OFFICE OF THE PRESIDENT

No. 1616.
16 October 1995

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 heeltydse of deeltydse>>-

(a) **enige heeltydse of deeltydse** 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 heeltydse of deeltydse** lid of agent van 'n weermag, polisiemag, intelligensie-agentskap of gevangenisdiens 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 doeleindes 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 interim 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 in <<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 bevoeg sal wees om van enige **fasiliteit** <<fasiliteite>>, toerusting of personeel wat behoort aan of onder die beheer van of in die 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 341995

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 getuienis 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 **aktiwiteite** <<werksaamhede>> 'n omvattende verslag wat besonderhede bevat van al sy bedrywighede en bevindings in verband met die verrigting van sy werksaamhede en die uitvoering van sy pligte ingevolge hierdie Wet, aan die 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 'n daad 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 in die 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 bepalings 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 is hangende 'n beslissing oor 'n aansoek om amnestie, en daardie aansoek **afgewys** <<geweier>> word, word die betrokke hof dienooreenkomstig ingelig.".

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** <<werksaamhede>>, 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 voorgele 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 of haar die geleentheid bied om binne 'n bepaalde tyd, vertoe aan die Kommissie voor te le met betrekking tot die aangeleentheid onder oorweging of om getuienis af te le **voor** <<by>> 'n verhoor van die Kommissie.".

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 te wees.";

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

"(2) 'n Betredings- of visenteringslasbrief in subartikel (1) bedoel word uitgereik deur 'n regter van die Hooggeregshof of 'n landdros wat regsbevoegdheid het in die gebied waar die betrokke perseel gelee is, en word slegs uitgereik indien dit aan die regter of landdros blyk uit inligting 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 aandui welke van die handelinge in paragraaf (b)(i) tot (vi) van daardie subartikel 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 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** <<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 privaat persoon of die sekondering van 'n beampte of werknemer van 'n Staatsdepartement ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), om as 'n getuiebeskermer op te tree; 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 bepalings 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.