

**TERMS OF REFERENCE FOR**  
**A SPECIAL DISPENSATION ON PRESIDENTIAL PARDONING PROCESS**  
**RELATING TO CERTAIN OFFENDERS**

1. **WHEREAS** there are individuals who have committed offences they believe were in pursuit of political objectives;
  
2. **AND WHEREAS** prior to the commencement of the new Constitutional dispensation and thereafter, amnesty and indemnity laws were enacted and utilized to extinguish criminal (and in some instances civil) liability and/or expunge criminal convictions of persons who committed offences before 1994 arising from the conflicts of the past, [with a political objective] from their criminal records, such pieces of legislation, namely the Indemnity Act (Act 35 of 1990), the Further Indemnity Act (Act 15 of 1992) and the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995) (“the TRC Act”), has expired and can no longer be utilized to deal with the existing matter at hand;
  
3. **AND WHEREAS** the President considered all other relevant statutory provisions, did not find any existing measures suitable to deal with the specific matter at hand;
  
4. **AND WHEREAS** Section 84(2)(j) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) as amended provides that the President is “**responsible for pardoning or relieving offenders and remitting any fines, penalties or forfeitures**”;

5. **AND WHEREAS** the President has declared a special dispensation for obtaining closure on the matters relating to the convictions of those persons who allegedly committed offences in pursuit of political objectives.

**NOW THEREFORE:**

**1 ESTABLISHMENT OF A REFERENCE GROUP (RG)**

- 1.1 A Reference Group consisting of representatives of political organization is hereby established.
- 1.2 At the first sitting of the Reference Group, members must amongst themselves, appoint a Chairperson who will chair all the meetings of the Reference Group.

**2. RESPONSIBILITY OF THE REFERENCE GROUP**

- 2.1 Receiving of all screened applications for pardon from the Department of Justice and Constitution Development (DOJ&CD).
- 2.2 Ensure that each application for pardon is completed in a prescribed manner.
- 2.3 Consider each application for pardon and make recommendations to the President.

- 2.4 The RG must develop its own rules and procedures in considering each application for pardon for purpose of making recommendations to the President based on each application.
- 2.5 The RG must communicate its rules and procedures to DOJ&CD within fourteen days (14) days from of its first sitting.

### **3. ADMINISTRATIVE SUPPORT TO THE RG**

- 3.1 The DOJ&CD will provide administrative and secretarial support to the RG.

### **4. SITTING OF THE REFERENCE GROUP**

- 4.1 The sitting of the RG shall be in Cape Town or any other location as may be determined by the RG in consultation with the DOJ&CD.

### **5. FINANCIAL IMPLICATIONS**

- 5.1 No member shall be remunerated for his or her services in the RG.
- 5.2 The DOJ&CD shall be responsible for all logistical and travelling expenses of members of the RG.
- 5.3 All logistical arrangements relating to the work of the RG shall be made by a designated official within the DOJ&CD.

## **6. LIFESPAN OF THE REFERENCE GROUP**

- 6.1 The RG shall exist for the period as from the date of its first meeting to a date on which its business is finalized, both dates inclusive, the latter date shall be not later than 30<sup>th</sup> September 2008.

## **7. WHO QUALIFIES FOR PARDON**

- 7.1 Persons who were convicted and sentenced solely on account of allegedly having committed politically motivated offences before June 16, 1999; and
- 7.2 Comply with the pre-determined criteria and procedures as set out in the application form, may apply to the President for pardon in the prescribed manner.
- 7.3 A person will only qualify for consideration for pardon if –
- (a) he or she
    - (i) is presently serving a sentence of imprisonment;
    - (ii) was sentenced to a term of imprisonment or a fine for an offence which arose from or is related to, an act or omission associated with a political objective committed in the course of the conflicts of the past;
  - (b) the offence referred to in paragraph (a) was committed on or before the date of the inauguration of the President on 16 June 1999; and
  - (c) his or her application for pardon is accompanied by a prescribed affidavit or affirmation deposed to or affirmed by a person authorized by a political party or organization, institution, liberation movement or body, in which it is confirmed that the act or omission which constituted the offence in question, occurred under the instruction of, or in the execution of an order, instruction, command,

direction, advice, plan or project of, or on behalf of, or with the approval of, or in furtherance, promotion or achievement of the policies, objectives or interests of, the said party, organization, institution, liberation movement or body of which the applicant was a member, agent or a supporter.

## 8. WHO DOES NOT QUALIFY FOR PARDON

8.1 A person will not qualify for consideration for pardon if –

- (a) he or she has been convicted of an offence relating to:
  - (i) any act of a sexual nature;
  - (ii) any act of a domestic violence nature,
  - (iii) any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), which relates to the manufacture and supply of scheduled substances, the use and possession of drugs and dealing in drugs;
- (b) he or she applied to the Committee on Amnesty established under the TRC Act and his or her application for amnesty was refused; and
- (c) he or she has **NOT** complied with all the prescribed pre-requisites **on or before** the three (3) month “window of opportunity” has expired.

## 9. LODGEMENT OF APPLICATION

9.1 Only applications which are completed properly and fully in the prescribed manner, including on a prescribed form specially designed for the purpose

of this special dispensation, within the period of the “window of opportunity, will be considered.

- 9.2 Only an application lodged by an individual will be considered. An application must be made by an individual applicant as prescribed and submitted to the DOJ&CD.
- 9.3 A political party to which the applicant belongs may also submit the application to the DOJ&CD on his / her behalf.
- 9.4 In the event of the application being submitted by the political party on behalf of the applicant; the political party must:
  - 9.4.1 ensure that the application has been completed in the prescribed manner;
  - 9.4.2 confirm under oath that the alleged circumstances around which the offence was committed are correct or consistent with the political events / activities of which the political party was part.

## **10. RECOMMENDATIONS BY THE RG**

- 10.1 All recommendations made in respect of applications for pardon must be submitted to the President.
- 10.2 Recommendation by RG shall be made in respect of each application for a pardon.
- 10.3 The recommendation made by the RG in respect of each application for pardon must reflect the majority as well as the minority views of members, if any, in respect of each application.

10.4 The President has the power to reject the recommendations made by the RG.

## **11. POWER TO GRANT PARDON**

11.1 The President after considering the recommendations made by the RG, has the power to grant or refuse an application for pardon.

11.2 No person has the right to be pardoned by the President.

11.3 The granting of a pardon to any person will lead to the expungement of the conviction and the criminal record of the offence in respect of which he or she is granted pardon.

### ***Enquiries:***

*Mr Neville Gawula*

*Director: Office of the Chief Litigation Officer*

*Department of Justice and Constitutional Development*

*329 Pretorius Street, Momentum Building*

*Pretoria*

*0001*

*Tel: (012) 357 8573*

*Fax: 0866 193 443*

*Mobile: 082 466 8968*