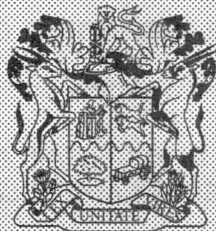


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SOUTH AFRICA



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PRETORIA, 12 NOVEMBER 1997

No. 18433

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 75, 1997

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS AGAINST Mr DUMISA NTSEBEZA AND RELATED MATTERS

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby declare that the provisions of that Act shall be applicable to the Commission of Inquiry into Certain Allegations Against Mr Dumisa Ntsebeza and Related Matters, and I hereby make the regulations in the Schedule with reference to the said Commission.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Eleventh day of November, One thousand Nine hundred and Ninety-seven.

N. R. MANDELA

President

By Order of the President-in-Cabinet:

A. M. OMAR

Minister of the Cabinet

TERMS OF REFERENCE
of the
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
to the
COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS AGAINST
Mr DUMISA NTSEBEZA AND RELATED MATTERS

The Commission's terms of reference are as follows:

- 1.1 To consider and investigate the contents of the affidavit given by Mr Bennett Sibaya to the South African Police on or about 4 January 1994, and the circumstances in which it came to be given by him.
- 1.2 To investigate in particular the allegations made against Mr Dumisa Ntsebeza concerning the attack on the Heidelberg Tavern on 30 December 1993 and the manner in which they were dealt with both by the South African Police Services and the Truth and Reconciliation Commission.
- 1.3 To consider and investigate the contents of the affidavit given by Mr Bennett Sibaya to the Truth and Reconciliation Commission on 3 November 1997 and the circumstances in which it came to be given by him.
- 1.4 To examine whether the allegations against Mr Dumisa Ntsebeza are true or are part of a conspiracy by any person or persons to discredit the Truth and Reconciliation Commission.
- 1.5 In so far as it may be relevant to any of the matters referred to in paragraphs 1, 2, 3 and 4, to investigate the supply of weapons or transport for the attack on the Heidelberg Tavern on 30 December 1993.
- 1.6 In so far as it may be relevant to the matters referred to in paragraphs 1, 2, 3 and 4, to investigate the role of any of the Security forces or related agencies or informers and especially that of the late Superintendent D. Segal with regard to the court proceedings relating to the attack on the Heidelberg Tavern.
2. To submit a report to the President as soon as possible.

SCHEDULE

REGULATIONS

1. In these regulations, unless the context otherwise indicates—

"Chairman" means the Chairman of the Commission;

"Commission" means the Commission of Inquiry into Certain Allegations Against Mr Dumisa Ntsebeza and Related Matters;

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

"inquiry" means the inquiry conducted by the Commission;

"officer" means a person in the full-time service of the State who has been appointed or designated to assist the Commission in the execution of its functions;

"premises" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairman.

3. (1) 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 at the outset 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 of Inquiry into Certain Allegations Against Mr Dumisa Ntsebeza and Related Matters in shorthand/by mechanical means as ordered by the Chairman of the Commission;
- (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.

(2) 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 execution of the functions of the Commission, including any person referred to in regulation 3 (1), shall help to preserve secrecy with 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 is necessary for the purposes of the report of the Commission, and every such person, except the Chairman or any officer, shall, before performing any duty in connection with the Commission, take and subscribe before the Chairman an oath of fidelity or secrecy in the following form:

I, A.B., declare under oath/affirm and declare that except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into Certain Allegations Against Mr Dumisa Ntsebeza and Related Matters, or by order of a competent court, I shall not communicate to any person any matter or information which may come to my knowledge in connection with the inquiry of the said Commission, or suffer or permit any person to have access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer.

5. No person shall communicate to any other person any matter or information which may have come to his knowledge in connection with the inquiry of the Commission, or suffer or permit any other person to have access to any records of the Commission, except in so far as it is necessary in the performance of his duties in connection with the functions of the Commission or by order of a competent court.

6. The Chairman may designate one or more knowledgeable persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member.

7. The Chairman or an officer generally or specially authorised thereto by the Chairman shall administer an oath to or accept an affirmation from any witness appearing before the Commission.

8. Where, at the time of any person giving evidence before the Commission, members of the general public are or have been excluded from attendance at the proceedings of the Commission, the Chairperson may, on the request of such a person, direct that no person shall disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

9. Any witness appearing before the Commission may be cross-examined by a person only if the Chairman permits such cross-examination by such person because the Chairman deems it necessary in the interest of the functions of the Commission.

10. Any witness appearing before the Commission may, in the discretion of the Chairman and in such manner as may be determined by him, be assisted by an advocate or an attorney.

11. An officer, attorney or advocate designated thereto by the Chairman may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the inquiry.

12. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation shall be dealt with by the Commission in such a manner as not to affect adversely such legal proceedings or investigation.

13. (1) The Chairperson or any officer may, with a warrant, for the purposes of the inquiry, at all reasonable times and without prior notice or with such notice as he or she may deem appropriate enter and inspect any premises and demand and seize any document which is on such premises.

(2) Any entry upon or search of any premises in terms of this regulation shall be conducted with strict regard to decency and 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.

(3) The premises referred to in subregulation (1) may only be entered by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may only be issued by a magistrate, regional magistrate or judge who is not the Chairperson, member or officer of the Commission.

(4) Subject to the proviso to subregulation (3), a warrant referred to in subregulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(5) The warrant may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating the need, in regard to the inquiry, for a search and seizure in terms of this regulation that there are reasonable grounds for believing that any document or article referred to in subregulation (1) is upon or at such premises or suspected to be upon or at such premises.

14. No person shall without the written permission of the Chairman—

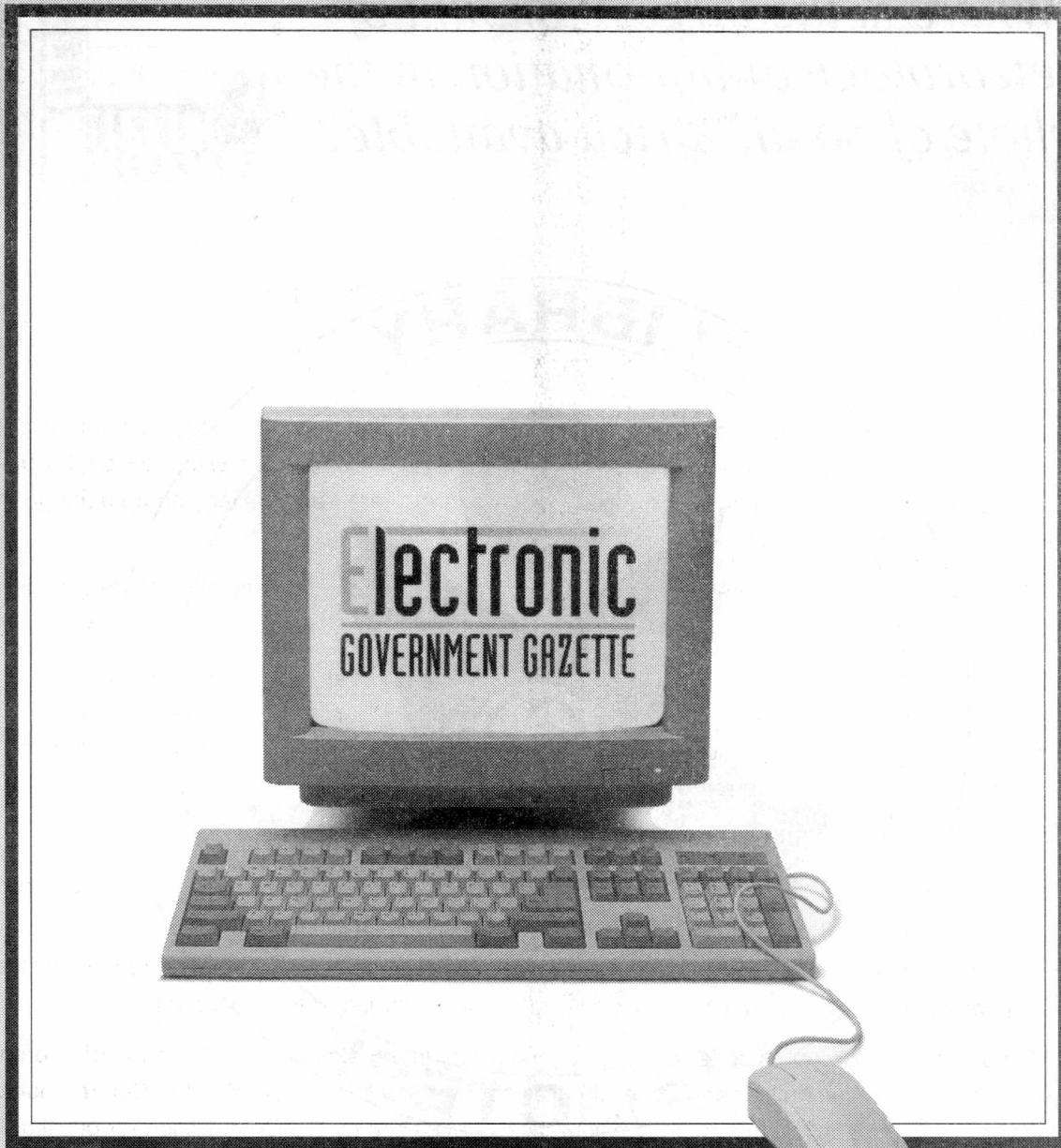
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or
- (b) peruse any document, including any statement, which is destined to be submitted to the Chairman or intercept such document while it is being taken or forwarded to the Chairman.

15. No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission for publication before the expiration of a period of 14 days after it has been submitted to the President: Provided that the President may authorise publication of any such report before the expiration of that period.

16. No person shall insult, disparage or belittle the Chairman or any member of the Commission or prejudice the proceedings or findings of the Commission.

17. Any person who—

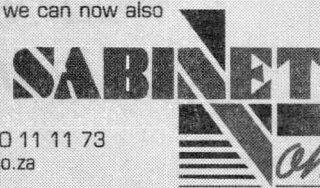
- (a) wilfully hinders, resists or obstructs the Chairman, any member or any officer in the exercise of any power contemplated in regulation 13; or
- (b) contravenes a provision of regulation 5, 8, 14 or 15; or
- (c) contravenes a provision of regulation 16, shall be guilty of an offence and liable on conviction—
 - (i) in the case of an offence referred to in paragraph (a) or (b), to a fine, or to imprisonment for a period not exceeding six months; and
 - (ii) in the case of an offence referred to in paragraph (c), to a fine, or to imprisonment for a period not exceeding 12 months.



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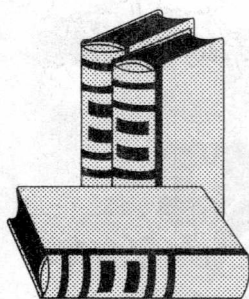
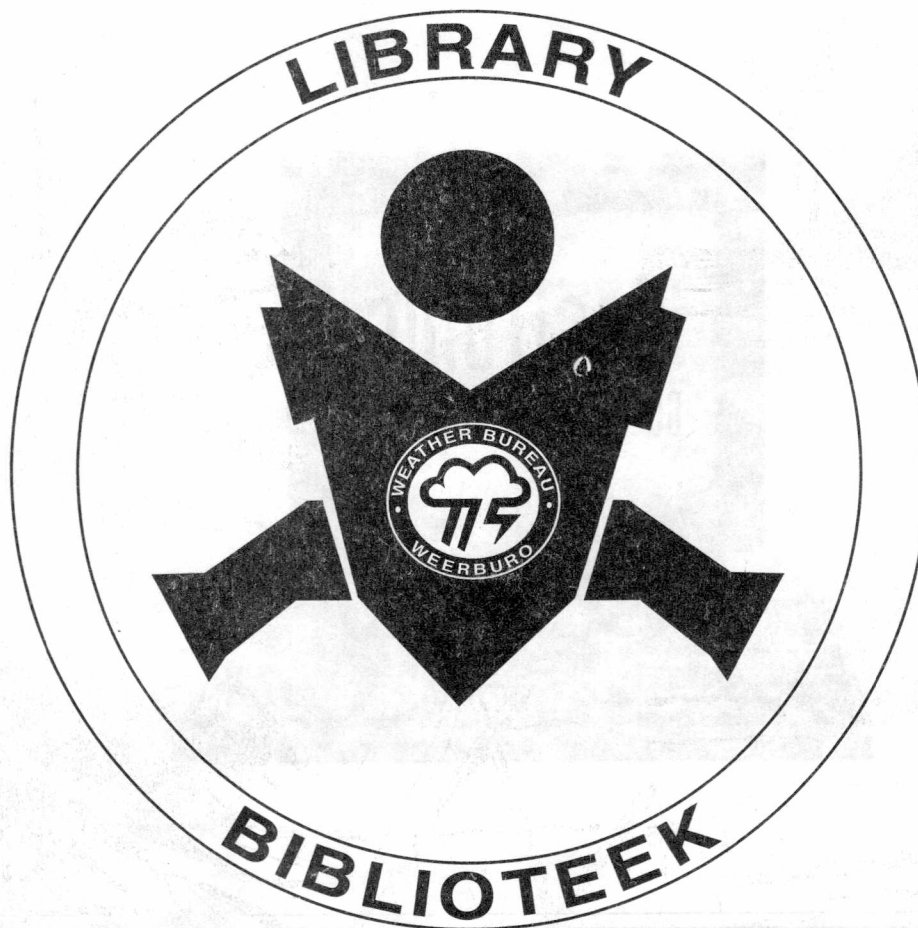
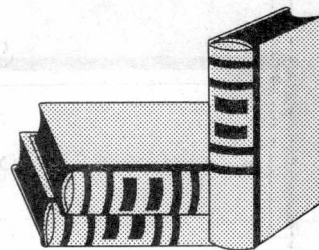
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