of section 32 of Act 34 of 1995*

16. Section 32 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text of paragraph (b) of subsection (1) of the following paragraph:

«(b) wat inligting bevat, of op redelike gronde vermoed word inligting te bevat, aangaande enige <<sodanige>> aangeleentheid, te vinde is, of op redelike gronde vermoed word te vinde twees.»;

(b) by the substitution in the Afrikaans text for subsection (2) of the following subsection:

«(2) 'n Betredings- of visenteringslasbrief in subartikel (1) bedoelword uitgereik deur 'n regter van die Hooggeregshof of 'n landdros watregsbevoegdheid het in die gebied waar die betrokke perseel gelee is, en word slegs uitgereik indien dit aan die regter of landdros blyk uitinligting onder eed dat daar redelike gronde is om te \*\*glo\*\* <<vermoed>> dat 'n voorwerp of ding in paragraaf (a) of (b) van subartikel (1) genoem, op of in sodanige perseel is, en moet aanduiwelke van die handeling in paragraaf (b)(i) tot (vi) van daardiesubartikel daarkragtens verrig mag word deur die persoon aan wie dit uitgereik is.»;

(c) by the substitution for the words preceding paragraph (a) of subsection

(3) of the following words:

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

(d) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (5) of the following words:

«(a) Any commissioner, or any member of the staff of the Commissioner police officer at the request of a commissioner, may without a warrant enter upon any premises, other than a private dwelling, and \*\*search for, seize and remove any article or thing\*\* <<exercise the powers>> referred to in subsection (1) <<(b)(i) up to and including (vi)>>».

*Amendment of section 34 of Act 34 of 1995*

17. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

*Substitution of section 35 of Act 34 of 1995*

18. The following section is hereby substituted in the Afrikaans text for section 35 of the principal Act:

«Beperkte getuiebeskermingsprogram

35. (1) Die Minister moet \*\*na\*\* <<in>> oorleg met die Kommissie, die instelling van 'n \*\*getuiebeskermingsplan\*\* <<getuiebeskermingsprogram>> bevorder ten einde wanneer nodig vir die beskerming en veiligheid van getuies op enige wyse voorsiening te maak.

(2) Die \*\*getuiebeskermingsplan\*\* <<getuiebeskermingsprogram>> beoog in subartikel (1) word so gou doenlik na die datum bedoel in artikel 7(3) deur die President voorgeskryf.

(3) Die regulasies wat vir 'n \*\*getuiebeskermingsplan\*\* <<getuiebeskermingsprogram>> voorsiening maak, moet-

(a) onder andere voorsiening maak vir die aanstelling van 'n privaatspesoon of die sekondering van 'n beaempte werknemer van 'n Staatsdepartement ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), om as 'n getuiebeskermer op trefte; en

(b) vir goedkeuring in die Parlement ter Tafel gele word.

(4)(a) Tot tyd en wyl die \*\*getuiebeskermingsplan\*\* <<getuiebeskermingsprogram>> ingestel is, kan die President, in oorleg met die Minister en die Kommissie, tussentydse maatreels voorskryf wat gevolg moet word ten einde vir die beskerming en die veiligheid van 'n getuie voorsiening te maak: Met dien verstande dat die bepaling van artikel 185A van die Strafproseswet, 1977 (Wet No. 51 van 1977), met die nodige aanpassings, in die afwesigheid van sodanige tussentydse maatreels toegepas word.

(b) Die tussentydse maatreels beoog in paragraaf (a) word in die Parlement ter Tafel gele vir goedkeuring.

(5) In hierdie artikel beteken-

'getuie' 'n persoon wat begerig is om getuienis te lewer, wat getuienis lewer of getuienis gelewer het vir die doeleindes van hierdie Wet en ook 'n lid van sy of haar familie of huishouding wie se veiligheid <<as gevolg daarvan>> bedreig word \*\*as gevolg daarvan\*\* deur 'n persoon of groep persone, hetsy hulle bekend is aan hom of haar, al dan nie».

*Substitution of long title of Act 34 of 1995*

19. The following long title is hereby substituted for the long title of the principal Act:

«To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission, <<comprising>> 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.».

*Short title*

20. This Act shall be called the Promotion of National Unity and Reconciliation Amendment Act, 1995.

**NO. 27 OF 1996: NATIONAL EDUCATION POLICY ACT, 1996.**

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



## GENERAL EXPLANATORY NOTE:

Words in italics indicate insertions in existing enactments.

## ACT

To provide for the determination of national policy for education; to amend the National Policy for General Education Affairs Act, 1984, so as to substitute certain definitions; to provide afresh for the determination of policy on salaries and conditions of employment of educators; and to provide for matters connected therewith.

## PREAMBLE

WHEREAS it is necessary to adopt legislation to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights; (Afrikaans text signed by the President.) (Assented to 16 April 1996.)

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

**Definitions**

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

- (i) «Committee» means the Heads of Education Departments Committee established by section 10; (vi)
- (ii) «consultative body» means a consultative body contemplated in section 11; (xiv)
- (iii) «Council» means the Council of Education Ministers established by section 9; (xiii)
- (iv) «Department» means the Department of Education; (iii)
- (v) «Director-General» means the Director-General: Education; (iv)
- (vi) «education» means any education and training provided by an education institution, other than training as defined in section I of the Manpower Training Act, 1981 (Act No. 56 of 1981); (viii)
- (vii) «education department» means the Department and a department of any provincial government which is responsible for education; (ix)
- (viii) «education institution» means any institution providing education, whether early childhood education, primary, secondary, further or higher education, other than a university or technikon, and also an institution providing specialised, vocational, adult, distance or community education; (x)
- (ix) «educator» means any person who teaches, educates or trains other persons at an education institution or assists in rendering education services or education auxiliary or support services provided by or in an education department, but does not include any officer or employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); (xi)
- (x) «Minister» means the Minister of Education; (vii)
- (xi) «organised teaching profession» means an organisation or union which is a member of the Education Labour Relations Council established by section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and is recognised by the Minister for the purposes of this Act; (v)
- (xii) «policy instrument» means the policy instrument referred to in section 7; (ii)
- (xiii) «provincial political head of education» means the member of an Executive Council responsible for education in a province; (xii)
- (xiv) «school» means a pre-primary, primary or secondary school; (xv)

(xv) «stakeholder» means an organisation or body with a direct and continuing interest in the education institution, programme, phase or sector in question; (i)

(xvi) «student» means any person enrolled in an education institution; (xvi)

(xvii) «subcommittee» means a subcommittee of the Committee. (xvii)

**Objectives of Act**

2. The objectives of the Act are to provide for-

- (a) the determination of national education policy by the Minister in accordance with certain principles;
- (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purpose of consultation;
- (c) the publication and implementation of national education policy;
- (d) the monitoring and evaluation of education.

**Determination of national education policy by Minister**

3. (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) In determining national policy for education at education institutions, the Minister shall take into account the competence of the provincial legislatures in terms of section 126 of the Constitution, and the relevant provisions of any provincial law relating to education.

(3) Whenever the Minister wishes a particular national policy to prevail over the whole or a part of any provincial law on education, the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect.

(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system, and without derogating from the generality of this section, may determine national policy for-

- (a) education management information systems, including the provision of data in accordance with the international obligations of the government;
- (b) the organisation, management and governance of the national education system;
- (c) facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission;
- (d) innovation, research and development in education;
- (e) the ratio between educators and students;
- (f) the professional education and accreditation of educators;
- (g) the organisation, management, governance, funding, establishment and registration of education institutions;
- (h) compulsory school education;
- (i) the admission of students to education institutions, which shall include the determination of the age of admission to schools;
- (j) the minimum number of hours per day and days per year during which education shall be provided for different phases of education in education institutions; (c) facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission;
- (k) co-ordination of the school dates among provinces;
- (l) curriculum frameworks, core syllabuses and education programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;
- (m) language in education;

(n) control and discipline of students at education institutions: Provided that no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any education institution;

(p) co-operation between the Department;

(i) other state departments;

(ii) provincial education departments;

(iii) local government; and

(iv) non-government organisations, with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;

(o) education support services, including health, welfare, career and vocational development, counselling and guidance for education institutions, within the functional responsibility of a department of education;

(q) international relations in the field of education;

(r) executive functions required to implement national education policy determined in terms of this Act, including the implementation of measures to address past discriminatory practices.

4. The policy contemplated in section 3 shall be directed toward-

(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 3 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right-

(i) of every person to be protected against unfair discrimination within or by an education department or education institution on any ground whatsoever;

(ii) of every person to basic education and equal access to education institutions;

(iii) of a parent or guardian in respect of the education of his or her child or ward;

(iv) of every child in respect of his or her education;

(v) of every student to be instructed in the language of his or her choice where this is reasonably practicable;

(vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;

(vii) of every person to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race;

(viii) of every person to use the language and participate in the cultural life of his or her choice within an education institution;

(b) enabling the education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;

(c) achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women;

(d) endeavouring to ensure that no person is denied the opportunity to receive an education to the maximum of his or her ability as a result of physical disability;

(e) providing opportunities for and encouraging lifelong learning;

(f) achieving an integrated approach to education and training within a national qualifications framework;

(g) cultivating skills, disciplines and capacities necessary for reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior knowledge and experience of students;

(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning in education institutions;

(k) promoting enquiry, research and the advancement of knowledge;

(l) enhancing the quality of education and educational innovation through systematic research and development on education, monitoring and evaluating education provision and performance, and training educators and education managers;

(m) ensuring broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system;

(n) achieving the cost-effective use of education resources and sustainable implementation of education services;

(o) achieving close co-operation between the national and provincial governments on matters relating to education, including the development of capacity in the departments of education, and the effective management of the national education system.

### Consultation on national education policy

5. (1) Policy contemplated in section 3 shall be determined by the Minister after consultation with such appropriate consultative bodies as have been established for that purpose in terms of section II or any applicable law, and with-

(a) the Council;

(b) such national organisations representing college rectors as the Minister may recognise for this purpose;

(c) the organised teaching profession;

(d) such national organisations representing parents as the Minister may recognise for this purpose;

(e) such national organisations representing students as the Minister may recognise for this purpose;

(f) such other national stakeholder bodies as the Minister may recognise for this purpose.

(2) The policy contemplated in section 3 shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

### Consultation on legislation

6. Legislation on a matter referred to in section 3 shall be introduced in Parliament or, in the case of regulations, be published in the Gazette only after consultation between the Minister and-

(a) the Council, in respect of education at education institutions; and

(b) all the parties in the Education Labour Relations Council established by section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), in respect of any matter falling within the objectives of that Act.

### Publication of national education policy

7. The Minister shall within 21 days after determining policy in terms of section 3-

(a) give notice of such determination in the Gazette and indicate in such notice where the policy instrument issued with regard thereto may be obtained;

(b) table the policy instrument referred to in paragraph (a) in Parliament within 21 days after the notice has appeared in the Gazette, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 day after the commencement of the first ensuing ordinary session of Parliament.

### Monitoring and evaluation of education

8. (1) The Minister shall direct that the standards of education provision, delivery and performance throughout the

Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national education policy, particularly as determined in terms of section 3(3).

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the bodies referred to in section 5(1).

(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of education management information systems, or by other suitable means, in co-operation with provincial departments of education.

(4) The Department shall fulfill its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the competent authority concerned to comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of education provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 3(3), the Minister shall inform the provincial political head of education concerned and require the submission within 90 days of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 days after the commencement of the first ensuing ordinary session of Parliament.

### **Council of Education Ministers**

9. (1) There is hereby established a council, called the Council of Education Ministers, consisting of-

- (a) the Minister, who shall be the chairperson;
- (b) the Deputy Minister of Education, if such Deputy Minister is appointed, who in the absence of the Minister shall be designated by the Minister as chairperson; and
- (c) every provincial political head of education.

(2) The Director-General shall attend meetings of the Council in order to report on the proceedings of the Committee, and to advise on any other matter relating to the responsibilities of the Department.

(3) The chairpersons of the Portfolio Committee on Education in the National Assembly and the Select Committee on Education in the Senate may attend meetings of the Council.

(4) The functions of the Council shall be to-

(a) promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of Parliament and the provincial legislatures in terms of section 126 of the Constitution;

(b) share information and views on all aspects of education in the Republic; and

(c) co-ordinate action on matters of mutual interest to the national and provincial governments.

(5) The Council may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.

(6) The proceedings of the Council shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.

### **Heads of Education Departments Committee**

10. (1) There is hereby established a committee called the Heads of Education Departments Committee consisting of-

- (a) the Director-General, who shall be the chairperson;
- (b) the Deputy Directors-General of the Department; and
- (c) the heads of the provincial education departments.

(2) The functions of the Committee shall be to-

(a) facilitate the development of a national education system in accordance with the objectives and principles provided for in this Act;

(b) share information and views on national education;

(c) co-ordinate administrative action on matters of mutual interest to the education departments; and

(d) advise the Department on any matter contemplated in sections 3, 4, 5, 6, 7, 8 and I I in respect of education, or on any other matter relating to the proper functioning of the national education system.

(3) The Committee may establish subcommittees to assist it in the performance of its functions, and-

(a) may appoint persons who are not members of the Committee to be members of a subcommittee: Provided that the organised teaching profession shall be invited to nominate representatives as members of each subcommittee;

(b) designate the chairperson of a subcommittee or direct that the chairperson be appointed by the subcommittee from among its members.

(4) (a) Meetings of the Committee shall be held at such times and places as the chairperson of the Committee may determine.

(b) The proceedings of the Committee shall not be invalid merely by virtue of the fact that there is a vacancy in the Committee.

(c) If the chairperson of the Committee is absent from a meeting of the Committee, one of the Deputy Directors-General designated for this purpose by the chairperson shall take the chair at that meeting.

(5) The Committee may draw up rules regarding the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers: Provided that not less than four meetings per year shall be held.

### **Consultative bodies**

11. (1) The Minister may, subject to any applicable law, by regulation establish such bodies as may be necessary to advise him or her on matters contemplated in section 3: Provided that the Minister shall establish-

(a) a body to be known as the National Education and Training Council, whose membership shall reflect the main national stakeholders in the national education system, to advise on broad policy and strategy for the development of the national education system and the advancement of an integrated approach to education and training;

(b) such other bodies as may be necessary to represent the interests of particular sectors of the education system.

(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as

prescribed by regulation: Provided that the bodies referred to in section 5(1)(c), shall be invited to nominate representatives to any such consultative body within their respective spheres of interest.

(3) Different regulations may be made in respect of different bodies established under subsection (1).

**Allowances and remuneration of members of subcommittees and consultative bodies**

12. A member of a subcommittee or a consultative body, who is not in the full-time employment of the State may, in respect of the services rendered by that member in connection with the affairs of the subcommittee or consultative body, from money appropriated for that purpose by Parliament, be paid such travelling and subsistence and other allowances, as the Minister, with the concurrence of the Minister of Finance, may determine.

**Administrative functions of Council, Committee, and consultative bodies**

13. (1) The administrative functions of the Council, Committee and each consultative body shall be performed by officials of the Department who are designated by the Director-General for that purpose.

(2) The Director-General shall in respect of the Council, Committee and each consultative body designate a Secretary under whose direction the other officials shall perform their functions.

**Amendment of Act 76 of 1984**

14. (1) Subject to the provisions of subsection (2), the National Policy for General Education Affairs Act, 1984 (Act No. 76 of 1984), is hereby amended to the extent set out in the Schedule.

(2) Anything done under a provision of the National Policy for General Education Affairs Act, 1984, prior to the amendment thereof by subsection (1), shall remain in force as if such amendment had not been made.

**Short title**

15. This Act shall be called the National Education Policy Act, 1996.

SCHEDULE

Number and year	Short title	Extent of repeal of law
Act No. 76 of 1984	National Policy for General Education Affairs Act.	1. The substitution for EducationAffairs Act section 1 of the following section: «Definitions <<1.In this Act, unless the context indicates otherwise- «department of education' means the departments of the national and provincial governments which are responsible for education; 'educator' means any person who teaches, educates or trains other persons at any school, technical college or teachers' training college, or assists in rendering professional services or educational auxiliary services provided by or in a department of education, but does not include any officer or employee, as defined in section

1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 'Minister' means the Minister of Education.».

2. The substitution for section 2 of the following section:

«Determination of policy on salaries and conditions of employment of educators

2. (1) Subject to the provisions of this section and the provisions of any law regarding the financing of education, the Minister may determine the national policy to be applied in respect of the salaries and conditions of employment of educators.

(2) The policy contemplated in subsection (1) shall be determined by the Minister in accordance with the provisions of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and, if it involves expenditure from the State Revenue Fund, with the concurrence of the Minister of Finance.».

3. The repeal of sections 3, 4, 5, 6, 7, 8, 9 and 10.

4. The substitution for section 11 of the following section:  
«Short title

11. This Act shall be called the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984.».

5. The substitution for the long title of the following long title:  
«To provide for the determination of national policy in respect of salaries and conditions of employment of educators; and for matters connected therewith.».

**NO. 84 OF 1996: SOUTH AFRICAN SCHOOLS ACT, 1996**

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

ACT

To provide for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and

WHEREAS this country requires a new national system for

schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State; and

WHEREAS it is necessary to set uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa;

(English text signed by the President.)

(Assented to 6 November 1996.)

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

## CHAPTER 1

### DEFINITIONS AND APPLICATION OF ACT

#### Definitions

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

(i) «Constitution» means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

(ii) «Council of Education Ministers» means the Council of Education Ministers established by the National Education Policy Act, 1996 (Act No. 27 of 1996); (xix)

(iii) «education department» means the department established by section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a province; (xi)

(iv) «educator» means an educator as defined in the Educators Employment Act, 1994 (Proclamation No. 138 of 1994); (xiii)

(v) «governing body» means a governing body contemplated in section 16(1); (ii)

(vi) «grade» means that part of an educational programme which a learner may complete in one school year, or any other education programme which the Member of the Executive Council may deem to be equivalent thereto; (iv)

(vii) «Head of Department» means the head of an education department; (iii)

(viii) «independent school» means a school registered or deemed to be registered in terms of section 46; (x)

(ix) «learner» means any person receiving education or obliged to receive education in terms of this Act; (vii)

(x) «member of staff» means a person employed at a school; (xiv)

(xi) «Member of the Executive Council» means the Member of the Executive Council of a province who is responsible for education in that province; (viii)

(xii) «Minister» means the Minister of Education; (ix)

(xiii) «officer» means an employee of an education department appointed in terms of the Educators Employment Act, 1994 (Proclamation No. 138 of 1994), or the Public Service Act, 1994 (Proclamation No. 103 of 1994); (i)

(xiv) «parent» means-

(a) the parent or guardian of a learner;

(b) the person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school; (xiv)

(xv) «principal» means an educator appointed or acting as the head of a school; (xvi)

(xvi) «province» means a province established by section 124 of the Constitution; (xviii)

(xvii) «provincial legislature» means a provincial legislature contemplated in section 125 of the Constitution; (xvii)

(xviii) «public school» means a school contemplated in Chapter 3; (xii)

(xix) «school» means a public school or an independent school which enrolls learners in one or more grades between grade zero and grade twelve; (xx)

(xx) «this Act» means this Act and all regulations promulgated under this Act. (vi)

#### Application of Act

2. (1) This Act applies to school education in the Republic of South Africa.

(2) A Member of the Executive Council and a Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

(3) Nothing in this Act prevents a provincial legislature from enacting legislation for school education in a province in accordance with the Constitution.

## CHAPTER 2

### LEARNERS

#### Compulsory attendance

3. (1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.

(2) The Minister must, by notice in the Government Gazette, determine the ages of compulsory attendance at school for learners with special education needs.

(3) Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsections (1) and (2).

(4) If a Member of the Executive Council cannot comply with subsection (3) because of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.

(5) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may-

(a) investigate the circumstances of the learner's absence from school;

(b) take appropriate measures to remedy the situation; and

(c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).

(6) Subject to this Act and any other applicable law-

(a) any parent who, without just cause and after a written notice from the Head of Department, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or

(b) any other person who, without just cause, prevents a learner who is subject to compulsory attendance from attend-

ing a school, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

#### **Exemption from compulsory attendance**

4. (1) A Head of Department may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.

(2) Every Head of Department must maintain a register of all learners exempted from compulsory school attendance.

#### **Admission to public schools**

5. (1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

(2) The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorise the principal of the school or any other person to administer such test.

(3) No learner may be refused admission to a public school on the grounds that his or her parent-

(a) is unable to pay or has not paid the school fees determined by the governing body under section 39;

(b) does not subscribe to the mission statement of the school; or

(c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.

(4) The Minister may by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine age requirements for the admission of learners to a school or different grades at a school.

(5) Subject to this Act and any applicable provincial law, the admission policy of a public school is determined by the governing body of such school.

(6) In determining the placement of a learner with special education needs, the Head of Department and principal must take into account the fights and wishes of the parents of such learner.

(7) An application for the admission of a learner to a public school must be made to the education department in a manner determined by the Head of Department.

(8) If an application in terms of subsection (7) is refused, the Head of Department must inform the parent in writing of such refusal and the reason therefor.

(9) Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council.

#### **Language policy of public schools**

6. (1) Subject to the Constitution and this Act, the Minister may, by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.

(2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.

(3) No form of racial discrimination may be practised in implementing policy determined under this section.

(4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.

#### **Freedom of conscience and religion at public schools**

7. Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.

#### **Code of conduct**

8. (1) Subject to any applicable provincial law, a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.

(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.

(3) The Minister may, after consultation with the Council of Education Ministers, determine guidelines for the consideration of governing bodies in adopting a code of conduct for learners.

(4) Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner.

(5) A code of conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

#### **Suspension and expulsion from public school**

9. (1) Subject to this Act and any applicable provincial law, the governing body of a public school may, after a fair hearing, suspend a learner from attending the school-

(a) as a correctional measure for a period not longer than one week; or

(b) pending a decision as to whether the learner is to be expelled from the school by the Head of Department.

(2) Subject to any applicable provincial law, a learner at a public school may be expelled only-

(a) by the Head of Department; and

(b) if found guilty of serious misconduct after a fair hearing.

(3) The Member of the Executive Council must determine by notice in the Provincial Gazette-

(a) the behaviour by a learner at a public school which may constitute serious misconduct;

(b) disciplinary proceedings to be followed in such cases;

(c) provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

(4) A learner or the parent of a learner who has been expelled from a public school may appeal against the decision of the Head of Department to the Member of the Executive Council.

(5) If a learner who is subject to compulsory attendance in terms of section 3(1) is expelled from a public school, the Head of Department must make an alternative arrangement for his or her placement at a public school.

#### **Prohibition of corporal punishment**

10. (1) No person may administer corporal punishment at a school to a learner.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

#### **Representative council of learners**

11. (1) A representative council of learners at the school must be established at every public school enrolling learners in the eighth grade and higher.

(2) A Member of the Executive Council may, by notice in the Provincial Gazette, determine guidelines for the establishment, election and functions of representative councils of learners.

(3) The Member of the Executive Council may, by notice in the Provincial Gazette, exempt a public school for learners with special education needs from complying with subsection

(1) if it is not practically possible for a representative council of learners to be established at the school.

## CHAPTER 3

### PUBLIC SCHOOLS

#### Provision of public schools

12. (1) The Member of the Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature.

(2) The provision of public schools referred to in subsection (1) may include the provision of hostels for the residential accommodation of learners.

(3) A public school may be an ordinary public school or a public school for learners with special education needs.

(4) The Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners.

(5) The Member of the Executive Council must take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.

(6) Nothing in this Act prohibits the provision of gender-specific public schools.

#### Public schools on State property

13. (1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(2) Subject to section 20(1)(k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.

(3) The right referred to in subsection (2) may only be restricted-

(a) by the Member of the Executive Council; and

(b) if the immovable property is not utilised by the school in the interests of education.

(4) The Member of the Executive Council may not act under subsection (3) unless he or she has-

(a) informed the governing body of the school of his or her intention so to act and the reasons therefor;

(b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;

(c) duly considered any such representations received.

(5) The right contemplated in subsection (2) is enforceable against any successor in title to the owner of the immovable property in question.

(6) No immovable property owned by the State and occupied by a public school may be alienated unless an agreement contemplated in section 14 has been concluded between the Member of the Executive Council and the prospective owner of the immovable property.

(7) The registrar of any deeds registry may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the registrar with proof of the agreement contemplated in subsection (6).

(8) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to the right contemplated in subsection (2).

#### Public schools on private property

14. (1) Subject to the Constitution and this Act, a public school may be provided on private property only in terms of

an agreement between the Member of the Executive Council and the owner of the private property.

(2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for-

(a) the provision of education and the performance of the normal functions of a public school;

(b) governance of the school, including the relationship between the governing body of the school and the owner;

(c) access by all interested parties to the property on which the school stands;

(d) security of occupation and use of the property by the school;

(e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services;

(f) protection of the owner's rights in respect of the property occupied, affected or used by the school.

(3) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.

(4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

(5) Despite subsection (3), a registrar of a deeds registry must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the registrar receives-

(a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and

(b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.

(6) The Minister must, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs.

#### Status of public schools

15. Every public school is a juristic person, with legal capacity to perform its functions in terms of this Act.

Governance and professional management of public schools

16. (1) Subject to this Act, the governance of every public school is vested in its governing body.

(2) A governing body stands in a position of trust towards the school.

(3) Subject to this Act and any applicable provincial law, the professional management of a public school must be undertaken by the principal under the authority of the Head of Department.

#### Governing body serving two or more schools

17. (1) The Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the best interests of education at the schools in question.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

(a) given notice in the Provincial Gazette of his or her intention so to act;

- (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
- (c) considered all such submissions.

#### **Constitution of governing body**

18. (1) Subject to this Act and any applicable provincial law, the governing body of a public school must function in terms of a constitution which complies with minimum requirements determined by the Member of the Executive Council by notice in the Provincial Gazette.

(2) A constitution contemplated in subsection (1) must provide for-

- (a) a meeting of the governing body at least once every school term;
- (b) meetings of the governing body with parents, learners, educators and other staff at the school, respectively, at least once a year;
- (c) recording and keeping of minutes of governing body meetings;
- (d) making available such minutes for inspection by the Head of Department; and
- (e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.

(3) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.

#### **Enhancement of capacity of governing bodies**

19. (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to-

- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
- (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

#### **Functions of all governing bodies**

20. (1) Subject to this Act, the governing body of a public school must-

- (a) promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school;
- (b) adopt a constitution;
- (c) develop the mission statement of the school;
- (d) adopt a code of conduct for learners at the school;
- (e) support the principal, educators and other staff of the school in the performance of their professional functions;
- (f) determine times of the school day consistent with any applicable conditions of employment of staff at the school;
- (g) administer and control the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
- (h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;
- (i) recommend to the Head of Department the appointment of educators at the school, subject to the Educators Employment Act, 1994 (Proclamation No. 138 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (j) recommend to the Head of Department the appointment of non-educator staff at the school, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (k) at the request of the Head of Department, allow the

reasonable use under fair conditions of the facilities of the school for educational programmes not conducted by the school;

(l) discharge all other functions imposed upon the governing body by or under this Act; and

(m) discharge other functions consistent with this Act as determined by the Minister by notice in the Government Gazette, or by the Member of the Executive Council by notice in the Provincial Gazette.

(2) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school.

(3) The governing body may join a voluntary association representing governing bodies of public schools.

#### **Allocated functions of governing bodies**

21. (1) Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:

(a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;

(b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;

(c) to purchase textbooks, educational materials or equipment for the school;

(d) to pay for services to the school; or

(e) other functions consistent with this Act and any applicable provincial law.

(2) The Head of Department may refuse an application contemplated in subsection (1) only if the governing body concerned does not have the capacity to perform such function effectively.

(3) The Head of Department may approve such application unconditionally or subject to conditions.

(4) The decision of the Head of Department on such application must be conveyed in writing to the governing body concerned, giving reasons.

(5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal to the Member of the Executive Council.

(6) The Member of the Executive Council may, by notice in the Provincial Gazette, determine that some governing bodies may exercise one or more functions without making an application contemplated in subsection (1), if-

(a) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and

(b) there is a reasonable and equitable basis for doing so.

#### **Withdrawal of functions from governing bodies**

22. (1) The Head of Department may, on reasonable grounds, withdraw a function of a governing body.

(2) The Head of Department may not take action under subsection (1) unless he or she has-

(a) informed the governing body of his or her intention so to act and the reasons therefor;

(b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and

(c) given due consideration to any such representations received.

(3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter-

(a) furnishes the governing body with reasons for his or her actions;



- (b) gives the governing body a reasonable opportunity to make representations relating to such actions; and
  - (c) duly considers any such representations received.
4. The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).
5. Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.

#### **Membership of governing body of ordinary public school**

23. (1) Subject to this Act, the membership of the governing body of an ordinary public school comprises-
- (a) elected members;
  - (b) the principal, in his or her official capacity;
  - (c) co-opted members.
- (2) Elected members of the governing body shall comprise a member or members of each of the following categories:
- (a) Parents of learners at the school;
  - (b) educators at the school;
  - (c) members of staff at the school who are not educators; and
  - (d) learners in the eighth grade or higher at the school.
- (3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2)(a).
- (4) The representative council of learners referred to in section II (1) must elect the learner or learners referred to in subsection (2)(d).
- (5) The governing body of an ordinary public school which provides education to learners with special needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.
- (6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.
- (7) The governing body of a public school contemplated in section 14 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.
- (8) Co-opted members do not have voting rights on the governing body.
- (9) The number of parent members must comprise one more than the combined total of other members of a governing body who have voting rights.

#### **Membership of governing body of public school for learners with special education needs**

24. (1) The following categories of persons must be represented on a governing body of a public school for learners with special education needs, in each case by a member or members of the respective category:
- (a) Parents of learners at the school, if reasonably practicable;
  - (b) educators at the school;
  - (c) members of staff at the school who are not educators;
  - (d) learners attending the eighth grade or higher, if reasonably practicable;
  - (e) representatives of sponsoring bodies, if applicable;
  - (f) representatives of organisations of parents of learners with special education needs, if applicable;
  - (g) representatives of organisations of disabled persons, if applicable;
  - (h) disabled persons, if applicable; and
  - (i) experts in appropriate fields of special needs education.
- (2) Subject to this Act, the Member of the Executive Council must, by notice in the Provincial Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every public school for learners with special education needs within his or her province.

- (3) A notice contemplated in subsection (2) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.

(4) The Member of the Executive Council must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

#### **Failure by governing body to perform functions**

25. (1) If a governing body has ceased to perform its functions, the Head of Department must appoint sufficient persons to perform those functions for a period not exceeding three months.

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

#### **Recusal by members of governing body**

26. A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

##### **Reimbursement of members of governing body**

27. (1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

#### **Election of members of governing body**

28. Subject to this Act and any applicable provincial law, the Member of the Executive Council must, by notice in the Provincial Gazette, determine-

- (a) the term of office of members and office-bearers of a governing body;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the governing body;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;
- (f) a formula or formulae for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 23(2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public schools; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

#### **Office-bearers of governing bodies**

29. (1) A governing body must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.

(2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body.

#### **Committees of governing body**

30. (1) A governing body may-
- (a) establish committees, including an executive committee; and
  - (b) appoint persons who are not members of the govern-

ing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) A governing body of an ordinary public school which provides education to learners with special education needs must establish a committee on special education needs.

#### **Term of office of members and office-bearers of governing bodies**

31. (1) The term of office of a member of a governing body other than a learner may not exceed three years.

(2) The term of office of a member of a governing body who is a learner may not exceed one year.

(3) The term of office of an office-bearer of a governing body may not exceed one year.

(4) A member or office-bearer of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

#### **Status of minors on governing bodies of public schools**

32. (1) A member of a governing body who is a minor may not contract on behalf of a public school.

(2) A member of a governing body who is a minor may not vote on resolutions of a governing body which impose liabilities on third parties or on the school.

(3) A member of a governing body who is a minor incurs no personal liability for any consequence of his or her membership of the governing body.

#### **Closure of public schools**

33. (1) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public school.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

(a) informed the governing body of the school of his or her intention so to act and his or her reasons therefor;

(b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;

(c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and

(d) given due consideration to any such representations received.

(3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

## CHAPTER 4

### FUNDING OF PUBLIC SCHOOLS

#### **Responsibility of State**

34. (1) The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.

(2) The State must, on an annual basis, provide sufficient information to public schools regarding the funding referred to in subsection (1) to enable public schools to prepare their budgets for the next financial year.

#### **Norms and standards for funding of public schools**

35. Subject to the Constitution and this Act, the Minister must determine norms and minimum standards for the fund-

ing of public schools after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance.

#### **Responsibility of governing body**

36. A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.

#### **School funds and assets of public schools**

37. (1) The governing body of a public school must establish a school fund and administer it in accordance with directions issued by the Head of Department.

(2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.

(3) The governing body of a public school must open and maintain a banking account.

(4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.

(5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.

(6) The school fund, all proceeds thereof and any other assets of the public school must be used only for-

(a) educational purposes, at or in connection with such school;

(b) educational purposes, at or in connection with another public school, by agreement with such other public school and with the consent of the Head of Department;

(c) the performance of the functions of the governing body; or

(d) another educational purpose agreed between the governing body and the Head of Department.

#### **Annual budget of public school**

38. (1) A governing body of a public school must prepare a budget each year, according to guidelines determined by the Member of the Executive Council, which shows the estimated income and expenditure of the school for the following financial year.

(2) Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days' notice, for consideration and approval by a majority of parents present and voting.

#### **School fees at public schools**

39. (1) Subject to this Act, school fees may be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the meeting referred to in section 38(2).

(2) A resolution contemplated in subsection (1) must provide for-

(a) the amount of fees to be charged; and

(b) equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay school fees.

(3) The governing body must implement a resolution adopted at the meeting contemplated in subsection (1).

(4) The Minister must, after consultation with the Council of Education Ministers and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in subsection (2)(b).

#### **Parent's liability for payment of school fees**

40. (1) A parent is liable to pay the school fees determined

in terms of section 39 unless or to the extent that he or she has been exempted from payment in terms of this Act.

(2) A parent may appeal to the Head of Department against a decision of a governing body regarding the exemption of such parent from payment of school fees.

(3) In deciding an appeal referred to in subsection (2), the Head of Department must follow due process which safeguards the interests of the parent and the governing body.

#### **Enforcement of payment of school fees**

41. The governing body of a public school may by process of law enforce the payment of school fees by parents who are liable to pay in terms of section 40.

#### **Financial records and statements of public schools**

42. The governing body of a public school must-

(a) keep records of funds received and spent by the public school and of its assets, liabilities and financial transactions; and

(b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the guidelines determined by the Member of the Executive Council.

#### **Audit or examination of financial records and statements**

43. (1) The governing body of a public school must appoint a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), to audit the records and financial statements referred to in section 42.

(2) If the audit referred to in subsection (1) is not reasonably practicable, the governing body of a public school must appoint a person to examine and report on the records and financial statements referred to in section 42, who-

(a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

(b) is approved by the Member of the Executive Council for this purpose.

(3) No person who has a financial interest in the affairs of the public school may be appointed under this section.

(4) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public school.

(5) A governing body must submit to the Head of Department, within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.

(6) At the request of an interested person, the governing body must make the records referred to in section 42, and the audited or examined financial statements referred to in this section, available for inspection.

#### **Financial year of public school**

44. The financial year of a public school commences on the first day of January and ends on the last day of December of each year.

### CHAPTER 5

## INDEPENDENT SCHOOLS

#### **Establishment of independent school**

45. Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an independent school.

#### **Registration of independent school**

46. (1) No person may establish or maintain an independent school unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department.

(3) A Head of Department must register an independent school if he or she is satisfied that-

(a) the standards to be maintained by such school will not be inferior to the standards in comparable public schools;

(b) the admission policy of the school does not discriminate on the grounds of race; and

(c) the school complies with the grounds for registration contemplated in subsection (2).

(4) Any person who contravenes subsection (1) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

#### **Withdrawal of registration of independent school**

47. (1) No withdrawal of the registration of an independent school is valid unless-

(a) the owner of such independent school has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;

(b) the owner of such independent school has been granted an opportunity to make written representations to the Head of Department as to why the registration of the independent school should not be withdrawn; and

(c) any such representations received have been duly considered.

(2) The owner of an independent school may appeal to the Member of the Executive Council against the withdrawal of the registration of such independent school.

#### **Subsidies to registered independent schools**

48. (1) The Minister may, by notice in the Government Gazette, determine norms and minimum standards for the granting of subsidies to independent schools after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless-

(a) the owner of such independent school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;

(b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and

(c) any such representations received have been duly considered.

(5) The owner of an independent school may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such independent school.

#### **Declaration of independent school as public school**

49. (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner

of an independent school in terms whereof such independent school is declared to be a public school.

(2) Notice of the change of status contemplated in subsection (1) must be published in the Provincial Gazette.

#### **Duties of Member of Executive Council relating to independent schools**

50. (1) The Member of the Executive Council must, by notice in the Provincial Gazette, determine requirements for-

(a) the admission of learners of an independent school to examinations conducted by or under the supervision of the education department;

(b) the keeping of registers and other documents by an independent school;

(c) criteria of eligibility, conditions and manner of payment of any subsidy to an independent school; and

(d) any other matter relating to an independent school which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different independent schools.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

#### **Registration of learner for education at home**

51. (1) A parent may apply to the Head of Department for the registration of a learner to receive education at the learner's home.

(2) The Head of Department must register a learner as contemplated in subsection (1) if he or she is satisfied that-

(a) the registration is in the interests of the learner;

(b) the education likely to be received by the learner at home-

(i) will meet the minimum requirements of the curriculum at public schools; and

(ii) will be of a standard not inferior to the standard of education provided at public schools; and

(c) the parent will comply with any other reasonable conditions set by the Head of Department.

(3) The Head of Department may, subject to subsection (4), withdraw the registration referred to in subsection (1).

(4) The Head of Department may not withdraw the registration until he or she-

(a) has informed the parent of his or her intention so to act and the reasons therefor;

(b) has granted the parent an opportunity to make representations to him or her in relation to such action; and

(c) has duly considered any such representations received.

(5) A parent may appeal to the Member of the Executive Council against the withdrawal of a registration or a refusal to register a learner in terms of this Act.

## CHAPTER 6

### TRANSITIONAL PROVISIONS

#### **Transitional provisions relating to schools other than private schools**

52. (1) Any school which was established or was deemed to have been established in terms of any law governing school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, other than a private school referred to in section 53 is deemed to be a public school.

(2) The assets and liabilities which vested in a school contemplated in subsection (1) immediately prior to the commencement of this Act, vest in the public school in question.

(3) Funds and other moveable assets used by, or held for or on behalf of, a public school contemplated in subsection (1) and which in law are the property of the State, remain at the disposal of the school, and devolve on the school on a date and subject to conditions determined by the Minister by notice in the Government Gazette, after consultation with the Council of Education Ministers.

(4) Any transaction entered into prior to the commencement of this Act by a school contemplated in subsection (1), which had the effect of transferring funds or other assets of such school to another person or body without value, is invalid.

#### **Transitional provisions relating to private schools**

53. A private school which was registered or deemed to have been registered under the provisions of a law regulating school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, is deemed to be an independent school.

#### **Transitional provisions relating to governing bodies**

54. (1) The Minister must, after consultation with the Member of the Executive Council and by notice in the Government Gazette, determine dates-

(a) by which the election of members of governing bodies at all public schools in a province must be finalised in terms of this Act; and

(b) from which the governing bodies referred to in subsection (1)(a) must function in terms of this Act.

(2) Different dates may be determined in terms of subsection (1)(b) in respect of governing bodies in the different provinces.

(3) Any governing body, management council or similar authority of a public school, which existed immediately prior to the commencement of this Act, continues to function until the day before the date on which the relevant governing body is elected and must perform all the functions it performed prior to the commencement of this Act which a governing body can lawfully perform in terms of this Act.

(4) Until a governing body begins to function in terms of subsection 1(b), such governing body of a school deemed to be a public school in terms of section 52(1) must perform the functions lawfully performed by its predecessor which are capable of being performed by a governing body in terms of this Act.

#### **Transitional provisions relating to immovable property of certain schools**

55. (1) The immovable property of a school which was declared to be a state-aided school under section 29(2A) of the Education Affairs Act, 1988 (House of Assembly) (Act No. 70 of 1988), devolves upon the State on a date determined by the Minister by notice in the Government Gazette.

(2) The Minister may determine different dates in respect of different schools under subsection (1).

(3) Any notice determining a date or dates referred to in subsection (1) or (2) must grant all interested parties a period of not less than 30 days in which to make written submissions.

(4) The Minister must consider all such submissions received, and thereafter may alter any notice referred to in subsection (1).

(5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in subsection (1) must be paid in full or in part from funds appropriated by Parliament for that purpose.

(6) The Minister may, with the concurrence of the Minister of Finance, direct that no transfer duty, stamp duty, other fees or costs contemplated in subsection (5) be paid in respect of a particular transfer under this section.

(7) The rights of third parties with claims against the school in respect of the immovable property affected by the transfer contemplated in this section are not extinguished by the transfer and-

(a) a third party acquires no right of execution against the immovable property as a result of such transfer alone;

(b) a third party is obliged to excuss the school in question if the school fails to meet its commitments to the third party; and

(c) the State indemnifies such a third party in its claims against the school which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the school prior to the transfer.

(8) The fact that compensation for any land and real rights in or over land expropriated in terms of subsection (1) has not been finalised or paid, does not impede the transfer of such land and real rights in or over land to the State.

(9) Until the date contemplated in subsection (1), a public school referred to in that subsection may not let, sell or otherwise alienate its immovable property, or grant to any person any real right thereon or servitude thereon without the written consent of the Member of the Executive Council.

(10) Any claim for compensation arising from subsection (1) must be determined as contemplated in the Constitution.

#### **Transitional provisions relating to public schools on private property**

56. If an agreement contemplated in section 14 does not exist at the commencement of this Act in respect of a school, standing on private property and which is deemed to be a public school in terms of section 52(1), the Member of the Executive Council must take reasonable measures to conclude such an agreement within six months of the commencement of this Act.

#### **Transitional provisions relating to private property owned by religious organisation**

57. If the owner of the private property referred to in section 56 is a religious organisation, such owner may require that the agreement contemplated in section 14 must recognise, in an appropriate manner consistent with this Act, the distinctive religious character of the school.

## CHAPTER 7

### GENERAL PROVISIONS

#### **Expropriation**

58. (1) The Member of the Executive Council may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to school education in a province.

(2) The Member of the Executive Council must give notice in the Provincial Gazette of his or her intention to expropriate in terms of subsection (1).

(3) A notice contemplated in subsection (2) must-

(a) identify the land or any real right in or over the land;

(b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and

(c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Member of the Executive Council in that regard, and draw attention to the provisions of subsection (5).

(4) The Member of the Executive Council may, after considering all such written submissions, expropriate the land or any real right in or over the land referred to in subsection (3) by notice in the Provincial Gazette.

(5) Any expropriation contemplated in subsection (4) takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

(6) If the Member of the Executive Council and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.

(7) The arbitrator determines the time, venue and procedures which apply in the arbitration.

(8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.

(9) The arbitrator may not make an award of costs.

(10) The arbitrator is paid, out of moneys appropriated for this purpose by the provincial legislature, such fees and allowances as the Member of the Executive Council may determine, with the concurrence of the Member of the Executive Council responsible for finance.

(11) Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right contemplated in subsection (1) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

(12) Any claim to compensation arising from the expropriation contemplated in subsection (4) must be determined as contemplated in the Constitution and this section.

#### **Duty of schools to provide information**

59. (1) A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights.

(2) Every school must provide such information about the school as is reasonably required by the Head of Department.

#### **Liability of State**

60. (1) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

(2) The provisions of the State Liability Act, 1957 (Act No. 20 of 1957), apply to any claim under subsection (1).

#### **Regulations**

61. The Minister may make regulations on any matter which must or may be prescribed by regulation under this Act and any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

#### **Delegation of powers**

62. (1) The Member of the Executive Council may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to the Head of Department or an officer, except the power to publish a notice and the power to decide an appeal lodged with him or her in terms of this Act.

(2) The Head of Department may, subject to such conditions as he or she may determine, delegate to an officer any of his or her powers in terms of this Act or delegated to him or her in terms of subsection (1).

(3) A delegation under subsection (1) or (2) does not prevent the Member of the Executive Council or Head of Department, as the case may be, from exercising such power or performing such duty.

#### **Repeal and amendment of laws**

63. (1) The laws listed in the first column of Schedule I are

hereby repealed to the extent set out in the third column of that Schedule.

(2) The Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), is hereby amended to the extent set out in Schedule 2.

**Short title and commencement**

64. This Act is the *South African Schools Act, 1996*, and comes into operation on a date fixed by the President by proclamation in the Government Gazette.

SCHEDULE 1

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 47 of 1963	Coloured Persons Education Act, 1963	Sections 1A, 8 to 20, 26 and 28 to 31
Act No. 61 of 1965	Indians Education Act, 1965	Sections 1B, 8 to 20, 26, 28, 29, 31 and 33(1)(g)
Act No. 90 of 1979	Education and Training Act, 1979	Sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44(1)(h)
Act No. 104 of 1986	Private Schools Act (House of Assembly), 1986	Section 1A
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	Sections 3 and 65 and Chapter 7

SCHEDULE 2

(Amendment of Educators' Employment Act, 1994, by section 63)

1. Amendment of section I by-

(a) the insertion of the following definitions:

«'Department' means a department contemplated in section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for education in the national government;

'educational institution' means a public school, college of education, technical college, other college or an office controlling such a school or college or rendering a support service to such a school or college where educators are employed, in regard to which the terms and conditions of employment of such educators are determined by this Act but excludes a university, technikon, independent school or independent college;

'Labour Relations Act' means the Labour Relations Act, 1995 (Act No. 66 of 1995);

'public educational institution' means an educational institution which is not a state-aided college;

'public school' means a public school as defined in section I of the South African Schools Act, 1996;

'state-aided college' means a college of education, technical college or other college which is wholly or partly funded by the State in respect of the remuneration and conditions of service of educators in posts on the establishment created in terms of section 3(1) and in regard to which the college is the employer of such educators;

'unsubsidised post' means a post at a state-aided college in respect of which no subsidy in terms of a law is paid by the State;»;

(b) substitution for the definitions of «educator», «employee member» and «employer» of the following definitions, respectively-

«'educator' means any person who teaches, educates or trains other persons or provides professional therapy educational services including professional therapy at any school, techni-

cal college or college of education educational institution or assists in rendering professional services or performs educational management services or educational auxiliary services provided by or in a department of education and whose employment appointment and terms and conditions of employment is are regulated by this Act; 'employee member' means an employee organisation that is a member of the Education Labour Relations Council established in terms of section 6 of the Education Labour Relations Act 37(3)(b) read with item 20 of Schedule 7 to the Labour Relations Act;

'employer' means-

(a) in the case of a departmental public educational institution or office, the head of a department; and

(b) in the case of a state-aided educational institution college, the body which employs an educator;

(c) for the purposes of section 5(1)(a) and (b) the Minister in respect of educators appointed to posts created in terms of sections 3(1) and (3); and

(d) in the case of an unsubsidised post at a public school referred to in section 3A, the body which employs the educator.»; and

(c) the deletion of the following definitions, namely-

«departmental educational institution»

«subsidised post»

«state-aided educational institution»

«Executive Council»

«Education Labour Relations Act»

2. The substitution for section 3 of the following section:

«Educator Establishment of educational institutions and Department

3. (1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act and the National Policy for General Education Affairs on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), the educator establishment at an a state educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates.

(2) The employer A state-aided college may create unsubsidised posts additional to the educator establishment referred to in subsection (1).

(3) Educators may be appointed on a temporary basis additional to the establishment referred to in subsection (1) with the approval of the Member of the Executive Council or the Minister, as the case may be.

(4) A post referred to in subsection (1) may be regraded, redesignated, converted or abolished by the Member of the Executive Council or the Minister, as the case may be.».

3. By the insertion after section 3 of the following section:

«Transitional arrangement

3A. (1) The authority to create unsubsidised posts, to employ educators in such posts and all other matters incidental thereto which, in terms of section 3(2), vested in a state-aided school prior to the commencement of this Act, shall remain intact for such school until 31 December 1997, and thereafter such authority shall cease.

(2) Contracts of employment of educators appointed to posts referred to in subsection (1) entered into after the commencement of this Act, shall not be valid after 31 December 1997.».

4. The substitution for section 4 of the following section:

«Appointment and promotion of educators

4. (1) The qualifications for appointment and promotion as an educator shall be prescribed determined by the Minister.

(2) Subject to the provisions of the Constitution, the Labour Relations Act, 1995 (Act No. 66 of 1995), and agreements reached in terms thereof Posts posts shall be filled by appointment, transfer or promotion and the power to fill a post creat-

ed under section 3 shall, subject to the provisions Of this Act, vest in the employer, who shall exercise such power with regard to posts referred to in section 3(1) and (3) subject to the prior approval of the Member of the Executive Council or the Minister, as the case may be.

(3) The authority to fill a post referred to in section 3(1) and (3) at a public school in terms of subsection (2) is exercised on the recommendation of a public school, as represented by its governing body, and the employer may only deviate from such recommendation if:

(a) the candidate does not have the required qualifications;  
 (b) the candidate has been found guilty of misconduct; or  
 (c) sufficient proof exists that the recommendation made by the school was based on improper influence.

(3) (4) An educator may be appointed under subsection (2) this section-

(a) in a permanent capacity, which shall include an appointment to the permanent relief staff, whether on probation or not; or

(b) temporarily or on special contract, whether in a full-time or part-time capacity.

(4) (5) An appointment, transfer or promotion referred to in subsection (2) shall be effected in such manner and subject to such conditions as may be determined by the Minister.

(5) (6) An educator appointed in terms of any law repeated by this Act shall be deemed to have been appointed in terms of this Act to the appropriate post on the establishment of the state educational institution in question.

(7) An educator appointed in terms of the Public Service Act, 1994, shall be deemed to have been appointed in terms of this Act.

(8) An educator appointed at a public school shall not, by virtue of an amendment of this Act by the South African Schools Act, 1996, be regarded as having changed employers.».

5. The amendment of section 5-

(a) by the substitution for subsection (1) of the following subsection:

«(1) Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of the National Policy on the Salaries and Conditions of Employment of Educators Act for General Education Affairs, 1984 (Act No. 76 of 1984), and the Education Labour Relations Act and subsection (2)-

(a) the salaries, salary scales, and allowances and other terms and conditions of employment of educators appointed, transferred or promoted to posts referred to in section 3(1) and (3) shall be determined by the Minister;

(b) the other terms and conditions of employment and service benefits of educators referred to in paragraph (a) shall be prescribed by the Minister; and

(b)c the salaries, salary scales, allowances and other terms and conditions of employment referred to in paragraphs paragraph (a) and (b) with a financial implication shall be determined by the Minister with the concurrence of the Minister responsible for finance at national level; and

(c)d the salaries, salary scales, allowances and other terms and conditions of employment of educators at a state-aided college appointed, transferred or promoted to posts referred to in section 3(2)(3) shall be determined by the employer.»; and

(b) by the deletion of subsection (2).

6. The substitution for section 6 of the following section:  
 «Transfer and secondment of educators

6. (1) Subject to the provisions of this section, section 4(3) and applicable terms and conditions of employment, an educator employed in an office or departmental public educational institution may be transferred from the post in which he or she serves to any other post-

(a) at the same departmental educational institution or office or at another departmental educational institution or of-

fice a public educational institution under the control of the same provincial education department by the Member of the Executive Council; or

(b) at a departmental public educational institution or office in a different province or the Department at national level by the Member of the Executive Council, or the Minister, as the case may be, with the concurrence of the Member of the Executive Council of such other province or the Minister, as the case may be.

(2) Subject to the provisions of this section, an educator employed at a state-aided educational institution college may with his or her consent, be transferred from the post in which he or she serves to any other post at the same or to any other state-aided educational institution college or public departmental educational institution-

(a) in the same province by the Member of the Executive Council, with the concurrence of the employer or employers concerned; or

(b) in a different province by the Member of the Executive Council, with the concurrence of the Member of the Executive Council of such other province and the employers concerned; or

(c) at the Department at national level with the concurrence of the Minister.

(3) Subject to the provisions of this section, an educator at a departmental public educational institution or office may, with his or her consent, be transferred from the post in which he or she serves to any other post at a state-aided educational institution college, and in such a case the provisions of subsection (2) must apply mutatis mutandis.

(4) A transfer provided for in subsections (1), (2) and (3) may be effected irrespective of whether the post to which an educator is transferred is of the same, a lower or higher grade: Provided that-

(a) the salary and salary scale of an educator shall not be lowered without his or her consent; and

(b) paragraph (a) shall not apply in respect of an educator transferred in terms of section 19(1).

(5) An educator who is employed in a permanent capacity at a state public educational institution in a post of a lower or higher grading than that appropriate to his or her rank shall, subject to section 4(4) (5) and (6) be transferred to a post with a grading appropriate to his or her rank as soon as a suitable vacancy arises.».

7. The amendment of section 7 by the substitution for the expression «state educational institution», wherever it occurs, of the expression «public educational institution».

8. The amendment of section 8 by the substitution for the expression «state educational institution», wherever it occurs, of the expression «public educational institution».

9. The amendment of section 10 by the substitution for the expression «state educational institution», wherever it occurs, of the expression «public educational institution».

10. The amendment of section 11 by the substitution for subsection (3) of the following subsection:

«(3) If the name of an educator is struck off a register of educators kept by a body recognised by the Minister in terms of the National Policy for General Education Affairs Act, 1984 (Act No. 76 of 1984), the South African Council for Educators he or she shall notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the date following immediately upon the day on which his or her name was so struck off.»

11. The substitution for section 22 of the following section:

«Transfer of educators on declaration of public educational institution to be state-aided college

22. (1) An educator who was employed at a departmental public educational institution immediately prior to the date of declaration of such institution to be a state-aided educational

institution college shall with effect from that date with his or her consent be transferred to and appointed in the service of the state-aided educational institution college in question.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to persons in the service of a state-aided college educational institutions: Provided that-

(a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;

(b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the state-aided public educational institution shall be deemed to be a period in the service of the provincial government at the state-aided college concerned;

(c) sick leave or vacation leave credit obtained by him or her as a result of his or her continuous service in a departmental public educational institution shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her service at the state-aided educational institution college in question; and

(d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct which he or she allegedly committed prior to the date contemplated in subsection (1) shall be disposed of or instituted, as the case may be, in terms of this Act.»

12. The substitution for section 23 of the following section:

«Transfer of educators on declaration of state-aided college to be public educational institution

23. (1) An educator who was employed in a subsidised post at a state-aided educational institution college immediately prior to the date of declaration of such institution to be departmental a public educational institution shall with effect from that date with his or her consent be transferred to and appointed in the service of the provincial government concerned.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to educators in the service of the provincial government concerned: Provided that-

(a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;

(b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the state-aided educational institution college shall be deemed to be a period in the service of the provincial government concerned;

(c) sick or vacation leave credit obtained by him or her as a result of his or her continuous service at the state-aided educational institution college shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her period in the service of the provincial government concerned; and

(d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct allegedly committed prior to the said date shall be disposed of or instituted, as the case may be, in terms of this Act».

**No. 4 of 2000  
PROMOTION OF EQUALITY AND  
PREVENTION OF UNFAIR DISCRIMINATION  
ACT, 2000.**

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

No. 4 of 2000: Promotion of Equality and Prevention of Unfair Discrimination Act. 2000.

ACT

To give effect to section 9 read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected therewith.

PREAMBLE

The consolidation of democracy in our country requires the eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people;

Although significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy;

The basis for progressively redressing these conditions lies in the Constitution which, amongst others, upholds the values of human dignity, equality, freedom and social justice in a united, non-racial and non-sexist society where all may flourish;

South Africa also has international obligations under binding treaties and customary international law in the field of human rights which promote equality and prohibit unfair discrimination. Among these obligations are those specified in the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Elimination of All Forms of Racial Discrimination;

Section 9 of the Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality;

This implies the advancement, by special legal and other measures, of historically disadvantaged individuals, communities and social groups who were dispossessed of their land and resources, deprived of their human dignity and who continue to endure the consequences;

This Act endeavors to facilitate the transition to a democratic society, united in its diversity, marked by human relations that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom.

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

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## CHAPTER 1

**DEFINITIONS, OBJECTS, INTERPRETATION, GUIDING PRINCIPLES AND APPLICATION OF ACT**  
**DEFINITIONS**

1. (l) In this Act, unless the context indicates otherwise—
  - (i) "age." includes the conditions of disadvantage and vulnerability suffered by persons on the basis of their age, especially advanced age;
  - (ii) "clerk of the equality court" means a clerk of an equality court appointed or designated in terms of section 17, read with section 31, and includes any reference to "a clerk";
  - (iii) "Commission for Gender Equality" means the Commission for Gender Equality referred to in section 187 of the Constitution;
  - (iv) "complainant" means any person who alleges any contravention of this Act and who institutes proceedings in terms of the Act;
  - (v) "Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
  - (vi) "constitutional institution" means any of the relevant institutions supporting constitutional democracy referred to in Chapter 9 of the Constitution and includes the Pan South African Language Board;
  - (vii) "Department" means the Department of Justice and Constitutional Development;
  - (viii) "discrimination" means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly—
    - (a) imposes burdens, obligations or disadvantage on; or
    - (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds;
  - (ix) "equality" includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcomes;
  - (x) "equality court" means a court contemplated in section 16, read with section 31, and includes any reference to "court";
  - (xi) "family responsibility" means responsibility in relation to a complainant's spouse, partner, dependent, child or other members of his or her family in respect of whom the member is liable for care and support;
  - (xii) "family status" includes membership in a family and the social, cultural and legal rights and expectations associated with such status;
  - (xiii) "harassment" means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to
    - (u) sex, gender or sexual orientation; or
    - (b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group;
  - (xiv) "HIV/AIDS status." includes actual or perceived presence in a person's body of the Human Immunodeficiency Virus (HIV) or symptoms of Acquired Immune Deficiency Syndrome (AIDS), as well as adverse assumptions based on this status;
  - (xv) "marital status." includes the status or condition of being single, married, divorced, widowed or in a relationship, whether with a person of the same or the opposite sex, involving a commitment to reciprocal support in a relationship;
  - (xxvi) "Minister" means the Minister for Justice and Constitutional Development;
  - (xxvii) "nationality" means ethnic or national origin and

includes practices associated with xenophobia and other adverse assumptions of a discriminatory nature but does not include rights and obligations normally associated with citizenship;

(xxviii) "person" includes a juristic person, a non-juristic entity, a group or a category of persons;

(xix) "pregnancy" includes any condition related to pregnancy, intended pregnancy, potential pregnancy or termination of pregnancy;

(xx) "prescribed" means prescribed by regulation in terms of this Act;

(xxi) "presiding officer" means a presiding officer of an equality court contemplated in section 16, read with section 31;

(xxii) "prohibited grounds" are—

(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or

(b) any other ground where discrimination based on that other ground—

(i) causes or perpetuates systemic disadvantage;

(ii) undermines human dignity; or

(iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a);

(xxiii) "regulation" means a regulation in terms of this Act;

(xxiv) "respondent" means any person against whom proceedings are instituted in terms of this Act;

(xv) "sector" means any sector referred to in section 29, and includes the sectors set out in the Schedule;

(xxvi) "socio-economic status" includes a social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications;

(xxvii) "South African Human Rights Commission" means the South African Human Rights Commission referred to in section 184 of the Constitution;

(xxviii) "the State" includes—

(a) any department of State or administration in the national, provincial or local sphere of government;

(b) any other function or institution—

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation or under customary law or tradition;

(xxix) "this Act" includes any regulation made in terms of this Act.

### Objects of Act

2. The objects of this Act are—

(a) to enact legislation required by section 9 of the Constitution;

(b) to give effect to the letter and spirit of the Constitution, in particular—

(i) the equal enjoyment of all rights and freedoms by every person;

(ii) the promotion of equality;

(iii) the values of non-racialism and non-sexism contained in section 1 of the Constitution;

(iv) the prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution;

(v) the prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the Constitution and section 12 of this Act;

(c) to provide for measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability;

(d) to provide for procedures for the determination of circumstances under which discrimination is unfair;

(e) to provide for measures to educate the public and raise public awareness on the importance of promoting equality and overcoming unfair discrimination, hate speech and harassment;

(f) to provide remedies for victims of unfair discrimination, hate speech and harassment and persons whose right to equality has been infringed;

(g) to set out measures to advance persons disadvantaged by unfair discrimination;

(h) to facilitate further compliance with international law obligations including treaty obligations in terms of, amongst others, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

### Interpretation of Act

3. (1) Any person applying this Act must interpret its provisions to give effect to

(u) the Constitution, the provisions of which include the promotion of equality through legislative and other measures designed to protect and advance persons disadvantaged by past and present unfair discrimination;

(b) the Preamble, the objects and guiding principles of this Act, thereby fulfilling the spirit, purport and objects of this Act.

(2) Any person interpreting this Act may be mindful of—

(a) any relevant law or code of practice in terms of a law;

(b) international law, particularly the international agreements referred to in section 2 and customary international law;

(c) comparable foreign law.

(3) Any person applying or interpreting this Act must take into account the context of the dispute and the purpose of this Act.

### Guiding principles

4. (1) In the adjudication of any proceedings which are instituted in terms of or under this Act, the following principles should apply:

(a) The expeditious and informal processing of cases, which facilitate participation by the parties to the proceedings;

(b) access to justice to all persons in relevant judicial and other dispute resolution forums;

(c) the use of rules of procedure in terms of section 19 and criteria to facilitate participation;

(d) the use of corrective or restorative measures in conjunction with measures of a deterrent nature;

(e) the development of special skills and capacity for persons applying this Act in order to ensure effective implementation and administration thereof.

(2) In the application of this Act the following should be recognised and taken into account:

(a) The existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, brought about by colonialism, the apartheid system and patriarchy; and

(b) the need to take measures at all levels to eliminate such discrimination and inequalities.

### Application of Act

5. (1) This Act binds the State and all persons.

(2) If my conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail.

(3) This Act does not apply to any person to whom and to the extent to which the Employment Equity Act, 1998 (Act No. 55 of 1998), applies.

## CHAPTER 2

**PREVENTION, PROHIBITION AND ELIMINATION OF UNFAIR DISCRIMINATION, HATE SPEECH AND HARASSMENT****Prevention and general prohibition of unfair discrimination**

6. Neither the State nor any person may unfairly discriminate against any person.

**Prohibition of unfair discrimination on ground of race**

7. Subject to section 6, no person may unfairly discriminate against any person on the ground of race, including—

(a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;

(b) the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;

(c) the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate but which is actually aimed at maintaining exclusive control by a particular race group;

(d) the provision or continued provision of inferior services to any racial group, compared to those of another racial group;

(e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons.

**Prohibition of unfair discrimination on ground of gender**

8. Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including—

(u) gender-based violence;

(b) female genital mutilation;

(c) the system of preventing women from inheriting family property;

(d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;

(e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;

(f) discrimination on the ground of pregnancy;

(g) limiting women's access to social services or benefits, such as health, education and social security;

(h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;

(i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.

**Prohibition of unfair discrimination on ground of disability**

9. Subject to section 6, no person may unfairly discriminate against any person on the ground of disability, including—

(u) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;

(b) contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;

(c) failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.

**Prohibition of hate speech**

10. (1) Subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to

(a) be hurtful;

(b) be harmful or to incite harm;

(c) promote or propagate hatred.

(2) Without prejudice to any remedies of a civil nature under this Act, the court may, in accordance with section 21(2)(n) and where appropriate, refer any case dealing with the publication, advocacy, propagation or communication of hate speech as contemplated in subsection (1), to the Director of Public Prosecutions having jurisdiction for the institution of criminal proceedings in terms of the common law or relevant legislation.

**Prohibition of harassment**

11. No person may subject any person to harassment.

Prohibition of dissemination and publication of information that unfairly discriminates

12. No person may—

(a) disseminate or broadcast any information;

(b) publish or display any advertisement or notice, that could reasonably be construed or reasonably be understood to demonstrate a clear intention to unfairly discriminate against any person: provided that bona fide engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.

## CHAPTER 3

**BURDEN OF PROOF AND DETERMINATION OF FAIRNESS OR UNFAIRNESS****Burden of proof**

13. (1) If the complainant makes out a prima facie case of discrimination—

(a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or

(b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

(2) If the discrimination did take place—

(a) on a ground in paragraph (a) of the definition of "prohibited grounds", then it is unfair, unless the respondent proves that the discrimination is fair;

(b) on a ground in paragraph (b) of the definition of "prohibited grounds", then it is unfair—

(i) if one or more of the conditions set out in paragraph (b) of the definition of "prohibited grounds" is established; and

(ii) unless the respondent proves that the discrimination is fair.

**Determination of fairness or unfairness**

14. (1) It is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.

(2) In determining whether the respondent has proved that the discrimination is fair, the following must be taken into account:

(a) The context;

(b) the factors referred to in subsection (3);

(c) whether the discrimination reasonably and justifiably

differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.

(3) The factors referred to in subsection (2)(b) include the following:

- (a) Whether the discrimination impairs or is likely to impair human dignity;
- (b) the impact or likely impact of the discrimination on the complainant;
- (c) the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;
- (d) the nature and extent of the discrimination;
- (e) whether the discrimination is systemic in nature;
- (f) whether the discrimination has a legitimate purpose;
- (g) whether and to what extent the discrimination achieves its purpose;
- (h) whether there are less restrictive and less disadvantageous means to achieve the purpose;
- (i) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to—
  - (i) address the disadvantage which arises from or is related to one or more of the prohibited grounds; or
  - (ii) accommodate diversity.

**Hate** speech and harassment not subject to determination of fairness.

15. In cases of hate speech and harassment section 14 does not apply.

## CHAPTER 4

### EQUALITY COURTS

#### Equality courts and presiding officers

16. (1) For the purposes of this Act, but subject to section 31—

- (a) every magistrate's court and every High Court is an equality court for the area of its jurisdiction; and
- (b) any magistrate, additional magistrate and judge may be designated by the

Minister, after consultation with the Judge President or the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944

(Act No. 32 of 1944), concerned, as the case may be, as a presiding officer of the equality court of the area in respect of which he or she is magistrate, additional magistrate or judge, as the case may be.

(2) A presiding officer must perform the functions and exercise the powers assigned to or conferred on him or her under this Act or any other law.

#### Clerks of equality court

17. (1) (a) Subject to the laws governing the public service, the Director-General of the Department may, for every equality court, appoint or designate one or more officers in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the equality court, who must generally assist the court to which they are attached in performing its functions and who must perform the functions as may be prescribed.

(b) If a clerk of an equality court is for any reason unable to act as such or if no clerk has been appointed or designated for any equality court under paragraph (a), the presiding officer concerned may designate any competent officer in the Department to act as clerk for as long as the said clerk is unable to act or until a clerk is appointed or designated under paragraph (a), as the case may be.

#### Witnesses

18. The attendance of witnesses and the payment of witness fees in cases arising from the application of this Act must be determined by the Minister in the prescribed manner.

#### Rules and court proceedings

19. (1) Except as is otherwise provided in this Act, the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Supreme Court Act, 1959 (Act No. 59 of 1959), and of the rules made thereunder as well as the rules made under the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), apply with the necessary changes required by the context to equality courts. In so far as these provisions relate to

- (a) the appointment and functions of officers;
- (b) the issue and service of process;
- (c) the execution of judgments or orders;
- (d) the imposition of penalties for non-compliance with orders of court, for obstruction of execution of judgments or orders, and for contempt of court;
- (e) jurisdiction, subject to subsection (3), and in so far as no other provision has been made in the regulations under section 30 of this Act.

(2) All proceedings before the court must be conducted in open court, except in so far as the court may direct otherwise in the interests of the administration of justice.

(3) (a) Subject to paragraph (b), nothing in this Act precludes a magistrates' court sitting as an equality court from making an order contemplated in section 21(2), which exceeds the monetary jurisdiction of a magistrates' court, in which case the order must be submitted in the prescribed manner to a judge of the High Court having jurisdiction for confirmation.

(b) The operation of paragraph (a), relating to the confirmation of an order, is suspended until any appeal contemplated in section 23 is finalised.

#### Institution of proceedings in terms of or under Act

20. (1) Proceedings under this Act may be instituted by—

- (a) any person acting in their own interest;
- (b) any person acting on behalf of another person who cannot act in their own name;
- (c) any person acting as a member of, or in (the interests of, a group or class of
- (d) any person acting in the public interest;
- (e) any association acting in the interests of its members;
- (f) the South African Human Rights Commission, or the Commission for Gender Equality.

(2) A person wishing to institute proceedings in terms of or under this Act must, in the prescribed manner, notify the clerk of the equality court of their intention to do so.

(3) (a) The clerk of the equality court must, within the prescribed period of receiving such notification, refer the matter to a presiding officer of the equality court in question, who must, within the prescribed period, decide whether the matter is to be heard in the equality court or whether it should be referred to another appropriate institution, body, court, tribunal or other forum (hereafter referred to as an alternative forum) which, in the presiding officer's opinion, can deal more appropriately with the matter in terms of that alternative forum's powers and functions.

(b) If the presiding officer decides that the matter is to be heard in the equality court, the presiding officer must refer the matter to the clerk of the equality court who must within the prescribed period of such referral assign a date of hearing of the matter.

(4) The presiding officer, before making a decision to refer a matter as contemplated in subsection (3), must take all relevant circumstances into account, including the following:

(a) The personal circumstances of the parties and particularly the complainant;

(b) the physical accessibility of any contemplated alternative forum;

(c) the needs and wishes of the parties and particularly the complainant;

(d) the nature of the intended proceedings and whether the outcome of the proceedings could facilitate the development of judicial precedent and jurisprudence in this area of the law;

(e) the views of the appropriate functionary at any contemplated alternative forum.

(5) (a) If the presiding officer decides that the matter must be referred to an alternative forum he or she must, in the prescribed manner, make an order, directing the clerk of the equality court to transfer the matter to the alternative forum mentioned in the order.

(b) When making an order contemplated in paragraph (u), the presiding officer may attach to the order any comments he or she deems necessary for the attention of the alternative forum.

(6) On receipt of an order referred to in subsection (5), the clerk of the equality court must transfer the matter and notify the parties to the matter of the transfer in the prescribed manner.

(7) On receipt of a matter transferred to it, the alternative forum in question must deal with the matter expeditiously in terms of its powers and functions.

(8) If the alternative forum referred to in subsection (7)

(a) fails to deal with the matter within a reasonable period in the circumstances; or

(b) is not able to resolve the matter to the satisfaction of one or both the parties and one or both parties so request, the alternative forum must, in the prescribed manner, refer the matter back to the equality court from which it was transferred, for adjudication, within the prescribed period from the date on which it was returned to the equality court.

(9) The State and constitutional institutions must, as far as reasonably possible, assist any person wishing to institute proceedings in terms of or under this Act, amongst others, by ensuring that the person is directed to the appropriate functionary in order to take the necessary action in the furtherance of the matter in question.

### **Powers and functions of equality court**

21. (1) The equality court before which proceedings are instituted in terms of or under this Act must hold an inquiry in the prescribed manner and determine whether unfair discrimination, hate speech or harassment, as the case may be, has taken place, as alleged.

(2) After holding an inquiry, the court may make an appropriate order in the circumstances, including—

(a) an interim order;

(b) a declaratory order;

(c) an order making a settlement between the parties to the proceedings an order of court;

(d) an order for the payment of any damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering, as a result of the unfair discrimination, hate speech or harassment in question;

(e) after hearing the views of the parties or, in the absence of the respondent, the views of the complainant in the matter, an order for the payment of damages in the form of an award to an appropriate body or organisation;

(f) an order restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, hate speech or harassment;

(g) an order to make specific opportunities and privileges

unfairly denied in the circumstances, available to the complainant in question;

(h) an order for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question;

(i) an order directing the reasonable accommodation of a group or class of persons by the respondent;

(j) an order that an unconditional apology be made;

(k) an order requiring the respondent to undergo an audit of specific policies or practices as determined by the court;

(l) an appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the licence of a person;

(m) a directive requiring the respondent to make regular progress reports to the court or to the relevant constitutional institution regarding the implementation of the court's order;

(n) an order directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of the common law or relevant legislation;

(o) an appropriate order of costs against any party to the proceedings:

(p) an order to comply with any provision of the Act.

(3) An order made by an equality court in terms of or under this Act has the effect of an order of the said court made in a civil action, where appropriate.

(4) The court may, during or after an inquiry, refer—

(a) its concerns in any proceedings before it, particularly in the case of persistent contravention or failure to comply with a provision of this Act or in the case of systemic unfair discrimination, hate speech or harassment to any relevant constitutional institution for further investigation;

(b) any proceedings before it to any relevant constitutional institution or appropriate body for mediation, conciliation or negotiation.

(5) The court has all ancillary powers necessary or reasonably incidental to the performance of its functions and the exercise of its powers, including the power to grant interlocutory orders or interdicts.

### **Assessors**

22. (1) In any proceedings in terms of or under this Act, the court may, at the request of either party, or of its own accord if the presiding officer considers it to be in the interests of justice, summon to its assistance one or two persons who are suitable and available and who may be willing to sit and act as assessors.

(2) Assessors appointed in terms of subsection (1) are, subject to subsection (3), deemed to be members of the court for purposes of this Act.

(3) Any matter of law arising for decision at the proceedings concerned and any question as to whether a matter for decision is a matter of fact or a matter of law must be decided by the presiding officer in the prescribed manner.

(4) On all matters of fact the finding or decision of the majority of the members of the court is the finding or decision of the court, and in the event of one assessor, the finding or decision of the court prevails.

(5) (a) If an assessor dies, or in the opinion of the presiding officer becomes unable to act as an assessor, or is for any reason absent, or has been ordered to recuse himself or herself or has recused himself or herself, at any stage before the completion of the proceedings concerned, the presiding officer may, in the interests of justice and after due consideration of the arguments put forward by the parties to the proceedings or their legal representatives—

(i) direct that the proceedings continue before the remaining member or members of the court;

(ii) direct that the proceedings start afresh; or  
 (iii) if an assessor is absent, postpone the proceedings in order to obtain the assessor's presence.

(b) The presiding officer must give reasons for any direction referred to in subparagraph (i) or (ii).

(6) (a) A presiding officer who is assisted by assessors at an enquiry where a party to the proceedings has an order made against him or her must record the reasons for his or her opinion—

(i) if that party to the proceedings is not assisted by a legal representative; and

(ii) if the presiding officer is of the opinion that the assessors concerned have clearly made an incorrect finding.

(b) The clerk of the equality court must as soon as is practicable, submit those reasons and the record to the appeal court in question for review in the prescribed manner.

(c) The appeal court has the power to confirm the said findings or to make any appropriate order in respect of such finding that, in the opinion of the appeal court, should have been made in the circumstances.

### Appeals and reviews

23. (1) Any person aggrieved by any order made by an equality court in terms of or under this Act may, within such period and in such manner as may be prescribed, appeal against such order to the High Court having jurisdiction or the Supreme Court of Appeal, as the case may be.

(2) On appeal, the High Court or the Supreme Court of Appeal, as the case may be, may make such order in the matter as it may deem fit.

(3) Notwithstanding subsection (1), any person aggrieved by any order made by an equality court may, subject to the rules of the Constitutional Court, appeal directly to the Constitutional Court.

(4) In the event of conflicting decisions being made by presiding officers in matters in respect of paragraph (b) of the definition of "prohibited grounds", the Minister may refer a stated case to the Supreme Court of Appeal or the Constitutional Court for a determination.

(5) (a) If a presiding officer in a magistrates' court makes a determination relating to a ground of discrimination referred to in paragraph (b) of the definition of "prohibited grounds", the decision must, after the finalisation of the proceedings and in the prescribed manner, be submitted to the High Court having jurisdiction for review.

(b) The High Court in question must, after considering the matter, make a determination in respect of the ground referred to in subsection (5)(a) and thereafter may make any order in terms of this Act as it deems fit.

(c) The operation of subsection (5)(a) is suspended until any appeal contemplated in this section is finalised.

## CHAPTER 5

### PROMOTION OF EQUALITY

#### General responsibility to promote equality

24. (1) The State has a duty and responsibility to promote and achieve equality.

(2) All persons have a duty and responsibility to promote equality.

#### Duty of State to promote equality

25. (1) The State must, where necessary with the assistance of the relevant constitutional institutions—

(a) develop awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equal-

ity; take measures to develop and implement programmed in order to promote equality; and where necessary or appropriate—

(i) develop action plans to address any unfair discrimination, hate speech or harassment;

(ii) enact further legislation that seeks to promote equality and to establish a legislative framework in line with the objectives of this Act;

(iii) develop codes of practice as contemplated in this Act in order to promote equality, and develop guidelines, including codes in respect of reasonable accommodation;

(iv) provide assistance, advice and training on issues of equality;

(v) develop appropriate internal mechanisms to deal with complaints of unfair discrimination, hate speech or harassment;

(vi) conduct information campaigns to popularise this Act.

(2) The South African Human Rights Commission and other relevant constitutional institutions may, in addition to any other obligation, in terms of the Constitution or any law, request any other component falling within the definition of the State or any person to supply information on any measures relating to the achievement of equality including, where appropriate, on legislative and executive action and compliance with legislation, codes of practice and programmes.

(3) In addition to the powers and functions of the constitutional institutions these institutions are also competent to

(a) assist complainants in instituting proceedings in an equality court, particularly complainants who are disadvantaged;

(b) conduct investigations into cases and make recommendations as directed by the court regarding persistent contravention of this Act or cases of unfair discrimination, hate speech or harassment referred to them by an equality court;

(c) request from the Department, in the prescribed manner, regular reports regarding the number of cases and the nature and outcome thereof.

(4) All Ministers must implement measures within the available resources which are aimed at the achievement of equality in their areas of responsibility by—

(a) eliminating any form of unfair discrimination or the perpetuation of inequality in any law, policy or practice for which those Ministers are responsible; and

(b) preparing and implementing equality plans in the prescribed manner, the contents of which must include a time frame for implementation of such plans, formulated in consultation with the Minister of Finance.

(5) (a) The equality plans must, within two years after the commencement of this Act, be submitted to the South African Human Rights Commission to be dealt with in the prescribed manner.

(b) The South African Human Rights Commission must consult with the Commission on Gender Equality when dealing with the plans contemplated in paragraph (a).

#### Responsibility of persons operating in public domain to promote equality

26. It is the responsibility of any person directly or indirectly contracting with the State or exercising public power to promote equality by—

(a) adopting appropriate equality plans, codes, regulatory mechanisms and other appropriate measures for the effective promotion of equality in the spheres of their operation;

(b) enforcing and monitoring the enforcement of the equality plans, codes and regulatory mechanisms developed by them; and

(c) making regular reports to the relevant monitoring authorities or institutions as may be provided in regulations, where appropriate.

### Social commitment by all persons to promote equality

27. (1) Pursuant to section 26, all persons, non-governmental organisations, community-based organisations and traditional institutions must promote equality in their relationships with other bodies and in their public activities.

(2) The Minister must develop regulations in relation to this Act and other Ministers may develop regulations in relation to other Acts which require companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations, where appropriate, in a manner proportional to their size, resources and influence, to prepare equality plans or abide by prescribed codes of practice or report to a body or institution on measures to promote equality

### Special measures to promote equality with regard to race, gender and disability

28. (1) If it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence.

(2) The South African Human Rights Commission must, in its report referred to in section 15 of the Human Rights Commission Act, 1994 (Act No. 54 of 1994), include an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems.

(3) (a) The State, institutions performing public functions and all persons have a duty and responsibility, in particular to

(i) eliminate discrimination on the grounds of race, gender and disability;

(ii) promote equality in respect of race, gender and disability.

(b) In carrying out the duties and responsibilities referred to in paragraph (a), the State, institutions performing public functions and, where appropriate and relevant, juristic and non-juristic entities, must—

(i) audit laws, policies and practices with a view to eliminating all discriminatory aspects thereof;

(ii) enact appropriate laws, develop progressive policies and initiate codes of practice in order to eliminate discrimination on the grounds of race, gender and disability;

(iii) adopt viable action plans for the promotion and achievement of equality in respect of race, gender and disability; and

(iv) give priority to the elimination of unfair discrimination and the promotion of equality in respect of race, gender and disability.

### Illustrative list of unfair practices in certain sectors

29. (1) Without detracting from the generality of the provisions of this Act, the Schedule to this Act is intended to illustrate and emphasise some practices which are or may be unfair, that are widespread and that need to be addressed.

(2) The State must, where appropriate, ensure that legislative and other measures are taken to address the practices referred to in subsection (1).

(3) The Minister must, on the recommendation of the Equality Review Committee, on an ongoing basis, assess the relevance of the practices contained in the Schedule for purposes of expanding, altering, varying or amending the list of practices in the Schedule.

(4) The Schedule is also intended to provide an illustrative list of practices that are or may be unfair discrimination in order to

(a) address and eliminate these practices; and

(b) assist persons in interpreting their experiences and practices.

(5) The illustrative list of practices in the Schedule is not conclusive and must be considered and revised by the Equality Review Committee on a continuous basis.

## CHAPTER 6

### GENERAL PROVISIONS AND IMPLEMENTATION OF ACT

#### Regulations

30. (1) The Minister may, and where required in the circumstances, must, make regulations relating to

(a) the procedures to be followed at or in connection with an inquiry in terms of or under this Act, including the manner in which proceedings must be instituted, the referral of matters contemplated in section 20 and the hearing of urgent matters;

(b) the form of any application, authority, certificate, consent, notice, order, process, register or subpoena to be made, given, issued or kept in terms of or under this Act, and any other form required in carrying out the provisions of this Act;

(c) the granting of legal aid at State expense in appropriate cases in consultation with the Legal Aid Board;

(d) the appearance of persons on behalf of the parties to the proceedings in court, which may include suitable persons other than attorneys or advocates;

(e) the appointment, powers, duties and functions of a clerk of an equality court;

(f) the attendance of witnesses in cases arising from the application of this Act and the payment of witness fees;

(g) the confirmation of court orders emanating from magistrates' courts sitting as equality courts as contemplated in section 19(3)(a);

(h) the procedure to be followed at, and criteria to be applied for, the designation and registration of persons from the community who are suitable and available to serve as assessors in each equality court;

(i) the method to be followed in respect of the allocation of assessors in respect of proceedings in terms of or under this Act;

(j) the factors to be taken into account by an equality court when deciding whether to summon assessors in the administration of justice;

(k) the taking of the oath or making an affirmation by assessors;

(l) the role of presiding officers and the procedure to be followed in cases where an equality court is assisted by assessors;

(m) the recusal of assessors and the procedure to be followed in the case of such recusal;

(n) a code of conduct for such assessors, and mechanisms for the enforcement of the code of conduct, including the liability of an assessor if any provision of the code of conduct is contravened by him or her;

(o) the establishment of a mechanism to deal with any grievance or complaint by or against an assessor;

(p) the training of assessors;

(q) the payment of allowances to assessors;

(r) any other matter which is necessary to prescribe in order to regulate the service of assessors in the equality courts;

(s) the procedures to be followed at or in connection with appeals or reviews as contemplated in section 23;

(t) the reports contemplated in sections 25(3)(c) and 26(c) and the equality plans contemplated in section 25(4)(b) and (5)(a) and section 27(2);

(u) the translation of this Act into the official languages and the distribution thereof as contemplated in section 31(2)(b);

(v) the powers and functions of the Equality Review Committee contemplated in section;

(w) any matter required or permitted to be prescribed by regulation under this Act;

(x) any other matter which is necessary to prescribe in order to achieve the objects of this Act.

(2) Any regulation made under this section which may result in expenditure for the State, must be made in consultation with the Minister of Finance.

(3) A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 12 months.

(4) (a) Any regulation made under this section must be tabled in Parliament 30 days before publication thereof in the Gazette, if Parliament is then in session.

(b) If Parliament is not in session as contemplated in paragraph (a), the regulations must be submitted to the Speaker of Parliament, 30 days before publication thereof in the Gazette.

(5) The regulations made in terms of this section, and particularly subsection (1)(a) relating to the procedure at an inquiry, must, as far as possible, ensure that the application of the Act is simple, fair and affordable.

#### **Implementation of Act**

31. (1) Despite section 16(1)(a) and (b), and until the Minister determines by notice in the Gazette, no proceedings may be instituted in any court unless—

(a) a presiding officer is available who has been designated, by reason of his or her training, experience, expertise and suitability in the field of equality and human rights; and

(b) one or more trained clerks are available.

(2) For purposes of giving full effect to this Act and making the Act as accessible as possible—

(a) and in giving effect to subsection (1), the Minister may designate suitable magistrates, additional magistrates or judges, as the case may be, and clerks referred to in subsection (1) as presiding officers and clerks, respectively, for one or more equality courts;

(b) the Minister must make the Act available in all official languages in the prescribed manner within a period of two years after the commencement of this Act.

(3) The Minister must take all reasonable steps within the available resources of the Department to designate at least one presiding officer and ensure that a trained clerk is available for each court in the Republic.

(4) The Minister must, after consultation with the Magistrates Commission and the Judicial Service Commission, issue policy directives and develop training courses with a view to

(a) establishing uniform norms, standards and procedures to be observed by presiding officers and clerks in the performance of their functions and duties and in the exercise of their powers; and

(b) building a dedicated and experienced pool of trained and specialised presiding officers and clerks.

(5) The Minister must table a copy of any policy directive issued in terms of subsection (4) in Parliament within a reasonable period after the finalisation thereof.

## CHAPTER 7

### **REVIEW OF ACT, SHORT TITLE AND COMMENCEMENT**

#### **Establishment of Equality Review Committee**

32. The Minister must, immediately, upon promulgation of

this Act, by notice in the Gazette, establish an Equality Review Committee and appoint members, consisting of—

(a) a senior judicial officer with appropriate qualifications;

(b) the Chairperson of the South African Human Rights Commission;

(c) the Chairperson of the Commission on Gender Equality;

(d) a representative of civil society;

(e) an expert in the field of human rights, especially the right to equality;

(f) a member of the National Assembly;

(g) a member of the National Council of Provinces.

#### **Powers, functions and term of office of Equality Review Committee**

33. (1) The Equality Review Committee—

(a) must advise the Minister about the operation of this Act;

(b) must advise the Minister about laws that impact on equality;

(c) must submit regular reports to the Minister on the operation of the Act, addressing whether the objectives of the Act and the Constitution have been achieved and must make recommendations on any necessary amendments to the Act to improve its operation;

(d) has the other powers and functions as prescribed.

(2) The Equality Review Committee may conduct its business and proceedings at its meetings as it deems fit.

(3) Members of the Equality Review Committee referred to in section 32(a), (d) and

(e) are appointed for a period of five years and may be reappointed upon the expiry of their term of office.

(4) The other terms and conditions of appointment of members of the Equality Review Committee are as prescribed.

(5) The administrative work connected with the performance of the functions of the Equality Review Committee must be performed by officers designated by the Director-General of the Department.

(6) The members of the Equality Review Committee are entitled to such remuneration, allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance.

#### **Directive principle on HIV/AIDS, nationality, socio-economic status and family responsibility and status**

34. (1) In view of the overwhelming evidence of the importance, impact on society and link to systemic disadvantage and discrimination on the grounds of HIV/AIDS status, socio-economic status, nationality, family responsibility and family status—

(a) special consideration must be given to the inclusion of these grounds in paragraph (a) of the definition of “prohibited grounds” by the Minister:

(b) the Equality Review Committee must, within one year, investigate and make 30 the necessary recommendations to the Minister.

(2) Nothing in this section—

(a) affects the ordinary jurisdiction of the courts to determine disputes that may be resolved by the application of law on these grounds;

(b) prevents a complainant from instituting proceedings on any of these grounds in a court of law;

(c) prevents a court from making a determination that any of these grounds are grounds in terms of paragraph (b) of the definition of “prohibited grounds” or are included within one or more of the grounds listed in paragraph (a) of the definition of “prohibited grounds”.

#### **Short title and commencement**

35. (1) This Act is called the Promotion of Equality and



Prevention of Unfair Discrimination Act, 2000, and comes into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of different provisions of this Act.

## SCHEDULE

### ILLUSTRATIVE LIST OF UNFAIR PRACTICES IN CERTAIN SECTORS

(Section 29)

#### Labour and employment

1. (a) Creating artificial barriers to equal access to employment opportunities by using certain recruitment and selection procedures.

(b) Applying human resource utilisation, development, promotion and retention practices which unfairly discriminate against persons from groups identified by the prohibited grounds.

(c) Failing to respect the principle of equal pay for equal work.

(d) Perpetuating disproportionate income differentials deriving from past unfair discrimination.

#### Education

2. (a) Unfairly excluding learners from educational institutions, including learners with special needs. 15

(b) Unfairly withholding scholarships, bursaries, or any other form of assistance from learners of particular groups identified by the prohibited grounds.

(c) The failure to reasonably and practicably accommodate diversity in education.

#### Health care services and benefits

3. (a) Subjecting persons to medical experiments without their informed consent.

(b) Unfairly denying or refusing any person access to health care facilities or failing to make health care facilities accessible to any person.

(c) Refusing to provide emergency medical treatment to persons of particular groups identified by one or more of the prohibited grounds.

(d) Refusing to provide reasonable health services to the elderly.

#### Housing, accommodation, land and property

4. (a) Arbitrary eviction of persons on one or more of the prohibited grounds.

(b) "Red-lining" on the grounds of race and social status.

(c) Unfair discrimination in the provision of housing bonds, loans or financial assistance on the basis of race, gender or other prohibited grounds.

(d) Failing to reasonably accommodate the special needs of the elderly.

#### Insurance services

5. (a) Unfairly refusing on one or more of the prohibited grounds to provide or to make available an insurance policy to any person.

(b) Unfair discrimination in the provision of benefits, facilities and services related to insurance.

(c) Unfairly disadvantaging a person or persons, including unfairly and unreasonably refusing to grant services, to persons solely on the basis of HIV/AIDS status.

#### Pensions

6. (a) Unfairly excluding any person from membership of

a retirement fund or from receiving any benefits from the fund on one or more of the prohibited grounds.

(b) Unfairly discriminating against members or beneficiaries of a retirement fund.

#### Partnerships

7. (a) Determining in an unfair discriminatory manner who should be invited to become a partner in the partnership in question.

Imposing unfair and discriminatory terms or conditions under which a person is invited or admitted to become a partner.

#### Profession and bodies

8. (a) Imposing conditions that unfairly limit or deny entry into the profession of persons from historically disadvantaged groups.

(b) Unfairly limiting or denying members access to benefits or facilities on the basis of a prohibited ground.

#### Provision of goods, services and facilities

9. (a) Unfairly refusing or failing to provide the goods or services or to make the facilities available to any person or group of persons on one or more of the prohibited grounds.

(b) Imposing terms, conditions or practices that perpetuate the consequences of past unfair discrimination or exclusion regarding to financial resources

(c) Unfairly limiting access to contractual opportunities for supplying goods and services.

#### Clubs, sport and associations

10. (a) Unfairly refusing to consider a person's application for membership of the association or club on any of the prohibited grounds.

(b) Unfairly denying a member access to or limiting a member's access to any benefit provided by the association or club.

(c) Failure to promote diversity in selection of representative teams.

## No. 19 of 2002:

### COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES ACT, 2002.

#### THE PRESIDENCY

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

No. 19 of 2002: Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002.

#### ACT

In giving effect to the provisions of the Constitution—  
\* to provide for the composition of the Commission for the Promotion and

Protection of the Rights of Cultural, Religious and Linguistic Communities;

\* to provide for additional functions of the Commission;

\* to provide for the convening of a national consultative conference; \* to provide for the establishment and recognition of community councils;

\* to provide for matters connected therewith.

and

## PREAMBLE

WHEREAS the South African nation consists of a diversity of cultural, religious and linguistic communities;

AND WHEREAS past policies have bequeathed a legacy of division and inequality between these communities;

AND WHEREAS the Constitution seeks to

\* heal these divisions of the past;

\* establish a non-racial and non-sexist society based on democratic values, social justice and fundamental human rights;

\* promote equality;

\* promote respect for, and the protection of, the rights of cultural, religious and linguistic communities; and

\* promote unity in our diversity;

AND WHEREAS the Constitution has created a range of institutional mechanisms to ensure the stability of the democratic order, including a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;

AND WHEREAS the Commission in fulfilling its constitutional task should play a key role in assisting with the building of a truly united South African nation bound by a common loyalty to our country and all our people;

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

## PART 1

### INTERPRETATION AND ADMINISTRATION OF ACT

#### Definitions

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

“Commission” means the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities referred to in section 3;

“community council” means a voluntary association of persons or community organisations based on the principle of freedom of association and which represents a cultural, religious or linguistic community and includes a cultural council envisaged by section 185(1)(c) of the Constitution;

“constitutional institution” means an institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“Minister” means the member of Cabinet contemplated in section 2;

“national consultative conference” means a national consultative conference convened under section 24;

“organ of state” means an organ of state as defined in section 239 of the Constitution;

“prescribe” means prescribe by a regulation made in terms of section 39;

“this Act” includes any regulation made in terms of section 39.

#### Administration of Act

2. This Act is administered by a member of the Cabinet designated by the President.

## PART 2

### STATUS, OBJECTS, POWERS AND FUNCTIONS OF COMMISSION

#### Status of Commission

3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities referred to in section 181(1)(c) of the Constitution-

(a) is independent;

(b) is a juristic person; and

(c) must be impartial and must exercise its powers and perform its functions without fear, favour or prejudice.

#### Objects of Commission

4. The objects of the Commission are-

(a) to promote respect for and further the protection of the rights of cultural, religious and linguistic communities;

(b) to promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;

(c) to foster mutual respect among cultural, religious and linguistic communities;

(d) to promote the right of communities to develop their historically diminished

(e) to recommend the establishment or recognition of community councils in heritage; and accordance with section 36 or 37.

#### Powers and functions of Commission

5. (1) The Commission may do all that is necessary or expedient to achieve its objects referred to in section 4, including to-

(a) conduct information and education programmes to promote public understanding of the objects, role and activities of the Commission;-

(b) conduct programmes to promote respect for and further the protection of the

(c) assist in the development of strategies that facilitate the full and active participation of cultural, religious and linguistic communities in nation-building in South Africa;

(d) promote awareness among the youth of South Africa of the diversity of cultural, religious and linguistic communities and their rights;

(e) monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities;

(f) educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities;

(g) facilitate the resolution of friction between and within cultural, religious and linguistic communities or between any such community and an organ of state where the cultural, religious or linguistic rights of a community are affected;

(h) receive and deal with requests related to the rights of cultural, religious and linguistic communities;

(i) make recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities;

(j) establish and maintain databases of cultural, religious and linguistic community organisations and institutions and experts on these communities; and

(k) bring any relevant matter to the attention of the appropriate authority or organ of state, and, where appropriate, make recommendations to such authority or organ of state in dealing with such a matter.

(2) The Commission may, in order to perform its functions properly-

(a) determine its own staff establishment and the terms and conditions of employment for its staff within a policy framework determined by the Minister;

(b) appoint employees and seconded personnel to posts on its staff establishment;

(c) obtain the services of any person by agreement or appropriate arrangement, including the services of any national or provincial department or functionary or any institution, to perform any specific task or function;

(d) acquire or dispose of any right in or to property, but

ownership in immovable property may be acquired or disposed of only with the consent of the Minister;

(e) open and operate its own bank accounts, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(f) insure itself against any loss, damage, risk or liability;

(g) perform legal acts, or institute or defend any legal action in its own name;

(h) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting the objects of the Commission;

(i) interact and co-operate with foreign institutions performing similar functions to those of the Commission; and

(j) do anything that is incidental to the performance of its functions.

#### **Cooperation between Commission and other constitutional institutions and organs of state**

6. (1) The Commission may-

(a) make appropriate arrangements with another constitutional institution or an organ of state to assist the Commission in the performance of any of its functions in so far as such institution or organ has the power to assist the Commission; and

(b) delegate to a constitutional institution or organ of state with which it has made arrangements any of its powers that may be necessary for the rendering of the agreed assistance.

(2) The Commission must co-operate with other constitutional institutions and organs of state where the functions of the Commission overlap with those of such other constitutional institutions or organs of state.

(3) The Commission may in terms of section 185(3) of the Constitution report any matter that falls within its functions and powers to the South African Human Rights Commission for investigation.

#### **Investigations by Commission or investigating committee**

7. (1) The Commission may conduct an investigation in terms of section 5 (1)(e) itself or may designate one or more Commission members or other persons as an investigating committee to conduct the investigation on its behalf. 55

(2) For purposes of an investigation, the Commission or an investigating committee may-

(a) by notice in writing summon a person to appear before the Commission or the committee, as the case may be-

(i) to give evidence; or

(ii) to produce a document available to that person and specified in the summons;

(b) call any person present at a meeting, whether summoned or not-

(i) to give evidence before the Commission or committee, as the case may

(ii) to produce a document in that person's custody at the meeting;

(c) administer an oath or solemn affirmation to a person contemplated in paragraph (b);

(d) question any person contemplated in paragraph (c) or have such a person questioned by a person designated by the Commission or committee, as the case may be; and

(e) retain for a reasonable period a document produced in terms of paragraph 15 (b)(ii).

(3) If an investigating committee has been appointed to conduct an investigation on behalf of the Commission, the committee must report and make recommendations to the Commission in respect of the investigation at the completion of the investigation.

#### **Reporting by Commission**

8. (a) The Commission must report annually to the National Assembly on its activities.

(b) Copies of the report referred to in paragraph (a) must also be distributed to persons and the performance of its functions, and institutions referred to in section- 26(1).

### **PART 3**

#### **COMPOSITION AND MEMBERSHIP OF COMMISSION**

##### **Composition**

9. (1) The Commission consists of-

(a) a Chairperson appointed by the President in terms of section 12; and (6) no fewer than 11 and no more than 17 other members appointed by the President in accordance with the procedure set out in section 11.

(2) The President-

(a) must determine the number of members to be appointed to the Commission in terms of subsection (1)(b), but may, when appointing members for a new term of the Commission, increase the number so determined after the names of the selected persons have been submitted in terms of section 11(3)(d); and

(b) may alter the number determined in terms of paragraph (a) from time to time, but may reduce the number only when appointing members for a new term of the Commission.

(3) The Commission must be composed in such a way that it-

(a) is at least broadly representative of the main cultural, religious and linguistic communities in South Africa

(b) broadly reflects the gender composition of South Africa; and

(c) collectively possesses sufficient knowledge and experience concerning issues relevant to-

(i) the promotion and protection of the rights of cultural, religious and 45

(ii) nation-building.

linguistic communities; and

##### **Qualifications for membership**

10. (1) A member of the Commission must-

(a) be a South African citizen;

(b) be a fit and proper person to hold office as a member of the Commission; and

(c) subscribe to the objects of the Commission set out in section 4.

(2) The following persons are disqualified from becoming or remaining a member of the Commission:

(a) A person who on any of the grounds set out in section 47(1)(c), (d) or (e) of the Constitution is not eligible to be a member of the National Assembly;

(b) a person who fails to resign as provided for in section 16(3)(c);

(c) a person who has been removed from office in terms of section 17; or

(d) a person who has been convicted of a crime or an offence in respect of which a court has determined that hatred based on race, ethnicity, gender or religion played a role.

##### **Procedure for appointment of members**

11. (1) Whenever it is necessary to appoint the members of the Commission contemplated in section 9(1)(b), the Minister must-

(a) through advertisements in the media, nationally and in each of the provinces, and, where necessary, by other means, invite organisations or individuals within the cultural, religious and linguistic Communities of South Africa to nominate persons complying with section 10 for appointment to the Commission;

(b) take further steps to invite organisations and individuals within the cultural, religious and linguistic communities of South Africa to nominate persons complying with section 10 for appointment to the Commission if the initial nominations as a result of advertisements or invitations referred to in paragraph (a) would not meet the requirements of section 9(3);

(c) compile a list of the names of persons nominated in respect of each of the various cultural, religious and linguistic communities, setting out the prescribed particulars of each individual nominee; and

(d) appoint a selection panel consisting of persons who command public respect for their fair-mindedness, wisdom and understanding of issues concerning South African cultural, religious and linguistic communities.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) or an invitation in terms of subsection (1)(b) must be supported by

(a) the personal details of the nominee;

(b) particulars of the nominee's involvement in cultural, religious and linguistic affairs, including a list of the cultural, religious and linguistic organisations of which that nominee is a member, an office-bearer or in which that nominee is an active participant;

(c) particulars of the nominee's knowledge and experience concerning issues relevant to -

(i) the promotion and protection of the rights of cultural, religious and linguistic communities; and

(ii) nation-building; and-

(d) any other information that may be prescribed.

(3) The selection panel must-

(a) select persons who qualify to be members of the Commission and who would be most suited to serve on the Commission;

(b) select persons whose appointment would meet the requirements of section 9(3)

(c) select from the list compiled in terms of subsection (1)(c) at least one and a half times the number of members to be appointed as a result of-

(i) a new term of the Commission;

(ii) an increase in the number of members contemplated in section 9(1)(b); or

(iii) a vacancy; and

(d) submit the names of the selected persons to the President together with reasons why they were selected.

(4) The President must-

(a) appoint the members of the Commission from the names of the selected persons submitted in terms of subsection (3)(d); and

(b) comply with section 9(3) when making the appointments.

### Chairperson

12. (1) The President must appoint a member of the Commission or another person satisfying the qualifications set out in section 10 as the Chairperson of the Commission.

(2) The person appointed as the Chairperson of the Commission must be a fit and proper person to hold office as Chairperson.

(3) The President may appoint a Deputy Chairperson from the ranks of the Commission.

### Term of Commission

13. (1) The term of the Commission is five years.

(2) The Chairperson and the other members of the Commission are appointed for one term of the Commission, but may be reappointed at the end of that term for one further term only.

(3) If the number of members contemplated in section 9(1)(b) is increased during a term, the additional member or members are appointed for the remaining part of the current term.

### Conditions of appointment

14. (1) The Minister, with the concurrence of the Minister of Finance, determines the conditions of appointment of the Chairperson, the Deputy Chairperson and the other members of the Commission, taking into account the conditions of appointment of members of constitutional institutions.

(2) The members of the Commission are appointed in a part-time capacity, but the Chairperson, Deputy Chairperson and not more than three other members may be appointed in a full-time capacity.

### Conduct of members

15. (1) A member of the Commission-

(a) must perform the functions of office-

(i) in the spirit of furthering peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;

(ii) in good faith; and

(iii) without fear, favour or prejudice; must disclose to the Commission any personal or private business interest which that member or that member's spouse, partner or close family member may have in any matter before the Commission, and must withdraw from the proceedings of the Commission when that matter is considered, unless the Commission decides that the member's interest in the matter is trivial or irrelevant; may not use the position or privileges of a member for private gain or to benefit another person improperly; and may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Commission.

(2) Any member of the Commission who contravenes or fails to comply with subsection (1) is guilty of misconduct.

### Termination of membership

16. (1) A person ceases to be a member of the Commission when that person-

(a) is no longer eligible in terms of section 10 to be a member;

(b) resigns; or

(c) is removed from office in terms of section 17.

(2) A member may resign after giving at least three months notice in writing to the President, but the President may accept a shorter period in a specific case

(3) A member is regarded as having resigned if that member-

(a) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council;

(b) is appointed as an office bearer of a political party; or

(c) is an office bearer of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council and fails to resign from such office within 30 days of having been appointed as a member of the Commission.

### Removal from office

17. (1) A member of the Commission may be removed from office, but only if a 10 committee of the National Assembly finds the member guilty of misconduct or rules that the member is incompetent or incapable of performing a member's functions, and the National Assembly, in accordance with section 194(2)(b) of the Constitution, adopts a resolution calling for that member's removal from office.

(2) The President-

(a) may suspend a member of the Commission from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that member; and

(b) must remove the member from office upon adoption by the National Assembly of the resolution calling for that member's removal.

#### **Filling of vacancies**

18. (1) In the event of a vacancy occurring in the office of-

(a) Chairperson, the vacancy is filled by the President in terms of section 12; and

(b) a member contemplated in section 9(1)(b), the vacancy is filled by following the procedure contemplated in section 11

(2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

### PART 4

#### **OPERATION OF COMMISSION**

##### **Meetings**

19. (1) The Chairperson of the Commission decides when and where the Commission meets, but must convene a meeting within 30 days after the receipt of a request supported by a majority of the members to convene a meeting of the Commission.

(2) The Commission must meet at least quarterly.

(3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson presides at meetings of the Commission, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

##### **Procedures**

20. The Commission may determine its own procedure, with due regard to the principles of transparency.

##### **Decisions**

21. (a) The Commission must take decisions in a consensus-seeking manner that gives effect to the principle of unity in diversity as reflected in the Constitution.

(b) If the Commission fails to reach consensus on a question before the Commission, a decision on the question can only validly be taken by a supporting vote of at least the majority of the total number of the members of the Commission.

##### **Committees**

22. (1) The Commission may-

(a) establish one or more committees consisting of members only or members and staff or other persons, to assist the Commission in the performance of its functions; and

(b) dissolve a committee at any time.

(2) The Commission-

(a) must determine the functions of a committee;

(b) must appoint a member of a committee as the chairperson of the committee;

(c) may remove a member of a committee at any time; and

(d) may determine a committee's procedure.

##### **Delegation of powers and assignment of duties**

23. (1) The Commission may-

(a) delegate any of the Commission's powers to-

(i) a member of the Commission;

(ii) a member of the Commission's staff; or

(iii) a committee of the Commission; and

(b) assign the performance of any of the Commission's duties to any such member, staff member or committee.

(2) A delegation or assignment in terms of subsection (1)-

(a) is subject to such conditions and directions as the Commission may impose; and

(b) does not divest Commission of responsibility for the exercise of the power or the performance of the duty.

(3) The Commission may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

### PART 5

#### **NATIONAL CONSULTATIVE CONFERENCE**

##### **Convening**

24. (1) (a) The Commission must convene two national consultative conferences during every term of the Commission, the first of which must take place within the first 12 months of a new term of the Commission.

(b) The Minister must be consulted if the Commission needs to convene more than two national consultative conferences during a particular term of the Commission.

(2) The Commission may generate funding for a national consultative conference in addition to money appropriated for that purpose by Parliament.

##### **Purpose**

25. The purpose of a national consultative conference is to provide a forum for-

(a) the consideration of-

(i) a report by the Commission on its activities, accomplishments and challenges; and -

(ii) any recommendations of the Commission;

(b) the evaluation of progress in South Africa with regard to

(i) the promotion of respect for and the furthering of the protection of the rights of cultural, religious and linguistic communities; and

(ii) the furthering of peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;

(c) the formulation of requests and recommendations to the Commission concerning matters mentioned in paragraph (b)(i) or (ii);

(d) the discussion of resolutions before the conference concerning requests to, and priorities for, the Commission; and

(e) promoting appreciation for cultural, religious and linguistic diversity.

##### **Composition**

26. (1) A national consultative conference may comprise such persons as the Commission may invite, but must include-

(a) members of the Commission;

(b) delegates from cultural, religious and linguistic communities;

(c) delegates from every community council recognised in terms of section 37;

(d) delegates from the National House of Traditional Leaders, the South African Human Rights Commission, the Pan South African Language Board, the Commission on Gender Equality and the National Youth Commission;

(e) delegates from the national government designated by the Minister;

(f) delegates from each provincial government designated by the Premier of the province concerned; and

(g) delegates designated by organised local government.

(2) The Commission must-

(a) through advertisements in the media, nationally and in each of the provinces, invite cultural, religious and linguistic

communities to nominate delegates representing those communities to a national conference;

(b) take further steps to invite organisations and individuals in order to ensure broad representation in respect of delegates referred to in subsection (1)(b)

(3) The Commission, after consultation with the Minister, may-

(a) determine the maximum number of delegates to a national consultative conference; and

(b) determine the maximum number of delegates that may be designated or invited in terms of subsection (1)(d), (e), (f) and (g).

(4) The number of delegates designated or invited in terms of subsection (1)(d), (e), 25

(f) and (g) may not exceed one-third of the maximum number of delegates to a national consultative conference.

(5) Any institution or body sending delegates to a conference must give due consideration to gender balance in the selection of delegates.

#### **Procedures**

27. The Commission determines-

(a) the agenda of a national consultative conference; and

(b) the procedures to be followed at a national consultative conference, but the person presiding at a session of a conference may give a ruling on any matter that may arise during that session.

#### **Chairperson**

28. The Chairperson of the Commission-or, in the absence of the Chairperson, the Deputy Chairperson or another member of the Commission elected by the Commission, presides at any session of a national consultative conference.

#### **Resolutions**

29. The person presiding at a session of a national consultative conference must submit any resolution adopted by the conference to the Commission for consideration

### **PART 6**

#### **ADMINISTRATIVE AND FINANCIAL MATTERS**

##### **Appointment of chief executive officer**

30. (1) The Commission must appoint a person as the chief executive officer of the Commission.

(2) The chief executive officer holds office-

(a) for an agreed term not exceeding five years, but which may be renewed;

(b) subject to the terms and conditions applicable generally to employees of the Commission; and

(c) on the terms and conditions set out in a written employment contract which must include terms and conditions setting performance standards.

##### **Functions of chief executive officer**

31. (1) The chief executive officer is the accounting officer of the Commission.

(2) The chief executive officer is responsible for-

(a) the formation and development of an efficient administration;

(b) the organisation, control and management of all staff, including persons seconded to the Commission from any organ of state;

(c) the maintenance of discipline in respect of the staff and

(d) the carrying out of the decisions of the Commission.

(3) As accounting officer the chief executive officer is responsible for-

(a) all income and expenditure of the Commission;

(b) all the Commission's assets and the discharge of all the liabilities of the Commission; and

(c) proper and diligent compliance with the Public Finance Management Act, 1999 (Act No. 1 of 1999)

##### **Conditions of employment of employees**

32. (1) An employee of the Commission is employed subject to the terms and conditions of employment determined by the Commission.

(2) The terms and conditions must comply with the basic values and principles set out in section 195 of the Constitution.

(3) Persons in the public service or other state institutions seconded to the Commission must perform their functions under the control and directions of the chief executive officer of the Commission.

##### **Pension rights**

33. (1) Any person appointed as an employee of the Commission may become a member of the Government Employees' Pension Fund contemplated in section 2 of the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996).

(2) An employee of the Commission who becomes a member of that pension fund is entitled to pension and retirement benefits as if that person were an official in the public service.

##### **Funding**

34. (1) The Commission is entitled to money appropriated annually by Parliament to enable it to perform its functions effectively

(2) For purposes of subsection (1), the Commission-

(a) must submit to the Minister during each financial year, but before a date set by the Minister, estimates of the Commission's income and expenditure for the next financial year; and

(b) may submit to the Minister at any time during a financial year estimates of the Commission's income and expenditure supplementary to those mentioned in paragraph (a).

(3) The Commission may seek to acquire gifts, donations or sponsorships to assist the Commission with the achievement of its objects, but such gifts, donations or sponsorships must be dealt with in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any regulations and instructions made and issued under that Act. 50

(4) When submitting the estimates the Commission must disclose, in accordance with the Public Finance Management Act, 1999., full particulars of any income that has accrued, or is expected to accrue, to the Commission from a source other than an appropriation by Parliament.

(5) The Commission must refund to-the National Revenue Fund any money paid to the Commission in terms of subsection (1) that has not been used at the end of a financial year, unless otherwise agreed to by the Minister of Finance.

##### **Audit**

35. The Auditor-General must audit the accounts and financial records of the Commission.

### **PART 7**

#### **COMMUNITY COUNCILS**

##### **Recommendation of establishment of community councils**

36. (1) Persons belonging to a cultural, religious or linguistic community may form, join and maintain cultural, religious and linguistic associations and other organs of civil society as envisaged in section 31 of the Constitution.

(2) The Commission may recommend to a community, which is not organised, to initiate and establish a community council at a provincial or national level if the establishment of such a council would be conducive to

(a) the promotion and protection of the rights of such a community; and

(6) the promotion and development of peace, friendship, humanity, tolerance and national unity among and within the different communities in South Africa.

#### Recognition of community councils

37. (1) A community council envisaged in section 36(1) or (2) may, in the prescribed manner, apply to the Commission for recognition.

(2) The Commission may in writing recognise a community council for purposes of participation in a national consultative conference and section 38

(3) A community council recognised in terms of subsection (2) may apply to the Commission or any other organ of state for financial assistance.

#### Aims of community councils

38. (1) The aims of a community council recognised in terms of section 37 should be to -

(a) preserve, promote and develop the culture, religion or language of the community for which it is recognised; or

(b) advise the Commission on, and assist the Commission in, matters concerning the achievement of the objects of the Commission.

### PART 8

#### MISCELLANEOUS MATTERS

##### Legal proceedings

39. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies with the necessary changes in respect of the Commission, and in any such application a reference in that Act to the Minister of the department concerned must be construed as a reference to the Chairperson of the Commission.

(2) No person, including the Commission, is liable for anything done or omitted in good faith when exercising a power or performing a duty in terms of this Act

##### Regulations

40. The Minister, after consultation with the Commission, may make regulations regarding any matter-

(a) that may or must be prescribed in terms of this Act; and

(b) that the Minister considers necessary or expedient to prescribe in order that the objects of the Commission may be achieved.

##### Offences and penalties

41. (1) A person commits an offence if that person-

(a) wilfully disrupts the proceedings of the Commission, or a committee of the Commission, or a session of a national consultative conference;

(b) wilfully hinders, obstructs or threatens members of the Commission or of a committee of the Commission, or delegates to a national consultative conference, in the exercise of their powers or the performance of their duties in terms of this Act;

(c) does anything calculated to influence the Commission or a committee of the Commission improperly in its consideration of a matter;

(d) after having been summoned in terms of section 7(2)(a) fails-

(i) to be present at a meeting of the Commission or an investigating

(ii) to remain present until excused by the Commission or committee; or

(e) after having been called in terms of section 7(2)(b) refuses-

(i) to appear before the Commission or the committee;

(ii) to answer any question; or

(iii) to produce a document specified in the summons, or in that person's custody at the meeting. committee at the time and place specified in the summons; or

(2) Any person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

#### Short title and commencement

42. This Act is called the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, and takes effect on a date determined by the President by proclamation in the Gazette.

## VI.3. Jurisprudencia <sup>44</sup>

### a) SUPREME COURT OF APPEAL

- CASE Maurice Alphonse Jacquesson v Minister of Finance  
Case No 548 / 04  
Date 15 November 2005

### b) CONSTITUTIONAL COURT

CASE The State v Wouter Basson  
Case No CCT 30/03  
Date 9 September 2005

CASE Bel Porto School Governing Body and others v Premier, Western Cape Province and another  
Case No 58/00  
Date 21 February 2002

CASE The State v J M Twala  
Case No CCT 27 /99  
Date 2 December 1999

CASE Azanian Peoples Organization (AZAPO) and others v President of the Republic of South Africa and others<sup>45</sup>  
Case No CCT 17/96  
Date 25 July 1996

### IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**Azanian Peoples Organization (AZAPO) and others v President of the Republic of South Africa and others**

**CCT 17/96**

**Decided on 25 July 1996**

#### MEDIA SUMMARY

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

<sup>44</sup> Fuente : Constitutional Court of South Africa. <http://www.constitutionalcourt.org.za>

<sup>45</sup> Se reproduce un resumen

The applicants applied for direct access to the Constitutional Court and for an order declaring s 20(7) of the Promotion of National Unity and Reconciliation Act 34 of 1995 unconstitutional. Section 20(7), read with other sections of the Act, permits the Committee on Amnesty established by the Act to grant amnesty to a perpetrator of an unlawful act associated with a political objective and committed prior to 6 December 1993. As a result of the grant of amnesty, the perpetrator cannot be criminally or civilly liable in respect of that act. Equally, the state or any other body, organisation or person that would ordinarily have been vicariously liable for such act, cannot be liable in law.

The Court upheld the constitutionality of the section. It acknowledged that the section limited the applicants' right in terms of s 22 of the interim Constitution to 'have justiciable disputes settled by a court of law, or . . . other independent or impartial forum'. However, in terms of s 33(2) of the Constitution, violations of rights are permissible either if sanctioned by the Constitution or if justified in terms of s 33(1) of the Constitution (the limitation section). The Court held that the epilogue ('National Unity and Reconciliation') to the Constitution sanctioned the limitation on the right of access to court.

The Court held that amnesty for criminal liability was permitted by the epilogue because without it there would be no incentive for offenders to disclose the truth about past atrocities. The truth might unfold with such an amnesty, assisting in the process of reconciliation and reconstruction. Further, the Court noted that such an amnesty was a crucial component of

the negotiated settlement itself, without which the Constitution would not have come into being. It found that the amnesty provisions were not inconsistent with international norms and did not breach any of the country's obligations in terms of public international law instruments.

The Court held that the amnesty for civil liability was also permitted by the epilogue, again because the absence of such an amnesty would constitute a disincentive for the disclosure of the truth.

The Court held that the epilogue permitted the granting of amnesty to the state for any civil liability. The Court said that Parliament was entitled to adopt a wide concept of reparations. This would allow the state to decide on proper reparations for victims of past abuses having regard to the resources of the state and the competing demands thereon. Further, Parliament was authorised to provide for individualised and nuanced reparations taking into account the claims of all the victims, rather than preserving state liability for provable and unprescribed delictual claims only.

The Court held that the epilogue authorised the granting of amnesty to bodies, organisations or other persons which would otherwise have been vicariously liable for acts committed in the past. The truth might not be told if these organisations or individuals were not given amnesty. Indeed, according to the Court, the Constitution itself might not have been negotiated had this amnesty not been provided for.

The judgment of the Court was delivered by Mahomed DP and was concurred in by the other members of the Court. Didcott J delivered a separate concurring judgment.

## VI.4. Estadísticas

### Población

La población sudafricana estimada para la mitad de año de 2006 es de 47,7 millones de habitantes. Su composición es:

"Africans" 37,7 millones que constituyen el 80% del total de la población ; "White" 4,4 millones; "Coloured" 4,2 millones e Indo-Asiáticos 1,2 millones.<sup>46</sup>

Mid-year estimates for South Africa by population group and sex, 2006

Population group	Male		Female		Total	
	Number	% of total population	Number	% of total population	Number	% of total population
African	18 558 500	79,6	19 104 400	79,4	37 662 900	79,5
Coloured	2 060 000	8,8	2 138 800	8,9	4 198 800	8,9
Indian/Asian	570 200	2,4	593 700	2,5	1 163 900	2,5
White	2 138 900	9,2	2 226 400	9,3	4 365 300	9,2
<b>Total</b>	<b>23 327 600</b>	<b>100</b>	<b>24 063 300</b>	<b>100</b>	<b>47 390 900</b>	<b>100</b>

### Fertility

Table 1 shows the national fertility assumptions used in this report. Fertility declined from an average of 2,9 children per woman in 2001 to 2,7 children by 2006.

Table 1: Estimated total fertility rates, 2001-2006

	African	Coloured	Indian/Asian	White	South Africa
2001	3.10	2.35	1.98	1.73	2.86
2002	3.07	2.33	1.92	1.73	2.84
2003	3.04	2.32	1.89	1.72	2.82
2004	3.01	2.30	1.87	1.72	2.80
2005	2.98	2.28	1.88	1.73	2.78
2006	2.92	2.27	1.88	1.73	2.73

<sup>46</sup> Fuente: Mid-year population estimates, South Africa 2006 . www.statssa.gov.za Census'96 and 2001 compared .Report n° 03-02-04 (2001) www.statssa.gov.za





### 2.3 Country of birth by population group and gender (numbers): South Africa, 2001

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	South Africa	16 502 228	18 336 487	34 838 715	1 911 822	2 066 663	3 978 485	525 710	556 132	1 081 843	1 883 906	2 011 753	3 895 659	20 823 666	22 971 035
SADC countries*	359 547	179 928	539 474	5 762	5 643	11 405	1 604	1 502	3 106	63 522	70 172	133 693	430 435	257 244	687 679
Rest of Africa	21 321	8 559	29 880	891	428	1 319	814	454	1 268	4 626	4 727	9 353	27 651	14 168	41 819
Europe	2 410	1 907	4 317	1 057	680	1 737	592	477	1 070	111 543	109 646	221 189	115 602	112 712	228 314
Asia	1 398	719	2 117	581	404	985	16 091	11 636	27 727	5 492	4 565	10 057	23 562	17 323	40 886
North America	522	434	956	131	123	254	126	119	244	3 698	4 000	7 698	4 476	4 676	9 152
Central and South America	349	260	609	148	101	249	70	42	112	5 890	5 938	11 828	6 457	6 341	12 798
Australia and New Zealand	55	43	98	34	37	71	42	56	98	2 059	2 104	4 162	2 191	2 239	4 429
<b>Total</b>	<b>16 887 830</b>	<b>18 528 336</b>	<b>35 416 166</b>	<b>1 920 426</b>	<b>2 074 079</b>	<b>3 994 505</b>	<b>545 050</b>	<b>570 417</b>	<b>1 115 467</b>	<b>2 080 734</b>	<b>2 212 905</b>	<b>4 293 640</b>	<b>21 434 040</b>	<b>23 385 737</b>	<b>44 819 778</b>

\* Southern African Development Community

Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

### 2.4 Country of birth by population group and gender (percentages): South Africa, 2001

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	South Africa	97,7	99,0	98,4	99,6	99,6	99,6	96,5	97,5	97,0	90,5	90,9	90,7	97,2	98,2
SADC countries*	2,1	1,0	1,5	0,3	0,3	0,3	0,3	0,3	0,3	3,1	3,2	3,1	2,0	1,1	1,5
Rest of Africa	0,1	0,0	0,1	0,0	0,0	0,0	0,1	0,1	0,1	0,2	0,2	0,2	0,1	0,1	0,1
Europe	0,0	0,0	0,0	0,1	0,0	0,0	0,1	0,1	0,1	5,4	5,0	5,2	0,5	0,5	0,5
Asia	0,0	0,0	0,0	0,0	0,0	0,0	3,0	2,0	2,5	0,3	0,2	0,2	0,1	0,1	0,1
North America	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,2	0,2	0,2	0,0	0,0	0,0
Central and South America	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,3	0,3	0,3	0,0	0,0	0,0
Australia and New Zealand	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,1	0,1	0,1	0,0	0,0	0,0
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

\* Southern African Development Community

Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

## 9.1 Attendance at an educational institution amongst those aged 5-24 years by population group and gender (numbers): South Africa, 1996

	Black African			Coloured			Indian or Asian			White			Unspecified/Other			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	5 years old																	
Studying	90 511	91 413	181 924	5 053	5 127	10 180	2 915	2 752	5 666	4 643	4 474	9 117	904	947	1 850	104 025	104 712	208 738
Not studying	292 282	289 946	582 228	34 821	33 731	68 552	6 373	6 320	12 693	24 129	23 177	47 306	3 419	3 178	6 597	361 024	356 353	717 377
Unspecified	11 271	11 467	22 737	1 765	1 691	3 456	376	329	705	1 711	1 756	3 467	658	633	1 291	15 781	15 875	31 656
<b>Total</b>	<b>394 064</b>	<b>392 826</b>	<b>786 890</b>	<b>41 639</b>	<b>40 548</b>	<b>82 187</b>	<b>9 664</b>	<b>10 552</b>	<b>19 065</b>	<b>30 483</b>	<b>29 407</b>	<b>59 890</b>	<b>4 981</b>	<b>4 758</b>	<b>9 739</b>	<b>480 830</b>	<b>476 940</b>	<b>957 771</b>
6 years old																		
Studying	190 578	195 378	385 955	22 333	22 063	44 396	7 070	6 910	13 981	11 673	11 886	23 559	2 270	2 402	4 671	233 924	238 639	472 563
Not studying	205 802	200 742	406 544	18 713	18 351	37 064	2 537	2 516	5 053	18 577	17 499	36 076	2 168	2 167	4 335	247 797	241 274	489 071
Unspecified	8 015	7 987	16 002	1 032	951	1 983	187	197	383	1 353	1 286	2 639	468	473	941	11 055	10 893	21 948
<b>Total</b>	<b>404 394</b>	<b>404 107</b>	<b>808 501</b>	<b>42 078</b>	<b>41 364</b>	<b>83 443</b>	<b>9 794</b>	<b>9 623</b>	<b>19 417</b>	<b>31 603</b>	<b>30 671</b>	<b>62 274</b>	<b>4 906</b>	<b>5 041</b>	<b>9 948</b>	<b>492 776</b>	<b>490 806</b>	<b>983 582</b>
7 years old																		
Studying	255 820	262 653	518 472	35 330	35 139	70 469	9 137	8 753	17 890	27 256	26 411	53 667	3 350	3 293	6 643	330 892	336 249	667 141
Not studying	117 062	110 991	228 053	4 442	4 215	8 657	551	500	1 051	3 117	2 718	5 834	935	872	1 807	126 108	119 295	245 402
Unspecified	5 075	4 945	10 020	332	348	680	76	92	169	536	483	1 018	343	342	685	6 362	6 210	12 572
<b>Total</b>	<b>377 957</b>	<b>378 588</b>	<b>756 545</b>	<b>40 104</b>	<b>39 702</b>	<b>79 806</b>	<b>9 765</b>	<b>9 345</b>	<b>19 110</b>	<b>30 908</b>	<b>29 611</b>	<b>60 519</b>	<b>4 627</b>	<b>4 508</b>	<b>9 135</b>	<b>463 362</b>	<b>461 754</b>	<b>925 115</b>
8 years old																		
Studying	279 474	293 154	572 628	36 000	35 917	71 917	9 320	8 912	18 231	29 087	28 139	57 225	3 426	3 481	6 907	357 306	369 603	726 909
Not studying	79 669	73 229	152 897	2 178	2 184	4 362	248	244	492	1 255	1 068	2 323	578	604	1 182	83 927	77 328	161 256
Unspecified	3 811	3 753	7 564	272	271	543	76	59	134	367	389	757	265	260	525	4 791	4 732	9 523
<b>Total</b>	<b>362 954</b>	<b>370 136</b>	<b>733 090</b>	<b>38 449</b>	<b>38 372</b>	<b>76 822</b>	<b>9 644</b>	<b>9 214</b>	<b>18 857</b>	<b>30 709</b>	<b>29 596</b>	<b>60 305</b>	<b>4 268</b>	<b>4 346</b>	<b>8 614</b>	<b>446 024</b>	<b>451 664</b>	<b>897 688</b>
9 years old																		
Studying	300 568	314 795	615 363	35 957	35 928	71 885	9 077	8 913	17 990	29 777	28 730	58 506	3 447	3 557	7 005	378 826	391 923	770 750
Not studying	54 616	45 818	100 434	1 362	1 354	2 716	173	145	319	766	765	1 532	440	386	826	57 358	48 468	105 827
Unspecified	2 973	2 809	5 782	216	223	439	64	51	116	359	354	713	241	240	481	3 854	3 678	7 531
<b>Total</b>	<b>368 157</b>	<b>363 422</b>	<b>721 580</b>	<b>37 535</b>	<b>37 506</b>	<b>75 041</b>	<b>9 315</b>	<b>9 110</b>	<b>18 425</b>	<b>30 902</b>	<b>29 849</b>	<b>60 750</b>	<b>4 129</b>	<b>4 183</b>	<b>8 312</b>	<b>440 038</b>	<b>444 070</b>	<b>884 108</b>
10 years old																		
Studying	332 262	347 428	679 690	38 729	38 563	77 292	10 193	10 026	20 219	32 001	30 784	62 785	3 764	3 824	7 587	416 949	430 624	847 573
Not studying	41 949	34 165	76 113	1 218	1 005	2 223	169	176	345	787	730	1 517	389	317	706	44 512	36 393	80 905
Unspecified	2 556	2 520	5 076	200	215	415	58	55	114	395	340	735	247	237	484	3 456	3 367	6 824
<b>Total</b>	<b>376 766</b>	<b>364 113</b>	<b>760 879</b>	<b>40 148</b>	<b>39 783</b>	<b>79 930</b>	<b>10 421</b>	<b>10 257</b>	<b>20 678</b>	<b>33 183</b>	<b>31 854</b>	<b>65 036</b>	<b>4 400</b>	<b>4 378</b>	<b>8 778</b>	<b>464 917</b>	<b>470 384</b>	<b>935 301</b>
11 years old																		
Studying	335 389	346 861	682 250	38 353	38 450	76 803	10 226	9 950	20 176	33 204	31 723	64 927	3 818	3 821	7 639	420 989	430 805	851 794
Not studying	30 589	23 784	54 354	1 094	966	2 060	169	147	316	664	734	1 399	281	276	557	32 798	25 907	58 705
Unspecified	2 378	2 087	4 466	193	179	372	62	47	109	353	347	701	227	235	462	3 213	2 896	6 109
<b>Total</b>	<b>368 356</b>	<b>372 713</b>	<b>741 069</b>	<b>39 640</b>	<b>39 615</b>	<b>79 254</b>	<b>10 457</b>	<b>10 144</b>	<b>20 600</b>	<b>34 222</b>	<b>32 804</b>	<b>67 026</b>	<b>4 326</b>	<b>4 332</b>	<b>8 658</b>	<b>457 000</b>	<b>459 607</b>	<b>916 608</b>

**9.1 Attendance at an educational institution amongst those aged 5-24 years by population group and gender (numbers): South Africa, 1996**  
(continued)

	Black African			Coloured			Indian or Asian			White			Unspecified/Other			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	12 years old																	
Studying	343 954	357 140	701 094	39 109	39 018	78 127	10 802	10 354	20 957	33 758	32 788	66 547	3 716	3 812	7 528	431 140	443 113	874 253
Not studying	26 690	21 225	47 915	1 195	1 004	2 199	154	149	302	672	619	1 291	301	284	565	29 012	23 261	52 272
Unspecified	2 201	2 149	4 350	184	205	389	59	49	108	330	334	664	229	225	454	3 003	2 963	5 966
<b>Total</b>	<b>372 845</b>	<b>380 514</b>	<b>753 359</b>	<b>40 488</b>	<b>40 228</b>	<b>80 716</b>	<b>10 815</b>	<b>10 552</b>	<b>21 367</b>	<b>34 760</b>	<b>33 742</b>	<b>68 502</b>	<b>4 247</b>	<b>4 301</b>	<b>8 548</b>	<b>463 154</b>	<b>469 337</b>	<b>932 491</b>
13 years old																		
Studying	334 857	349 932	684 789	38 345	38 650	76 996	10 424	10 238	20 663	33 348	32 805	66 154	3 624	3 692	7 316	420 599	435 318	855 917
Not studying	23 132	19 187	42 319	1 290	1 205	2 495	120	184	304	639	614	1 253	244	240	485	25 425	21 431	46 856
Unspecified	1 905	1 934	3 839	200	181	382	57	53	110	328	348	676	199	189	389	2 689	2 706	5 395
<b>Total</b>	<b>359 894</b>	<b>371 063</b>	<b>730 947</b>	<b>39 836</b>	<b>40 037</b>	<b>79 872</b>	<b>10 601</b>	<b>10 476</b>	<b>21 077</b>	<b>34 316</b>	<b>33 767</b>	<b>68 083</b>	<b>4 068</b>	<b>4 122</b>	<b>8 189</b>	<b>448 714</b>	<b>459 455</b>	<b>908 169</b>
14 years old																		
Studying	334 406	351 884	686 290	35 401	36 383	71 784	10 426	9 908	20 335	32 660	32 031	64 691	3 641	3 506	7 147	416 534	433 712	850 246
Not studying	23 870	21 328	45 198	1 792	1 777	3 569	207	211	418	604	551	1 155	258	243	501	26 731	24 111	50 842
Unspecified	1 915	1 879	3 793	226	202	428	48	41	89	335	331	665	218	235	453	2 741	2 688	5 429
<b>Total</b>	<b>360 192</b>	<b>375 090</b>	<b>735 282</b>	<b>37 418</b>	<b>38 362</b>	<b>75 780</b>	<b>10 682</b>	<b>10 160</b>	<b>20 842</b>	<b>33 599</b>	<b>32 913</b>	<b>66 512</b>	<b>4 116</b>	<b>3 985</b>	<b>8 101</b>	<b>446 006</b>	<b>460 510</b>	<b>906 517</b>
15 years old																		
Studying	304 243	316 482	620 726	31 862	32 393	64 255	9 656	9 474	19 130	31 684	30 882	62 566	3 133	3 183	6 316	380 578	392 415	772 993
Not studying	25 688	26 693	52 382	3 049	3 016	6 065	249	298	547	638	695	1 333	264	321	585	29 889	31 023	60 912
Unspecified	1 870	1 851	3 721	217	199	416	49	56	104	296	279	575	168	183	351	2 600	2 567	5 167
<b>Total</b>	<b>331 802</b>	<b>345 026</b>	<b>676 828</b>	<b>35 128</b>	<b>35 608</b>	<b>70 736</b>	<b>9 954</b>	<b>9 828</b>	<b>19 781</b>	<b>32 618</b>	<b>31 856</b>	<b>64 474</b>	<b>3 565</b>	<b>3 687</b>	<b>7 252</b>	<b>413 067</b>	<b>426 005</b>	<b>839 071</b>
16 years old																		
Studying	306 360	316 460	622 819	29 401	29 359	58 760	9 549	9 476	19 025	30 943	30 350	61 293	3 091	3 227	6 318	379 344	388 872	768 216
Not studying	34 437	41 490	75 927	5 699	5 798	11 496	521	599	1 120	1 200	1 279	2 479	413	405	817	42 268	49 571	91 839
Unspecified	2 246	2 284	4 530	289	245	534	73	59	132	327	317	644	187	215	402	3 122	3 120	6 241
<b>Total</b>	<b>343 042</b>	<b>360 234</b>	<b>703 276</b>	<b>35 389</b>	<b>35 401</b>	<b>70 790</b>	<b>10 142</b>	<b>10 134</b>	<b>20 277</b>	<b>32 470</b>	<b>31 946</b>	<b>64 416</b>	<b>3 691</b>	<b>3 847</b>	<b>7 537</b>	<b>424 735</b>	<b>441 562</b>	<b>866 297</b>
17 years old																		
Studying	268 254	270 304	538 559	23 322	23 130	46 452	8 652	8 578	17 231	27 942	27 354	55 196	2 640	2 591	5 232	330 712	331 958	662 669
Not studying	42 808	57 083	99 891	8 514	8 723	17 237	1 097	1 081	2 178	2 287	2 375	4 662	534	586	1 120	55 240	69 848	125 088
Unspecified	2 206	2 440	4 646	323	369	692	50	56	106	354	360	713	182	177	359	3 114	3 401	6 516
<b>Total</b>	<b>313 268</b>	<b>329 828</b>	<b>643 096</b>	<b>32 159</b>	<b>32 222</b>	<b>64 381</b>	<b>9 799</b>	<b>9 715</b>	<b>19 514</b>	<b>30 483</b>	<b>30 088</b>	<b>60 571</b>	<b>3 356</b>	<b>3 355</b>	<b>6 711</b>	<b>389 066</b>	<b>405 207</b>	<b>794 273</b>
18 years old																		
Studying	244 055	244 954	489 009	17 817	17 531	35 348	6 476	6 210	12 685	23 464	22 693	46 157	2 132	2 089	4 221	293 943	293 477	587 420
Not studying	58 436	80 460	138 896	13 511	14 616	28 127	3 119	3 379	6 497	6 254	6 788	13 042	823	951	1 774	82 143	106 194	188 337
Unspecified	2 857	3 013	5 870	554	553	1 107	138	124	262	541	489	1 030	195	235	429	4 285	4 415	8 699
<b>Total</b>	<b>305 348</b>	<b>328 427</b>	<b>633 775</b>	<b>31 883</b>	<b>32 700</b>	<b>64 583</b>	<b>9 733</b>	<b>9 712</b>	<b>19 445</b>	<b>30 258</b>	<b>29 971</b>	<b>60 229</b>	<b>3 150</b>	<b>3 275</b>	<b>6 424</b>	<b>380 371</b>	<b>404 086</b>	<b>784 457</b>

### 9.1 Attendance at an educational institution amongst those aged 5-24 years by population group and gender (numbers): South Africa, 1996 (concluded)

	Black African			Coloured			Indian or Asian			White			Unspecified/Other			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	19 years old																	
Studying	221 042	216 650	437 693	11 598	10 792	22 390	4 076	4 170	8 246	15 331	14 090	29 421	1 683	1 670	3 353	253 732	247 371	501 102
Not studying	81 666	106 792	188 458	18 075	20 098	38 173	5 008	5 094	10 101	13 234	13 886	27 121	1 095	1 213	2 308	119 078	147 083	266 161
Unspecified	3 347	3 604	6 951	713	711	1 425	176	177	353	708	752	1 460	235	241	476	5 180	5 485	10 664
<b>Total</b>	<b>308 055</b>	<b>327 047</b>	<b>633 102</b>	<b>30 387</b>	<b>31 601</b>	<b>61 988</b>	<b>9 260</b>	<b>9 440</b>	<b>18 701</b>	<b>29 274</b>	<b>28 728</b>	<b>58 001</b>	<b>3 014</b>	<b>3 123</b>	<b>6 136</b>	<b>377 990</b>	<b>399 938</b>	<b>777 928</b>
20 years old																		
Studying	188 884	189 228	378 113	7 620	6 963	14 583	3 423	3 489	6 912	14 383	13 516	27 899	1 485	1 458	2 943	215 795	214 654	430 449
Not studying	115 768	143 649	259 417	22 863	25 440	48 303	6 349	6 437	12 786	16 759	17 750	34 510	1 521	1 632	3 153	163 260	194 909	358 169
Unspecified	4 300	4 568	8 869	807	875	1 682	239	251	490	1 007	902	1 909	279	298	576	6 632	6 894	13 525
<b>Total</b>	<b>308 952</b>	<b>337 446</b>	<b>646 398</b>	<b>31 290</b>	<b>33 278</b>	<b>64 568</b>	<b>10 011</b>	<b>10 177</b>	<b>20 188</b>	<b>32 149</b>	<b>32 168</b>	<b>64 317</b>	<b>3 284</b>	<b>3 387</b>	<b>6 672</b>	<b>385 687</b>	<b>416 457</b>	<b>802 144</b>
21 years old																		
Studying	154 781	158 624	313 405	5 069	4 833	9 901	2 806	2 875	5 680	12 919	11 710	24 629	1 120	1 150	2 270	176 694	179 192	355 886
Not studying	142 665	167 717	310 382	25 893	27 842	53 736	7 355	7 198	14 553	18 672	20 066	38 737	1 694	1 838	3 533	196 280	224 662	420 941
Unspecified	5 041	5 126	10 167	941	883	1 824	271	255	526	1 071	1 060	2 131	310	275	585	7 633	7 600	15 233
<b>Total</b>	<b>302 486</b>	<b>331 468</b>	<b>633 954</b>	<b>31 903</b>	<b>33 557</b>	<b>65 461</b>	<b>10 432</b>	<b>10 328</b>	<b>20 760</b>	<b>32 662</b>	<b>32 836</b>	<b>65 498</b>	<b>3 124</b>	<b>3 264</b>	<b>6 388</b>	<b>380 607</b>	<b>411 453</b>	<b>792 060</b>
22 years old																		
Studying	116 122	125 214	241 336	3 439	3 339	6 779	2 139	2 171	4 310	11 047	9 285	20 332	779	841	1 619	133 525	140 851	274 376
Not studying	161 370	186 046	347 416	27 081	29 802	56 884	7 716	7 871	15 586	20 123	23 089	43 212	1 909	1 992	3 901	218 199	248 800	466 998
Unspecified	5 385	5 709	11 094	917	970	1 887	282	263	545	1 036	1 121	2 157	311	290	600	7 930	8 353	16 283
<b>Total</b>	<b>282 877</b>	<b>316 970</b>	<b>599 847</b>	<b>31 438</b>	<b>34 111</b>	<b>65 549</b>	<b>10 136</b>	<b>10 306</b>	<b>20 442</b>	<b>32 205</b>	<b>33 495</b>	<b>65 700</b>	<b>2 999</b>	<b>3 122</b>	<b>6 121</b>	<b>359 654</b>	<b>398 004</b>	<b>757 658</b>
23 years old																		
Studying	83 477	97 171	180 648	2 578	2 392	4 970	1 654	1 706	3 360	8 740	6 630	15 370	695	678	1 373	97 145	108 577	205 722
Not studying	177 384	201 838	379 222	28 309	31 864	60 173	7 801	7 941	15 742	22 519	26 110	48 629	1 939	2 152	4 091	237 953	269 905	507 857
Unspecified	6 150	6 132	12 282	972	1 076	2 048	263	274	537	1 204	1 145	2 349	300	284	584	8 889	8 911	17 799
<b>Total</b>	<b>267 011</b>	<b>305 142</b>	<b>572 152</b>	<b>31 859</b>	<b>35 332</b>	<b>67 191</b>	<b>9 718</b>	<b>9 921</b>	<b>19 639</b>	<b>32 463</b>	<b>33 885</b>	<b>66 348</b>	<b>2 935</b>	<b>3 113</b>	<b>6 048</b>	<b>343 986</b>	<b>387 393</b>	<b>731 379</b>
24 years old																		
Studying	67 340	81 819	149 160	2 175	2 060	4 235	1 451	1 359	2 810	7 621	5 447	13 068	543	610	1 153	79 130	91 295	170 425
Not studying	203 533	225 978	429 512	29 324	33 196	62 520	8 350	8 666	17 015	25 250	29 114	54 364	2 037	2 354	4 392	268 494	299 308	567 802
Unspecified	6 974	6 716	13 690	1 085	1 063	2 148	290	254	544	1 286	1 282	2 568	338	303	641	9 973	9 618	19 591
<b>Total</b>	<b>277 848</b>	<b>314 513</b>	<b>592 361</b>	<b>32 584</b>	<b>36 318</b>	<b>68 903</b>	<b>10 090</b>	<b>10 278</b>	<b>20 369</b>	<b>34 157</b>	<b>35 843</b>	<b>70 000</b>	<b>2 918</b>	<b>3 268</b>	<b>6 186</b>	<b>357 598</b>	<b>400 221</b>	<b>757 819</b>
<b>Total</b>	<b>4 752 378</b>	<b>4 927 545</b>	<b>9 679 923</b>	<b>459 493</b>	<b>458 029</b>	<b>917 523</b>	<b>139 274</b>	<b>136 225</b>	<b>275 498</b>	<b>451 381</b>	<b>431 726</b>	<b>883 107</b>	<b>49 258</b>	<b>49 833</b>	<b>99 091</b>	<b>5 851 784</b>	<b>6 003 358</b>	<b>11 855 142</b>
Not studying	1 939 416	2 078 142	4 017 558	250 424	266 207	516 631	58 267	59 154	117 421	178 146	189 629	367 775	21 245	21 990	43 234	2 447 497	2 615 123	5 062 620
Unspecified	82 475	82 976	165 451	11 438	11 409	22 847	2 893	2 741	5 634	13 898	13 673	27 571	5 598	5 571	11 169	116 302	116 370	232 672
<b>Total</b>	<b>6 774 268</b>	<b>7 088 663</b>	<b>13 862 931</b>	<b>721 355</b>	<b>735 646</b>	<b>1 457 002</b>	<b>200 433</b>	<b>198 121</b>	<b>398 553</b>	<b>643 424</b>	<b>635 028</b>	<b>1 278 453</b>	<b>76 102</b>	<b>77 394</b>	<b>153 495</b>	<b>8 415 583</b>	<b>8 734 851</b>	<b>17 150 434</b>

Including workers' hostels, excluding other collective living quarters

## 9.3 Attendance at an educational institution amongst those aged 5-24 years by population group and gender (numbers): South Africa, 2001

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	5 years old														
Studying	178 505	186 028	364 533	14 946	14 797	29 743	4 505	4 348	8 852	19 401	18 745	38 146	217 357	223 918	441 275
Not studying	228 877	222 145	451 022	26 681	25 896	52 577	4 394	4 256	8 650	7 656	7 216	14 872	267 608	259 512	527 121
<b>Total</b>	<b>407 382</b>	<b>408 173</b>	<b>815 555</b>	<b>41 627</b>	<b>40 693</b>	<b>82 320</b>	<b>8 899</b>	<b>8 604</b>	<b>17 502</b>	<b>27 058</b>	<b>25 960</b>	<b>53 018</b>	<b>484 966</b>	<b>483 430</b>	<b>968 396</b>
6 years old															
Studying	273 907	280 983	554 890	26 506	26 264	52 770	7 779	7 513	15 292	23 229	22 383	45 611	331 421	337 143	668 564
Not studying	125 582	119 077	244 660	14 263	13 749	28 012	1 068	977	2 045	3 776	3 538	7 314	144 689	137 342	282 031
<b>Total</b>	<b>399 489</b>	<b>400 060</b>	<b>799 549</b>	<b>40 769</b>	<b>40 013</b>	<b>80 783</b>	<b>8 848</b>	<b>8 490</b>	<b>17 337</b>	<b>27 004</b>	<b>25 921</b>	<b>52 926</b>	<b>476 110</b>	<b>474 485</b>	<b>950 595</b>
7 years old															
Studying	358 103	362 574	720 677	37 459	36 980	74 439	8 369	8 171	16 540	25 177	23 893	49 070	429 108	431 618	860 726
Not studying	53 963	48 781	102 744	3 782	3 517	7 298	405	430	835	1 356	1 232	2 588	59 506	53 960	113 465
<b>Total</b>	<b>412 066</b>	<b>411 355</b>	<b>823 421</b>	<b>41 241</b>	<b>40 497</b>	<b>81 737</b>	<b>8 774</b>	<b>8 601</b>	<b>17 375</b>	<b>26 533</b>	<b>25 125</b>	<b>51 658</b>	<b>488 614</b>	<b>485 577</b>	<b>974 191</b>
8 years old															
Studying	366 395	373 255	739 650	38 301	38 636	76 938	8 371	8 448	16 819	26 654	25 215	51 869	439 721	445 554	885 276
Not studying	29 525	26 600	56 126	2 040	1 841	3 881	259	308	567	834	784	1 619	32 659	29 534	62 193
<b>Total</b>	<b>395 921</b>	<b>399 855</b>	<b>795 776</b>	<b>40 341</b>	<b>40 478</b>	<b>80 819</b>	<b>8 630</b>	<b>8 756</b>	<b>17 386</b>	<b>27 488</b>	<b>25 999</b>	<b>53 487</b>	<b>472 380</b>	<b>475 088</b>	<b>947 468</b>
9 years old															
Studying	396 126	405 814	801 940	40 651	40 605	81 256	9 095	9 207	18 303	28 967	27 692	56 660	474 839	483 320	958 159
Not studying	25 845	23 078	48 923	1 838	1 619	3 456	312	298	610	900	856	1 757	28 895	25 851	54 746
<b>Total</b>	<b>421 970</b>	<b>428 892</b>	<b>850 862</b>	<b>42 488</b>	<b>42 224</b>	<b>84 713</b>	<b>9 408</b>	<b>9 505</b>	<b>18 913</b>	<b>29 868</b>	<b>28 549</b>	<b>58 416</b>	<b>503 734</b>	<b>509 170</b>	<b>1 012 904</b>
10 years old															
Studying	414 421	419 851	834 272	43 181	42 565	85 746	9 803	9 453	19 256	30 980	29 463	60 443	498 385	501 332	999 717
Not studying	28 422	24 695	53 117	2 081	1 748	3 829	335	309	644	943	919	1 862	31 782	27 670	59 452
<b>Total</b>	<b>442 843</b>	<b>444 546</b>	<b>887 389</b>	<b>45 263</b>	<b>44 312</b>	<b>89 575</b>	<b>10 138</b>	<b>9 762</b>	<b>19 900</b>	<b>31 923</b>	<b>30 382</b>	<b>62 305</b>	<b>530 167</b>	<b>529 002</b>	<b>1 059 169</b>
11 years old															
Studying	411 477	412 400	823 877	42 992	42 258	85 250	10 010	9 466	19 476	31 498	29 859	61 357	495 978	483 982	989 960
Not studying	25 991	21 973	47 964	2 124	1 772	3 896	291	299	590	1 066	1 023	2 089	29 472	25 067	54 539
<b>Total</b>	<b>437 469</b>	<b>434 373</b>	<b>871 841</b>	<b>45 116</b>	<b>44 030</b>	<b>89 146</b>	<b>10 301</b>	<b>9 765</b>	<b>20 065</b>	<b>32 565</b>	<b>30 882</b>	<b>63 446</b>	<b>525 450</b>	<b>519 049</b>	<b>1 044 499</b>

**9.3 Attendance at an educational institution amongst those aged 5-24 years by population group and gender (numbers): South Africa, 2001**  
(continued)

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	12 years old														
Studying	384 896	400 781	785 677	39 983	41 153	81 136	9 755	9 595	19 349	30 951	29 948	60 900	465 585	481 477	947 062
Not studying	20 434	17 024	37 459	1 759	1 571	3 330	240	229	469	853	818	1 671	23 287	19 642	42 929
<b>Total</b>	<b>405 331</b>	<b>417 805</b>	<b>823 136</b>	<b>41 742</b>	<b>42 725</b>	<b>84 466</b>	<b>9 995</b>	<b>9 823</b>	<b>19 818</b>	<b>31 805</b>	<b>30 766</b>	<b>62 571</b>	<b>488 872</b>	<b>501 119</b>	<b>989 991</b>
13 years old															
Studying	385 358	398 585	783 943	38 936	39 263	78 200	9 636	9 444	19 080	31 349	30 244	61 593	465 279	477 536	942 815
Not studying	22 479	19 689	42 168	2 323	1 885	4 209	250	265	515	861	846	1 707	25 913	22 685	48 598
<b>Total</b>	<b>407 837</b>	<b>418 274</b>	<b>826 111</b>	<b>41 260</b>	<b>41 149</b>	<b>82 408</b>	<b>9 886</b>	<b>9 709</b>	<b>19 594</b>	<b>32 210</b>	<b>31 089</b>	<b>63 299</b>	<b>491 192</b>	<b>500 221</b>	<b>991 413</b>
14 years old															
Studying	374 392	386 424	760 816	37 184	38 027	75 211	9 752	9 436	19 188	32 151	31 068	63 220	453 479	464 955	918 434
Not studying	25 125	24 175	49 300	3 318	3 153	6 471	350	386	736	1 002	902	1 904	29 796	28 615	58 411
<b>Total</b>	<b>399 517</b>	<b>410 598</b>	<b>810 115</b>	<b>40 502</b>	<b>41 180</b>	<b>81 682</b>	<b>10 102</b>	<b>9 822</b>	<b>19 924</b>	<b>33 153</b>	<b>31 970</b>	<b>65 124</b>	<b>483 275</b>	<b>493 571</b>	<b>976 846</b>
15 years old															
Studying	375 711	386 202	761 912	36 028	36 645	72 673	10 013	10 095	20 108	33 207	32 250	65 458	454 959	466 192	920 151
Not studying	34 543	38 022	72 565	5 758	5 414	11 172	642	597	1 239	1 304	1 371	2 675	42 246	45 405	87 652
<b>Total</b>	<b>410 253</b>	<b>424 224</b>	<b>834 477</b>	<b>41 786</b>	<b>42 060</b>	<b>83 845</b>	<b>10 655</b>	<b>10 692</b>	<b>21 347</b>	<b>34 511</b>	<b>33 621</b>	<b>68 133</b>	<b>497 205</b>	<b>510 597</b>	<b>1 007 802</b>
16 years old															
Studying	370 355	371 035	741 390	33 710	34 365	68 076	10 145	10 083	20 228	35 326	33 654	68 981	449 536	449 138	898 674
Not studying	46 399	56 978	103 377	9 805	9 131	18 936	1 085	996	2 081	2 451	2 239	4 690	59 739	69 344	129 083
<b>Total</b>	<b>416 754</b>	<b>428 013</b>	<b>844 767</b>	<b>43 515</b>	<b>43 496</b>	<b>87 011</b>	<b>11 229</b>	<b>11 079</b>	<b>22 308</b>	<b>37 777</b>	<b>35 893</b>	<b>73 670</b>	<b>509 275</b>	<b>518 482</b>	<b>1 027 757</b>
17 years old															
Studying	331 990	327 044	659 034	28 136	29 405	57 542	9 427	9 616	19 043	32 500	32 100	64 600	402 053	398 165	800 219
Not studying	61 623	82 154	143 777	13 698	13 069	26 767	1 832	1 553	3 385	3 999	3 886	7 885	81 152	100 662	181 814
<b>Total</b>	<b>393 612</b>	<b>409 198</b>	<b>802 810</b>	<b>41 834</b>	<b>42 475</b>	<b>84 309</b>	<b>11 259</b>	<b>11 169</b>	<b>22 428</b>	<b>36 499</b>	<b>35 986</b>	<b>72 485</b>	<b>483 205</b>	<b>498 828</b>	<b>982 033</b>
18 years old															
Studying	300 725	288 082	588 807	21 000	21 072	42 071	6 763	6 573	13 336	28 570	27 537	56 107	357 059	343 262	700 321
Not studying	95 655	126 634	222 289	21 225	21 750	42 975	4 456	4 398	8 854	8 317	8 300	16 617	129 653	161 083	290 735
<b>Total</b>	<b>396 380</b>	<b>414 716</b>	<b>811 096</b>	<b>42 225</b>	<b>42 822</b>	<b>85 046</b>	<b>11 219</b>	<b>10 971</b>	<b>22 190</b>	<b>36 887</b>	<b>35 837</b>	<b>72 724</b>	<b>486 712</b>	<b>504 345</b>	<b>991 056</b>

### 9.3 Attendance at an educational institution amongst those aged 5-24 years by population group and gender (numbers): South Africa, 2001 (concluded)

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	19 years old														
Studying	255 715	237 730	493 445	12 833	12 209	25 042	4 763	4 506	9 270	17 929	17 577	35 506	291 241	272 022	563 263
Not studying	135 796	173 869	309 665	27 074	29 020	56 094	6 543	6 223	12 766	16 029	15 256	31 285	185 442	224 369	409 810
<b>Total</b>	<b>391 511</b>	<b>411 599</b>	<b>803 110</b>	<b>39 907</b>	<b>41 229</b>	<b>81 136</b>	<b>11 306</b>	<b>10 729</b>	<b>22 036</b>	<b>33 958</b>	<b>32 833</b>	<b>66 791</b>	<b>476 683</b>	<b>496 391</b>	<b>973 073</b>
20 years old															
Studying	194 265	177 119	371 384	7 966	7 388	15 355	3 549	3 741	7 290	13 830	14 392	28 222	219 610	202 640	422 249
Not studying	173 937	203 752	377 690	30 670	32 274	62 943	7 325	6 918	14 242	19 302	17 284	36 586	231 234	260 227	491 461
<b>Total</b>	<b>368 202</b>	<b>380 871</b>	<b>749 073</b>	<b>38 636</b>	<b>39 662</b>	<b>78 298</b>	<b>10 873</b>	<b>10 658</b>	<b>21 532</b>	<b>33 132</b>	<b>31 675</b>	<b>64 807</b>	<b>450 844</b>	<b>462 867</b>	<b>913 710</b>
21 years old															
Studying	150 654	140 235	290 889	5 347	4 991	10 339	2 910	3 058	5 969	11 929	11 927	23 856	170 841	160 211	331 052
Not studying	224 414	251 075	475 488	32 272	33 523	65 795	8 005	7 368	15 373	20 006	18 706	38 711	284 697	310 671	595 368
<b>Total</b>	<b>375 068</b>	<b>391 310</b>	<b>766 377</b>	<b>37 620</b>	<b>38 514</b>	<b>76 134</b>	<b>10 916</b>	<b>10 426</b>	<b>21 342</b>	<b>31 934</b>	<b>30 632</b>	<b>62 567</b>	<b>455 538</b>	<b>470 882</b>	<b>926 420</b>
22 years old															
Studying	96 304	92 303	188 607	3 194	3 039	6 234	2 129	2 153	4 282	8 701	8 403	17 104	110 328	105 898	216 226
Not studying	245 604	269 090	514 694	30 595	31 826	62 422	8 112	7 825	15 936	19 673	19 167	38 841	303 985	327 908	631 893
<b>Total</b>	<b>341 909</b>	<b>361 393</b>	<b>703 301</b>	<b>33 790</b>	<b>34 866</b>	<b>68 655</b>	<b>10 240</b>	<b>9 978</b>	<b>20 218</b>	<b>28 374</b>	<b>27 571</b>	<b>55 944</b>	<b>414 312</b>	<b>433 807</b>	<b>848 119</b>
23 years old															
Studying	63 632	65 379	129 011	2 382	2 273	4 655	1 617	1 612	3 229	6 744	5 847	12 590	74 374	75 111	149 485
Not studying	250 624	273 473	524 097	29 990	31 675	61 665	8 239	7 866	16 105	20 765	21 094	41 859	309 618	334 108	643 726
<b>Total</b>	<b>314 256</b>	<b>338 852</b>	<b>653 108</b>	<b>32 372</b>	<b>33 948</b>	<b>66 320</b>	<b>9 855</b>	<b>9 478</b>	<b>19 334</b>	<b>27 509</b>	<b>26 941</b>	<b>54 450</b>	<b>383 992</b>	<b>409 219</b>	<b>793 211</b>
24 years old															
Studying	47 717	50 598	98 315	1 918	1 848	3 766	1 284	1 212	2 496	5 092	4 547	9 639	56 011	58 205	114 216
Not studying	277 444	296 977	574 421	29 351	31 137	60 488	8 695	8 619	17 314	23 107	23 517	46 624	338 597	360 250	698 847
<b>Total</b>	<b>325 161</b>	<b>347 575</b>	<b>672 736</b>	<b>31 269</b>	<b>32 985</b>	<b>64 254</b>	<b>9 979</b>	<b>9 831</b>	<b>19 810</b>	<b>28 199</b>	<b>28 063</b>	<b>56 262</b>	<b>394 608</b>	<b>418 455</b>	<b>813 063</b>
<b>Total</b>	<b>5 730 648</b>	<b>5 762 420</b>	<b>11 493 069</b>	<b>512 656</b>	<b>513 786</b>	<b>1 026 441</b>	<b>139 674</b>	<b>137 730</b>	<b>277 404</b>	<b>474 185</b>	<b>456 744</b>	<b>930 930</b>	<b>6 857 163</b>	<b>6 870 680</b>	<b>13 727 843</b>
<b>Studying</b>	<b>2 132 281</b>	<b>2 319 262</b>	<b>4 451 543</b>	<b>290 647</b>	<b>295 570</b>	<b>586 217</b>	<b>62 839</b>	<b>60 119</b>	<b>122 958</b>	<b>154 202</b>	<b>148 953</b>	<b>303 154</b>	<b>2 639 969</b>	<b>2 823 904</b>	<b>5 463 873</b>
<b>Total</b>	<b>7 862 930</b>	<b>8 081 682</b>	<b>15 944 612</b>	<b>803 302</b>	<b>809 356</b>	<b>1 612 658</b>	<b>202 513</b>	<b>197 849</b>	<b>400 362</b>	<b>628 387</b>	<b>605 697</b>	<b>1 234 084</b>	<b>9 497 133</b>	<b>9 694 584</b>	<b>19 191 716</b>

Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.



### 10.1 Labour market status of those aged 15-65 years by population group and gender (numbers): South Africa, 1996

	Black African		Coloured		Indian or Asian		White		Unspecified/Other		Total	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Employed	3 506 509	2 175 968	5 692 476	633 417	496 099	1 129 515	234 563	128 803	363 486	1 060 736	795 716	1 856 452
Unemployed*	1 810 570	2 395 421	4 205 992	141 555	157 676	299 231	29 312	21 068	50 379	45 938	43 127	89 066
Not economically active	3 118 988	4 954 676	8 073 665	265 507	508 899	774 406	79 548	214 816	294 365	323 006	651 947	974 953
<b>Total</b>	<b>8 436 067</b>	<b>9 526 065</b>	<b>17 962 133</b>	<b>1 040 479</b>	<b>1 162 673</b>	<b>2 203 152</b>	<b>343 444</b>	<b>364 787</b>	<b>708 231</b>	<b>1 429 680</b>	<b>1 490 790</b>	<b>2 920 471</b>

\* Expanded definition including workers' hostels, excluding other collective living quarters

### 10.2 Labour market status of those aged 15-65 years by population group and gender (percentages): South Africa, 1996

	Black African		Coloured		Indian or Asian		White		Unspecified/Other		Total	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Employed	41.6	22.8	31.6	60.9	42.7	51.3	68.3	35.3	51.3	74.2	53.4	63.6
Unemployed*	21.5	25.1	23.4	13.6	13.6	13.6	8.5	5.8	7.1	3.2	2.9	3.0
Not economically active	37.0	52.0	44.9	25.5	43.8	35.1	23.2	58.9	41.6	22.6	43.7	33.4
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

\* Expanded definition including workers' hostels, excluding other collective living quarters

### 10.3 Labour market status of those aged 15-65 years by population group and gender (numbers): South Africa, 2001

	Black African		Coloured		Indian or Asian		White		Total			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Employed	3 638 748	2 477 081	6 115 829	656 197	551 196	1 207 393	247 093	149 838	386 931	1 044 263	819 347	1 863 610
Unemployed*	2 779 731	3 391 579	6 171 311	226 778	220 465	447 243	46 144	34 415	80 560	67 488	57 473	124 961
Not economically active	3 987 852	5 688 845	9 676 697	364 325	601 712	966 037	100 217	229 717	329 934	371 036	675 586	1 046 621
<b>Total</b>	<b>10 406 331</b>	<b>11 557 506</b>	<b>21 963 837</b>	<b>1 247 300</b>	<b>1 373 373</b>	<b>2 620 673</b>	<b>393 454</b>	<b>413 970</b>	<b>807 424</b>	<b>1 482 787</b>	<b>1 552 406</b>	<b>3 035 193</b>

\* Official or strict definition Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

### 10.4 Labour market status of those aged 15-65 years by population group and gender (percentages): South Africa, 2001

	Black African		Coloured		Indian or Asian		White		Total			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Employed	35.0	21.4	27.8	52.6	40.1	46.1	62.8	36.2	49.2	70.4	52.8	61.4
Unemployed*	26.7	29.3	28.1	18.2	16.1	17.1	11.7	8.3	10.0	4.6	3.7	4.1
Not economically active	38.3	49.2	44.1	29.2	43.8	36.9	25.5	55.5	40.9	25.0	43.5	34.5
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

\* Official or strict definition Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

### 14.1 Occupation amongst the employed aged 15-65 years by population group and gender (numbers): South Africa, 1996

	Black African		Coloured		Indian or Asian		White		Unspecified/Other		Total						
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female					
	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total					
Legislators, senior officials and managers	71 087	26 189	20 007	10 363	30 369	21 600	5 818	27 418	149 192	56 460	205 652	2 810	1 378	4 187	264 695	100 207	364 902
Professionals	170 824	256 569	28 237	46 633	74 870	22 700	19 100	41 800	162 821	153 897	316 718	4 625	5 550	10 175	389 208	481 747	870 955
Technicians and associate professionals	92 886	85 699	27 234	28 179	55 414	22 973	13 365	36 338	135 960	130 553	266 514	3 113	2 920	6 033	282 166	260 716	542 882
Clerks	115 091	133 185	34 492	70 539	105 031	21 543	32 144	53 687	48 273	246 141	294 414	2 484	6 061	8 545	221 883	488 070	709 953
Service, shop and market sales workers	355 956	157 704	49 441	44 402	92 844	24 139	11 524	35 663	103 079	68 392	171 471	4 241	2 929	7 170	535 856	284 951	820 807
Skilled agricultural and fishery workers	208 546	58 695	267 241	28 877	35 428	1 443	325	1 768	44 528	6 281	50 809	1 564	468	2 032	284 957	72 321	357 278
Craft and related trades workers	775 325	117 602	892 927	135 694	160 345	36 282	6 281	42 564	179 420	16 049	195 469	9 347	1 346	10 693	1 136 068	165 929	1 301 997
Plant and machine operators and assemblers	539 073	46 548	585 621	62 101	36 994	22 560	12 903	35 463	45 124	6 723	51 847	4 350	1 537	5 887	673 210	104 705	777 914
Elementary occupations	794 959	1 133 722	1 918 681	185 542	372 244	12 381	6 433	18 814	34 543	19 686	54 230	7 310	8 829	16 139	1 024 736	1 355 371	2 380 107
Other	133 319	48 688	182 006	15 432	9 631	15 393	6 795	22 188	64 080	36 758	100 838	1 784	1 041	2 805	229 988	102 913	332 901
Not stated	259 444	111 368	370 812	47 359	31 454	33 569	14 215	47 784	93 714	54 777	148 491	5 051	3 200	8 252	439 136	215 014	654 151
<b>Total</b>	<b>3 506 509</b>	<b>2 175 968</b>	<b>5 682 476</b>	<b>633 417</b>	<b>496 099</b>	<b>1 129 515</b>	<b>234 583</b>	<b>128 903</b>	<b>363 486</b>	<b>1 060 736</b>	<b>795 716</b>	<b>46 688</b>	<b>35 258</b>	<b>81 917</b>	<b>5 481 903</b>	<b>3 631 944</b>	<b>9 113 847</b>

Including workers' hostels, excluding other collective living quarters

### 14.2 Occupation amongst the employed aged 15-65 years by population group and gender (percentages): South Africa, 1996

	Black African		Coloured		Indian or Asian		White		Unspecified/Other		Total							
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female						
	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total	Total						
Legislators, senior officials and managers	2.0	1.2	1.7	3.2	2.1	2.7	9.2	4.5	7.5	14.1	7.1	11.1	6.0	3.9	5.1	4.8	2.8	4.0
Professionals	4.9	11.8	7.5	4.5	9.4	6.6	9.7	14.8	11.5	15.3	19.3	17.1	9.9	15.7	12.4	7.1	13.3	9.6
Technicians and associate professionals	2.6	3.9	3.1	4.3	5.7	4.9	9.8	10.4	10.0	12.8	16.4	14.4	6.7	8.3	7.4	5.1	7.2	6.0
Clerks	3.3	6.1	4.4	5.4	14.2	9.3	9.2	24.9	14.8	4.6	30.9	15.9	5.3	17.2	10.4	4.0	13.4	7.8
Service, shop and market sales workers	10.2	7.2	9.0	7.6	9.0	8.2	10.3	8.9	9.8	9.7	8.6	9.2	9.1	8.3	8.8	9.8	7.8	9.0
Skilled agricultural and fishery workers	5.9	2.7	4.7	4.6	1.3	3.1	0.6	0.3	0.5	4.2	0.8	2.7	3.4	1.3	2.5	5.2	2.0	3.9
Craft and related trades workers	22.1	5.4	15.7	21.4	5.0	14.2	15.5	4.9	11.7	16.9	2.0	10.5	20.0	3.8	13.1	20.7	4.6	14.3
Plant and machine operators and assemblers	15.4	2.1	10.3	9.8	7.5	8.8	9.6	10.0	9.8	4.3	0.8	2.8	9.3	4.4	7.2	12.3	2.9	8.5
Elementary occupations	22.4	52.1	33.8	29.3	37.6	33.0	5.3	5.0	5.2	3.3	2.5	2.9	15.7	25.0	19.7	18.7	37.3	26.1
Other	3.8	2.2	3.2	2.4	1.9	2.2	6.6	5.3	6.1	6.0	4.6	5.4	3.8	3.0	3.4	4.2	2.8	3.7
Not stated	7.4	5.1	6.5	7.5	6.3	7.0	14.3	11.0	13.1	8.8	6.9	8.0	10.8	9.1	10.1	8.0	5.9	7.2
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Including workers' hostels, excluding other collective living quarters

### 14.3 Occupation amongst the employed aged 15-65 years by population group and gender (numbers): South Africa, 2001

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	Legislators, senior officials and managers	97 703	41 806	139 509	26 901	15 302	42 202	35 817	10 774	46 591	202 646	84 440	287 087	363 068	152 322
Professionals	135 579	106 000	241 578	25 811	21 787	47 599	28 984	19 208	48 192	193 216	137 878	331 094	383 590	284 873	668 463
Technicians and associate professionals	203 195	283 536	486 731	42 635	59 165	101 800	27 497	21 265	48 762	135 388	147 093	282 481	408 714	511 060	919 774
Clerks	224 337	254 809	479 146	52 127	106 552	158 679	35 678	47 936	83 614	66 070	260 190	326 260	378 212	669 486	1 047 699
Service, shop and market sales workers	427 001	204 997	631 999	54 459	49 178	103 637	33 167	15 287	48 453	117 819	75 679	193 497	632 446	345 141	977 587
Skilled agricultural and fishery workers	138 977	52 743	191 720	22 282	7 925	30 207	1 330	214	1 545	37 581	7 058	44 638	200 170	67 940	268 110
Craft and related trades workers	689 127	120 629	809 756	126 298	30 994	157 292	32 914	7 818	40 732	144 615	12 578	157 193	992 954	172 018	1 164 973
Plant and machine operators and assemblers	608 332	65 734	674 066	67 818	29 908	97 725	23 269	9 804	33 073	35 069	4 300	39 369	734 487	109 745	844 233
Elementary occupations	899 371	1 181 897	2 081 268	192 468	193 068	385 536	13 748	7 331	21 078	32 018	20 042	52 060	1 137 604	1 402 338	2 539 942
Undetermined	215 125	164 931	380 056	45 399	37 317	82 716	14 689	10 202	24 891	79 842	70 089	149 931	355 055	282 538	637 593
<b>Total</b>	<b>3 638 748</b>	<b>2 477 081</b>	<b>6 115 829</b>	<b>656 197</b>	<b>551 196</b>	<b>1 207 393</b>	<b>247 093</b>	<b>149 838</b>	<b>396 931</b>	<b>1 044 263</b>	<b>819 347</b>	<b>1 863 610</b>	<b>5 586 300</b>	<b>3 997 462</b>	<b>9 583 762</b>

Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

### 14.4 Occupation amongst the employed aged 15-65 years by population group and gender (percentages): South Africa, 2001

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	Legislators, senior officials and managers	2,7	1,7	2,3	4,1	2,8	3,5	14,5	7,2	11,7	19,4	10,3	15,4	6,5	3,8
Professionals	3,7	4,3	4,0	3,9	4,0	3,9	11,7	12,8	12,1	18,5	16,8	17,8	6,9	7,1	7,0
Technicians and associate professionals	5,6	11,4	8,0	6,5	10,7	8,4	11,1	14,2	12,3	13,0	18,0	15,2	7,3	12,8	9,6
Clerks	6,2	10,3	7,8	7,9	19,3	13,1	14,4	32,0	21,1	6,3	31,8	17,5	6,8	16,7	10,9
Service, shop and market sales workers	11,7	8,3	10,3	8,3	8,9	8,6	13,4	10,2	12,2	11,3	9,2	10,4	11,3	8,6	10,2
Skilled agricultural and fishery workers	3,8	2,1	3,1	3,4	1,4	2,5	0,5	0,1	0,4	3,6	0,9	2,4	3,6	1,7	2,8
Craft and related trades workers	18,9	4,9	13,2	19,2	5,6	13,0	13,3	5,2	10,3	13,8	1,5	8,4	17,8	4,3	12,2
Plant and machine operators and assemblers	16,7	2,7	11,0	10,3	5,4	8,1	9,4	6,5	8,3	3,4	0,5	2,1	13,1	2,7	8,8
Elementary occupations	24,7	47,7	34,0	29,3	35,0	31,9	5,6	4,9	5,3	3,1	2,4	2,8	20,4	35,1	26,5
Undetermined	5,9	6,7	6,2	6,9	6,8	6,9	5,9	6,8	6,3	7,6	8,6	8,0	6,4	7,1	6,7
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

**15.1 Economic sector amongst the employed aged 15-65 years by population group and gender (numbers): South Africa, 1996**

	Black African			Coloured			Indian or Asian			White			Unspecified/Other			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	Agriculture, hunting, forestry and fishing	393 973	163 690	557 663	113 687	61 986	175 673	2 495	489	2 984	60 015	13 608	73 623	2 913	1 495	4 407	573 082	241 267
Mining and quarrying	449 827	9 517	459 344	10 270	1 279	11 549	1 529	285	1 814	56 162	9 333	65 495	3 215	129	3 344	521 003	20 544	541 546
Manufacturing	413 385	175 026	588 412	112 028	96 019	208 047	62 199	34 691	96 890	148 451	66 608	215 059	6 836	4 728	11 564	742 900	377 073	1 119 973
Electricity, gas and water supply	54 754	5 396	60 150	7 379	1 553	8 932	2 656	569	3 225	28 802	7 368	36 170	729	128	857	94 320	15 014	109 334
Construction	367 662	20 763	388 445	75 423	3 239	78 662	10 944	1 056	12 000	58 959	12 289	71 248	4 433	341	4 774	517 441	37 688	555 129
Wholesale and retail trade	350 269	264 430	614 699	68 956	77 151	146 107	50 655	24 295	74 950	145 761	105 696	251 457	5 672	5 166	10 838	621 314	476 737	1 098 051
Transport, storage and communication	270 007	22 133	292 140	40 829	7 869	48 718	17 020	3 270	20 290	81 991	36 828	118 809	2 950	744	3 694	412 788	70 864	483 652
Financial, insurance, real estate and business services	172 400	67 116	239 516	37 517	32 530	70 047	18 439	16 465	34 905	158 115	170 076	328 191	3 976	3 520	7 496	390 448	289 707	680 156
Community, social and personal services	433 003	463 802	896 804	86 997	95 899	182 896	30 699	28 614	59 313	173 144	252 271	425 414	7 416	8 840	16 256	731 259	849 425	1 580 684
Private households	178 387	754 531	932 918	12 366	72 590	84 956	2 762	2 320	5 082	9 600	14 305	23 905	1 161	5 080	6 241	204 276	848 826	1 053 103
Unspecified	422 820	229 564	652 384	67 964	45 964	113 929	35 186	16 847	52 033	139 745	107 335	247 080	7 355	5 087	12 443	673 071	404 797	1 077 868
<b>Total</b>	<b>3 506 509</b>	<b>2 175 968</b>	<b>5 682 476</b>	<b>633 417</b>	<b>496 099</b>	<b>1 129 515</b>	<b>234 583</b>	<b>128 903</b>	<b>363 486</b>	<b>1 060 736</b>	<b>795 716</b>	<b>1 856 452</b>	<b>46 658</b>	<b>35 258</b>	<b>81 917</b>	<b>5 481 903</b>	<b>3 631 944</b>	<b>9 113 847</b>

Including workers' hostels, excluding other collective living quarters

**15.3 Economic sector amongst the employed aged 15-65 years by population group and gender (numbers): South Africa, 2001**

	Black African			Coloured			Indian or Asian			White			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
	Agriculture, hunting, forestry and fishing	470 786	205 371	676 158	123 574	71 221	194 795	3 417	871	4 288	66 760	18 490	85 249	664 537	295 953
Mining and quarrying	305 233	9 712	314 944	8 858	1 524	10 382	1 135	360	1 495	48 341	8 333	56 674	363 567	19 928	383 495
Manufacturing	481 577	210 164	691 741	105 439	84 053	189 492	58 703	31 524	90 227	163 079	72 307	235 386	808 797	398 047	1 206 845
Electricity, gas and water supply	40 303	6 774	47 077	5 141	1 111	6 252	1 893	553	2 447	12 135	3 715	15 850	59 473	12 154	71 626
Construction	326 964	25 283	352 247	70 760	5 132	75 892	11 652	1 582	13 233	64 533	14 580	79 113	473 909	46 577	520 486
Wholesale and retail trade	504 712	357 864	862 576	89 056	100 565	189 621	66 511	33 409	99 920	174 146	128 183	302 328	834 425	620 021	1 454 446
Transport, storage and communication	232 018	35 951	267 969	35 655	10 676	46 331	19 148	5 341	24 488	68 572	35 370	103 942	355 393	87 337	442 730
Financial, insurance, real estate and business services	274 143	122 700	396 843	48 540	47 941	96 482	26 614	24 293	50 907	176 272	184 064	360 337	525 570	378 999	904 568
Community, social and personal services	542 803	604 164	1 146 967	89 441	110 560	200 001	34 584	36 431	71 015	165 563	258 306	423 869	832 391	1 009 460	1 841 851
Other and not adequately defined	771	532	1 303	66	104	169	112	73	185	413	454	867	1 361	1 163	2 524
Private households	160 820	690 205	851 026	10 506	65 661	76 166	696	1 215	1 911	3 566	7 654	11 220	175 588	764 735	940 323
Undetermined	298 618	208 362	506 979	69 160	52 649	121 809	22 628	14 187	36 815	100 884	87 891	188 775	491 290	363 088	854 378
<b>Total</b>	<b>3 638 748</b>	<b>2 477 081</b>	<b>6 115 829</b>	<b>656 197</b>	<b>551 196</b>	<b>1 207 393</b>	<b>247 093</b>	<b>149 838</b>	<b>396 931</b>	<b>1 044 263</b>	<b>819 347</b>	<b>1 863 610</b>	<b>5 586 300</b>	<b>3 997 462</b>	<b>9 583 762</b>

Please refer to the extract from the report of the Census Subcommittee to the SA Stats Council on Census 2001 (p.3) when reading this table.

## VI.5. Direcciones web

**South Africa Government Online**

[www.gov.za/](http://www.gov.za/)

**Constitutional Court**

[www.constitutionalcourt.org.za](http://www.constitutionalcourt.org.za)

**Statistics South Africa**

[www.statssa.gov.za/](http://www.statssa.gov.za/)

**Truth and Reconciliation Commission**

[www.doj.gov.za/trc/index.html](http://www.doj.gov.za/trc/index.html)

**Centre for the Study of violence and reconciliation**

[www.csvr.org.za](http://www.csvr.org.za)

**Commission for the Rights of Cultural, Religious and Linguistic Communities**

[www.crlcommission.org.za](http://www.crlcommission.org.za)

**South African Human Rights Commission**

[www.sahrc.org.za](http://www.sahrc.org.za)

**South African Institute of Race Relations**

[www.sairr.org.za](http://www.sairr.org.za)

**Amnesty International South African**

[www.amnesty.org.za](http://www.amnesty.org.za)

**Centre for Human Rights. University of Pretoria**

[www.chr.up.za](http://www.chr.up.za)

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