

South Africa

## Prevention of Public Violence and Intimidation Act, 1991

Act 139 of 1991

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## Prevention of Public Violence and Intimidation Act, 1991

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## South Africa

# Prevention of Public Violence and Intimidation Act, 1991

## Act 139 of 1991

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**Assented to on 27 June 1991**

**Commenced on 17 July 1991**

*[This is the version of this document as it was from 9 October 1992 to 31 March 1997.]*

*[Amended by [Prevention of Public Violence and Intimidation Amendment Act, 1992 \(Act 50 of 1992\)](#) on 6 May 1992]*

*[Amended by [General Law Amendment Act, 1992 \(Act 139 of 1992\)](#) on 9 October 1992]*

## ACT

**To provide for the prevention and control of public violence and intimidation; and for matters connected therewith.**

(English text signed by the State President)

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

### 1. Definitions

In this Act, unless the context otherwise indicates—

"**Chairman**" means the Chairman of the Commission;

"**Commission**" means the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation established by [section 2](#);

"**committee**" means a committee established in terms of [section 4](#);

"**document**" includes any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph or picture;

"**inquiry**" means an inquiry conducted by the Commission;

"**institute**" means an institution or body attached to a university, a research council or any other person whose object is or includes research in respect of particular matters;

"**Minister**" means the Minister of Justice;

"**premises**" includes a building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft;

"**public violence and intimidation**" means public violence and intimidation, whether or not committed, presumably committed or alleged to have been committed to achieve any particular political aims;

"**Republic**" includes the self-governing territories.

### 2. Establishment and objects of Commission

- (1) There is hereby established a body to be known as the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation.
- (2) The Commission shall strive for a community free from public violence and intimidation.

### 3. Constitution of Commission

- (1) The Commission shall consist of five persons appointed by the State President, of whom—
  - (a) one shall be—
    - (i) a judge or former judge of the Supreme Court of South Africa; or
    - (ii) a senior advocate who was involved in the enforcement of the law for a period of not less than 10 years,who shall be the Chairman of the Commission; and
  - (b) one shall be a person who in the opinion of the State President is fit for appointment on account of his tenure of any judicial office, or on account of his experience as an advocate or attorney, or as a professor or lecturer in law at a tertiary educational institution in the Republic; and
  - (c) the other three shall be persons who, in the opinion of the State President, are fit for appointment on account of the fact that by reason of any other qualifications which they have they will promote the effective exercise or performance of the powers, duties and functions of the Commission.
- (2) Any person appointed under subsection (1) shall hold office for a period of three years.

### 4. Establishment of committees

- (a) The Commission may, with the concurrence of the Minister, establish as many committees as it may deem necessary for the effective exercise and performance of its powers, duties and functions.
- (b) A committee shall consist of such number of persons as may be determined by the Commission.  
*[paragraph (b) substituted by section 1 of [Act 50 of 1992](#)]*
- (c) The Commission shall designate a member of a committee as chairman of the committee.  
*[paragraph (c) substituted by section 1 of [Act 50 of 1992](#)]*
- (d) The majority of the members of a committee shall form a quorum for a meeting of the committee.
- (e) A committee shall after the conclusion of an inquiry conducted by it submit a report to the Commission for consideration.
- (f) The Commission may on receipt of the report referred to in paragraph (e)—
  - (i) refer the matter back to the committee for such further inquiry as may be determined by the Commission;
  - (ii) make such further inquiry as it may deem necessary or desirable.
- (g) For the purposes of the performance of its functions a committee shall have the same powers as those conferred upon the Commission in terms of this Act for the performance of its functions.

### 5. Constitution and employment of institutes

- (1)
  - (a) The Commission may, with the concurrence of the State President, appoint, either separately or jointly, as many institutes as it may deem necessary to assist it in the exercise and performance of its powers, duties and functions.
  - (b) For the purpose of paragraph (a) an institute shall consist of one or more persons attached thereto determined by the Commission.
  - (c) An institute shall perform the functions agreed to by it and the Commission.

- (2) An institute shall after the conclusion of its functions submit a report to the Commission for its consideration.
- (3) The Commission may on receipt of the report referred to in subsection (2) refer the matter back to the institute —
  - (a) for such further inquiry as may be determined by the Commission;
  - (b) to perform such further functions as the Commission may deem necessary or desirable.
- (4) A member of an institute referred to in subsection (1) shall receive such remuneration as the Minister may, with the concurrence of the Minister of State Expenditure, determine.

## 6. Remuneration of members of Commission and committees

- (a) A member of the Commission and of a committee who—
  - (i) is a judge or, an officer in the public service shall, notwithstanding anything to the contrary contained in any other law, in addition to his salary and any allowance, including any allowance for reimbursement of travelling and subsistence expenses, which may be payable to him in his capacity as a judge or such an officer, be entitled to such allowance, if any, in respect of the performance of his functions as such a member as the State President may determine;
  - (ii) is not a judge or an officer in the public service, shall be entitled to such remuneration, allowances (including any allowance for reimbursement of travelling and subsistence expenses incurred by him in the performance of his functions as such a member), benefits and privileges as the Minister may, with the concurrence of the Minister of State Expenditure, determine.
- (b) Different remunerations, allowances, benefits or privileges may be determined under paragraph (a) in respect of the Chairman, the other members of the Commission and the members of a committee.

## 7. Functions of Commission

- (1) The Commission shall, subject to the provisions of subsections (3) and (4) and [section 10\(1\)](#)—
  - (a) inquire into the phenomenon of public violence and intimidation in the Republic, the nature and causes thereof and what persons are involved therein;
  - (b) inquire into any matter which, in the opinion of the State President, relates to any matter referred to in paragraph (a) and which the State President may refer to it for the purposes of inquiry;
  - (c) inquire into any steps that should be taken in order to prevent public violence and intimidation;
  - (d) make recommendations to the State President regarding—
    - (i) the general policy which ought to be followed in respect of the prevention of public violence and intimidation;
    - (ii) steps to prevent public violence or intimidation;
    - (iii) any other steps it may deem necessary or expedient, including proposals for the passing of legislation, to prevent a repetition or continuation of any act or omission relating to public violence or intimidation;
    - (iv) the generation of income by the State to prevent public violence and intimidation as well as the compensating of persons who were prejudiced and suffered patrimonial loss thereby;

- (v) any other matter which may contribute to preventing public violence and intimidation.
- (2) (a) Any person may by way of an affidavit or affirmed statement or in such other manner as the Chairman may determine or allow request the Commission to deal with a matter which relates to the phenomenon of public violence and intimidation referred to in paragraph (a) of subsection (1) in terms of the said subsection.
- (b) If a person is being detained in terms of an order of a court of law or judicial officer or the provisions of any law, he may address a request referred to in paragraph (a) to the Commission in a sealed envelope, and such envelope shall be handed, unopened, to the Chairman by the person in charge of the place where such person is being detained or by any person designated by him.
- (3) The Commission shall not be obliged to inquire into any matter brought to its notice under subsection (2) when, in its opinion, the request in question is of a vexatious or trivial nature, and shall in such a case inform the person who addressed such request to it accordingly.
- (4) (a) When the Commission is satisfied upon evidence or information presented to it that an inquiry may adversely affect existing, instituted or pending judicial procedures or investigations which may lead to the institution of judicial procedures, evidence which is relevant to such procedures or investigations shall be dealt with by the Commission in such a manner that such procedures or investigations are not adversely affected.
- (b) The provisions of paragraph (a) shall not preclude the Commission from taking cognizance of evidence given during such processes or inquiries which is relevant to its functions, and the Commission may take cognizance of the findings made during such processes and inquiries.
- (5) (a) The provisions of subsection (1) shall not be interpreted as authorizing the Commission to inquire into any particular occurrence which took place and ended before the commencement of this Act: Provided that for the purposes of its functions in terms of subsection (1), the Commission may hear evidence and gather information in connection with such occurrence, if such evidence or information is, in the opinion of the Commission, necessary for the proper performance of its functions.
- (b) The Commission shall not inquire into occurrences in respect of which a prosecution, an inquest or an inquiry by an official commission of inquiry was instituted or completed before the commencement of this Act: Provided that the Commission may take cognizance of those proceedings, the evidence tendered thereat and the findings made in connection therewith.

## 8. Powers of Commission for purposes of inquiry

- (1) When the Commission performs its duties and functions in terms of this Act—
- (a) it may in its discretion determine the nature and extent of any inquiry referred to in [section 7](#);
  - (b) it may, through the Chairman, or any member of its staff authorized thereto in writing by the Chairman, request from any person such particulars and information as it may deem necessary in connection with an inquiry;
  - (c) it may by notice in writing under the hand of the Chairman or a member of its staff designated in writing by the Chairman, addressed and delivered by such a member or a sheriff to any person, require such person, in relation to an inquiry, to appear before it at a time and place specified in such notice and to produce to it all documents or things in the possession or under the control of any such person and which the Commission may deem necessary in connection with that inquiry;
  - (d) it may, through the Chairman, or a member of its staff authorized thereto in writing by the Chairman, 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 under oath or affirmation in connection with any matter which it may deem necessary in connection with that inquiry.

- (2) Any person appearing before the Commission in terms of subsection (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 would have received as witness fees had he been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.
- (3) When in the course of or after holding an inquiry the Commission is of the opinion that the facts disclose the commission of an offence by any person, it may, in addition to the other powers which it may exercise under this Act, at any time bring the matter to the notice of the Attorney-General.
- (4) Any person questioned under subsection (1) shall, notwithstanding the provisions of any law or the common law to the contrary, but subject to the provisions of subsection (5)—
  - (a) be competent and compelled to answer all questions put to him regarding any fact or matter connected with the inquiry of the Commission notwithstanding that the answer may incriminate him;
  - (b) be compelled to produce to the Commission any document or thing in his possession or under his control which the Commission may deem necessary in connection with that inquiry.
- (5) The provisions of subsection (4) shall not be interpreted as meaning that an incriminating answer referred to in subsection (4)(a) shall be admissible as evidence against the person concerned in any proceedings in a court of law or before any body or institution established by or under any law.
- (6) The Chairman or any member of the staff of the Commission may, for the purposes of an inquiry, at all reasonable times enter upon and inspect any premises and demand and seize any document on or kept on such premises.
- (7)
  - (a) No person shall, without the written permission of the Chairman, disseminate any document submitted to the Commission by any person in connection with an inquiry or publish the contents or any portion of the contents of such document.
  - (b) No person may without the written permission of the Chairman peruse any document, including any statement, which is destined to be submitted to the Chairman or intercept it while it is being taken or forwarded to the Chairman.
- (8) No person shall, except in so far as shall be necessary in the performance of the functions of the Commission, publish or furnish to any other person any report of the Commission or a copy or part thereof or information regarding the consideration of evidence by the Commission, unless and until the State President has released the report for publication.

## 9. Sittings of Commission

- (1) The Commission may sit at any place in the Republic determined by the Chairman for the purpose of inspections *in loco* or to hear evidence or to deliberate.
- (2) The majority of the members of the Commission shall form a quorum for a sitting of the Commission.
- (3)
  - (a) Subject to the provisions of paragraphs (b) and (c), the proceedings of the Commission shall be open to the public.
  - (b) The Commission may in its discretion exclude any person, any category of persons or all persons whose presence is, in the opinion of the Commission, not necessary or desirable at its proceedings, from such proceedings or any part thereof.

- (c) When a person required in terms of this Act to appear before the Commission alleges by way of an affidavit or affirmed statement or when it is so alleged in respect of such a person that there is on the grounds set out in such affidavit or affirmed statement reason to suspect that such a person or his nearest relatives may be killed, assaulted, injured, caused damage or prejudiced by any other person if it becomes known that such a person has given evidence before the Commission on any matter, the Commission shall exclude from the proceedings of the Commission at the time of the hearing of the evidence of that person or of evidence in connection with that person all persons whose presence, in its opinion, is not necessary or desirable.
- (4) (a) No person summoned or required to appear before the Commission in order to be questioned or to produce documents or things, shall be entitled to be represented by a legal representative, except with the consent of the Commission and to such extent as may be determined by the Commission.
- [paragraph (a), previously subsection (4), renumbered by section 31 of [Act 139 of 1992](#)]*
- (b) If the Commission has granted consent as contemplated in paragraph (a) and is satisfied that —
- (i) the person is not financially capable of appointing a legal representative himself; and
- (ii) it is in the interest of the commission's functions that such person be represented by a legal representative,
- the Commission may appoint a legal representative to appear *pro Deo* on behalf of the person concerned.
- [paragraph (b) added by section 31 of [Act 139 of 1992](#)]*
- (5) The proceedings of the Commission shall be recorded in such a manner as the Chairman may determine.

## 10. Duties and powers of Commission after conclusion of inquiry

- (1) The Commission shall after completion of an inquiry prepare a report for submission to the State President and may at any time before the completion of the inquiry submit an interim report to the State President in respect of any matter which in its opinion should urgently be brought to the attention of the State President.
- (2) The State President may at any time after the conclusion of an inquiry in accordance with the provisions of this Act, whether before or after the receipt of a report referred to in subsection (1), make known for public information the facts in question and the findings of the Commission which he deems necessary in the public interest.

## 11. Staff of Commission

- (1) In the exercise of its powers and the performance of its duties and functions under this Act the Commission shall be assisted by officers in the public service made available for such purpose by the Director-General: Justice.
- (2) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded shall beforehand take an oath or make an affirmation in the following form:
- I, A.B., declare under oath/affirm and declare—
- (a) that I shall faithfully and to the best of my ability take down/record the proceedings of the Commission in shorthand/by mechanical means as ordered by the Chairman;



- (b) that I shall transcribe fully and to the best of my ability any shorthand notes/mechanical record of the proceedings of the said Commission made by me or by any other person.
- (3) No shorthand notes or mechanical record of the proceedings of the Commission shall be transcribed except by order of the Chairman.
- (4) Every person employed in the performance of the functions of the Commission, including any person referred to in subsection (2), shall aid in preserving secrecy in regard to any matter or information that may come to his knowledge in the performance of his duties in connection with the said functions, except in so far as the publication of such matter or information shall be necessary for the purposes of the report of the Commission.

## 12. Expenditure in connection with functions of Commission

The expenditure in connection with the exercise of the Commission's powers or the performance of its duties and functions shall be paid out of money appropriated by Parliament for such purpose.

## 13. Offences and penalties

A person who—

- (a) refuses or fails to comply with a notice under [section 8\(1\)\(c\)](#) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of [section 8\(1\)\(d\)](#) or refuses to answer any question put to him under that section, or gives to such question an answer which to his knowledge is false, or refuses or fails to furnish particulars or information required from him under that section;
- (b) insults, disparages or belittles the Commission, or anticipates the proceedings at an inquiry or the findings of the Commission in a manner calculated to influence such proceedings or findings;
- (c) wilfully hinders or obstructs the Commission or a member of its staff in the exercise of its or his powers or the performance of its or his duties or functions;
- (d) wilfully interrupts the proceedings at an inquiry of the Commission or misbehaves himself in any other manner in the place where such inquiry is held;
- (e) in connection with any inquiry of the Commission does anything which, if such inquiry were proceedings in a court of law, would have constituted contempt of court;
- (f) 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 inquiry;
- (g) contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

## 14. Limitation of liability in respect of anything done under this Act

The Commission or any member of its staff or an institute or a person referred to in [section 5\(1\)\(b\)](#) shall not be liable in respect of anything done in good faith under any provision of this Act.

## 15. Regulations

- (1) The Minister may make regulations as to—
  - (a) any matter required or permitted to be prescribed in terms of this Act; and
  - (b) generally, all matters which in his opinion are necessary or expedient to be prescribed to achieve the objects of this Act.

- (2) A regulation under subsection (1) may prescribe penalties for any contravention of the provisions thereof or any failure to comply therewith, not exceeding a fine of R2 000 or imprisonment for a period of six months.
- (3) Regulations under subsection (1) affecting State expenditure shall be made only with the concurrence of the Minister of State Expenditure.

## **16. Short title**

This Act shall be called the Prevention of Public Violence and Intimidation Act, 1991.