

REPUBLIC OF SOUTH AFRICA

**PROMOTION OF NATIONAL
UNITY AND RECONCILIATION
AMENDMENT BILL**

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

(MINISTER OF JUSTICE)

[B 48B—98]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE BEVORDERING VAN
NASIONALE EENHEID EN
VERSOENING**

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

(MINISTER VAN JUSTISIE)

[W 48B—98]

ISBN 0 621 27674 X

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Promotion of National Unity and Reconciliation Act, 1995, so as to further regulate the constitution of the Committee on Amnesty; to provide for the suspension of the activities of the Truth and Reconciliation Commission pending the completion of its work by the Committee on Amnesty; to extend the powers of the Committee on Amnesty and the period within which the Committee on Amnesty shall complete its work; to further regulate the consequences of the dissolution of the Commission; and to provide for matters connected therewith.

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

Amendment of section 17 of Act 34 of 1995, as amended by section 1 of Act 18 of 1997

1. Section 17 of the Promotion of National Unity and Reconciliation Act, 1995 (hereinafter referred to as the principal Act), is amended by the substitution for subsection (1) of the following subsection—

“(1) The Committee shall consist of a Chairperson, a Vice-Chairperson and **[not more than 17]** such other members who are fit and proper persons, appropriately qualified, South African citizens and broadly representative of the South African community, as the President deems necessary.”.

Substitution of section 43 of Act 34 of 1995, as amended by section 2 of Act 84 of 1997

2. The following section is substituted for section 43 of the principal Act:

“Completion of work and dissolution of Commission 15

43. (1) (a) Subject to subsection (2), the Commission shall complete its work on 31 July 1998.

(b) The Commission shall, within three months after 31 July 1998, submit a report to the President, whereafter its activities shall be suspended until it is reconvened by the President in terms of subsection (3). 20

- (c) The Commissioners whose activities are suspended shall not receive any remuneration whilst their activities are so suspended.
- (2) Notwithstanding the provisions of subsection (1)—
- (a) the Committee on Amnesty referred to in section 16 shall continue with its functions in terms of this Act until a date determined by the President by proclamation in the *Gazette*; and
- (b) for the duration of the period referred to in paragraph (a)—
- (i) the Chairperson or the Deputy Chairperson of the Commission shall continue to represent the Commission for the purposes of any legal proceedings instituted by or against the Commission;
- (ii) the Committee on Amnesty shall also exercise the powers and perform the duties and functions of the Committee on Human Rights Violations established by section 12, and of the Committee on Reparation and Rehabilitation established by section 23, in respect of—
- (aa) responses to matters commenced before 14 December 1997 by the said Committees, but not yet finalised by 31 July 1998, excluding any inquiries or hearings in terms of section 29; and
- (bb) matters emanating from the consideration of applications for amnesty by the Committee on Amnesty
- (iii) the President may, subject to section 17(2) and from the ranks of the existing commissioners, appoint not more than two further commissioners to the Committee on Amnesty to assist in the exercising of the powers and the performance of the duties and functions referred to in subparagraph (ii); and
- (iv) the Chairperson of the Committee on Amnesty shall submit quarterly reports to the President in respect of its activities.
- (3) The President shall, by proclamation in the *Gazette*—
- (a) reconvene the Commission for the purpose of completing its final report after the Committee on Amnesty has completed its work;
- (b) determine a date for the dissolution of the Commission.
- (4) The provisions of section 44 shall also be applicable in respect of the report referred to in subsection (1)(b).”.

Amendment of section 46 of Act 34 of 1995

3. Section 46 of the principal Act is amended by the addition of the following subsection:

- “(7) (a) Upon the dissolution of the Commission, subject to subsection (6), all assets, including intellectual property rights, monies and liabilities of the Commission, shall revert to the Department of Justice to be dealt with according to law.
- (b) The Minister shall—
- (i) have the authority to wind up the affairs of the Commission; and
- (ii) for the purposes of any legal relationships, including legal proceedings involving the Commission, be the legal successor of the Commission.”.

Amendment of section 47 of Act 34 of 1995

4. Section 47 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) [**As from the date on which the Commission is dissolved**] Notwithstanding the dissolution of the Commission in terms of section 43 (3), the President’s Fund shall continue to exist until a date fixed by the President by proclamation in the *Gazette*, whereupon all the funds and property which vested in the President’s Fund immediately prior to that date shall be transferred to the Disaster Relief Fund referred to in Chapter II of the Fund Raising Act, 1978 (Act No. 107 of 1978), and shall vest in the Disaster Relief Fund.”.

Repeal of section 3 of Act 84 of 1997

5. Section 3 of the Promotion of National Unity and Reconciliation Second Amendment Act, 1997, is repealed.

Short title and commencement

6. This Act is called the Promotion of National Unity and Reconciliation Amendment Act, 1998, and shall be deemed to have come into operation on 30 April 1998. 5

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

1. During 1997 the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995), was amended, amongst others, so as to extend the period within which the Committee on Amnesty shall finish its work, to 30 June 1998 (see the Promotion of National Unity and Reconciliation Second Amendment Act, 1997 (Act No. 34 of 1997)). This amendment also entailed that the Truth and Reconciliation Commission would have to submit its final report on or before 31 July 1998.

2. However, it has become clear that the Committee on Amnesty will not be able to finalise its functions by 30 June 1998. According to information supplied by the Committee, more than one thousand amnesty applications still need to be dealt with by way of formal hearings, in addition to many more which could be dealt with in chambers. The Truth and Reconciliation Commission, consequently, requested that the said Act be amended so as to allow the Committee on Amnesty to complete its work, and to allow for the suspension of the activities of the Commission.

3. The Bill, consequently, purports to amend the Promotion of National Unity and Reconciliation Act, 1995, so as to make provision for the following:

- (a) The Commission must complete its work on 31 July 1998 and submit a report to the President within three months thereafter. Thereupon the activities of the Commission will be suspended until the Committee on Amnesty has completed its work, whereupon the Commission must be reconvened by the President for the purpose of completing and submitting its final report.
- (b) Notwithstanding the suspension of the activities of the Commission, the Committee on Amnesty will continue with its functions until a date to be determined by the President, and, for the duration of such period, the Committee will also exercise the powers and perform the duties and functions of the Committees on Human Rights Violations and on Reparation and Rehabilitation.
- (c) Upon the dissolution of the Commission, all assets will revert to the Department of Justice to be dealt with according to law, and the Minister of Justice will be the legal successor of the Commission.
- (d) The President's Fund will continue to exist until a date fixed by the President by proclamation in the *Gazette*.

4. The Truth and Reconciliation Commission was consulted regarding the contents of the Bill.

5. In the opinion of the Department and the State Law Advisers, the Bill should be dealt with in accordance with the procedure prescribed by section 75 of the Constitution of the Republic of South Africa, 1996.