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CONTENTS

No.		Page No.	Gazette No.
PROCLAMATION			
135	Commissions Act (8/1947): Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services	3	22718
GENERAL NOTICE			
Correctional Services, Department of			
<i>General Notice</i>			
2103	Commission's Act (8/1947): Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services: Appointment of chairperson	17	22718

INHOUD

No.		Bladsy No.	Koerant No.
PROKLAMASIE			
135	Kommissiewet (8/1947): Kommissie van Onderzoek van beweerde voorvalle van korrupsie, wanadministrasie, geweld of intimidasie in die Departement van Korrektiewe Dienste	10	22718
ALGEMENE KENNISGEWING			
Korrektiewe Dienste, Departement van			
<i>Algemene Kennisgewing</i>			
2103	Kommissiewet (8/1947): Kommissie van Onderzoek van beweerde insidente van korrupsie, wanadministrasie, geweld of intimidasie in die Departement van Korrektiewe Dienste: Aanstelling van voorsitter	20	22718

PROCLAMATION*by the**President of the Republic of South Africa***No. 135, 2001****COMMISSION OF INQUIRY INTO ALLEGED INCIDENTS OF CORRUPTION,
MALADMINISTRATION, VIOLENCE OR INTIMIDATION IN THE DEPARTMENT
OF CORRECTIONAL SERVICES**

Under the powers vested in me by section 1 of the Commission's 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 alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services, 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 on this Nineteenth day of September, Two Thousand and One.

T M MBEKI**PRESIDENT****By order of the President-in-Cabinet****MINISTER OF THE CABINET**

ANNEXURE**SCHEDULE****REGULATIONS**

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

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services;

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

“inquiry” means the inquiry conducted by the Commission;

“member” means a member of the Commission;

“officer” means a person in the full-time service of the State who has been appointed or designated to assist the Commissioner 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 Chairperson.
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, AB., 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 alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services in shorthand/by mechanical means as ordered by the Chairperson 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 Chairperson.

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 or her knowledge in the performance of his or her 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 Chairperson, any member or any officer, shall, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity or secrecy in the following form:

I, AB., 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 alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services 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 or her duties in connection with the functions of the Commission or by order of a competent court.
6. The Chairperson 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 Chairperson or an officer generally or specially authorised thereto by the Chairperson 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 Chairperson permits such cross-examination by such person because the Chairperson 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 Chairperson and in such manner as may be determined by him or her, be assisted by an advocate or an attorney.
11. An officer, attorney or advocate designated thereto by the Chairperson 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, any member 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 sub-regulation (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 sub-regulation (3), a warrant referred to in sub-regulation (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 sub-regulation (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 Chairperson –

- (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 Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.

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 Chairperson 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 Chairperson, 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
- (d) 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 imprisonment for a period not exceeding 12 months.

PROKLAMASIE*van die**President van die Republiek van Suid-Afrika***No. 135, 2001****KOMMISSIE VAN ONDERSOEK VAN BEWEERDE VOORVALLE VAN
KORRUPSIE, WANADMINISTRASIE, GEWELD OF INTIMIDASIE IN DIE
DEPARTMENT VAN KORREKTIEWE DIENSTE**

Kragtens die bevoegdheid aan my verleen ingevolge Artikel 1 van die Kommissiewet 1947 (Wet No. 8 van 1947), verklaar ek hiermee dat die bepalings van daardie wet van toepassing is op die Kommissie van Onderzoek van beweerde voorvalle van korrupsie, wanadministrasie, geweld of intimidasie in die Department van Korrektiewe Dienste en maak ek hiermee die regulasies in die Aanhangsel met betrekking tot die Kommissie.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hierdie Negentiende dag van September, Twee Duisend en Een.

PRESIDENT**Op las van die President-in-Kabinet.****MINISTER VAN DIE KABINET**

AANHANGSEL**BYLAE****REGULASIES**

1. In hierdie regulasies, tensy uit die samehang anders blyk, beteken -

“beampte” iemand wat in die voltydse diens van die Staat is en wat aangestel of aangewys is om die Kommissie by the verrigting van sy werksaamhede behulpsaam te wees;

“dokument” ook ‘n boek, pamflet, aantekening, lys, omsendbrief, plan, plakkaat, aanplakbiljet, publikasie, tekening, foto of prent;

“Kommissie” in hierdie proklamasie bedoelde Kommissie van Onderzoek van beweerde insidente van korrupsie, wanadministrasie, geweld of intimidasie in die Department van Korrektiewe Dienste;

“lid” ‘n lid van die Kommissie;

“ondersoek” die ondersoek wat deur die Kommissie ingestel word;

“perseel” ook grond of ‘n gebou, bouwerk, gedeelte van ‘n gebou of bouwerk, voertuig, vervoermiddel, vaartuig of lugvaartuig.

“Voorsitter” die Voorsitter van die Kommissie.

2. Die verrigtinge van die Kommissie word genotuleer op die wyse deur die Voorsitter bepaal.
3. (1) Iemand wat aangestel of aangewys is om die verrigtinge van die Kommissie in snelskrif aan te teken of op meganiese wyse op te neem of om sodanige verrigtinge wat aldus aangeteken of opgeneem is, te transkribeer, moet vooraf 'n eed of bevestiging in die volgende vorm aflê:

Ek, AB., verklaar onder eed/bevestig en verklaar –

 - (a) dat ek getrou en na my beste vermoë die verrigtinge van die Kommissie van Onderzoek van beweerde insidente van korrupsie, wanadministrasie, geweld of intimidasie in die Departement van Korrektiewe Dienste in snelskrif sal aanteken/op meganiese wyse sal opneem soos deur die Voorsitter gelas;
 - (b) dat ek enige snelskrifaantekeninge/meganiese opname van die verrigtinge van genoemde Kommissie deur my of iemand anders gemaak, volledig en na my beste vermoë sal transkribeer.
- (2) Geen snelskrifaantekeninge of meganiese opname van die verrigtinge van die Kommissie word getranskribeer nie behalwe op las van die Voorsitter.
4. Elke persoon wat diens doen by die verrigting van die Kommissie se werksaamhede, met inbegrip van iemand in regulasie 3(1) bedoel, moet ten aansien van enige aangeleentheid of inligting wat by die vervulling van sy of haar pligte in verband met bedoelde werksaamhede tot sy of haar kennis kom, geheimhouding help bewaar, behalwe vir sover bekendmaking van sodanige aangeleentheid of inligting vir die doeleindes van die Kommissie se verslag nodig is, en elke sodanige persoon, behalwe die Voorsitter, 'n lid of 'n beampte, moet, voordat hy/sy enige diens in verband met die Kommissie verrig, 'n eed van getrouheid of geheimhouding voor die Voorsitter in die volgende vorm aflê en onderteken:

Ek, AB., verklaar onder eed/bevestig en verklaar dat, behalwe vir sover dit by die uitvoering van my pligte in verband met die werksaamhede van die

Kommissie van Onderzoek van beweerde insidente van korrupsie, wanadministrasie, geweld of intimidasie in die Department van Korrektiewe Dienste of ingevolge 'n bevel van 'n bevoegde hof nodig is, ek geen aangeleentheid of inligting wat in verband met genoemde Kommissie se ondersoek tot my kennis kom, aan enigiemand sal meedeel nie en niemand sal toelaat of veroorloof of toegang tot stukke van die Kommissie te verkry nie, met inbegrip van enige aantekening, opname of transkripsie van die verrigtinge van genoemde Kommissie in my besit of bewaring of in die besit of bewaring van genoemde Kommissie of 'n beampte.

5. Niemand mag enige aangeleentheid of inligting wat in verband met die Kommissie se ondersoek tot sy of haar kennis gekom het, aan iemand anders meedeel of iemand anders toelaat of veroorloof om toegang te verkry tot stukke van die Kommissie nie, behalwe vir sover dit by die uitoefening van sy/haar pligte in verband met die werksaamhede van die Kommissie of ingevolge 'n bevel van 'n bevoegde hof nodig is.
6. Die Voorsitter kan een of meer kundige persone aanwys om die Kommissie in 'n ander hoedanigheid as 'n lid behulpzaam te wees by die verrigting van sekere van sy werksaamhede.
7. Die Voorsitter of 'n beampte deur die Voorsitter in die algemeen of spesiaal daartoe gemagtig, moet 'n getuie wat voor die Kommissie verskyn, 'n eed opleë of van hom of haar 'n bevestiging afneem.
8. Indien, ten tyde van die aflegging van getuienis deur 'n persoon voor die Kommissie, lede van die publiek van die verrigtinge van die Kommissie uitgesluit is of was, kan die Voorsitter op versoek van so 'n persoon gelas dat niemand die naam of adres van sodanige persoon of enige ander inligting wat waarskynlik sy of haar identiteit sal openbaar, op enige wyse hoegenaamd bekend maak nie.
9. 'n Getuie wat voor die Kommissie verskyn, kan deur 'n persoon in kruisverhoor geneem word slegs indien die Voorsitter sodanige kruisverhoor deur daardie persoon toelaat omdat die Voorsitter dit in belang van die werksaamhede van die Kommissie nodig ag.

17. Iemand wat -

- (a) die Voorsitter, 'n lid of 'n beampte by die uitoefening van 'n bevoegdheid in regulasie 13 bedoel, opsetlik hinder, teengaan of dwarsboom; of
- (b) 'n bepaling van regulasie 5, 8, 14 of 15 oortree nie; of
- (c) 'n bepaling van regulasie 16 oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar -
 - (i) in die geval van 'n misdryf in paragraaf (a) of (b) bedoel, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens ses maande; en
 - (ii) in die geval van 'n misdryf in paragraaf (c) bedoel, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 2103 OF 2001

Notice is hereby given that the President appointed the Honourable Mr. Justice T.S.B. Jali as chairperson of a Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation in the Department of Correctional Services, with the following terms of reference -

TERMS OF REFERENCE

of the

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

to the

**COMMISSION OF INQUIRY INTO ALLEGED INCIDENTS OF CORRUPTION,
MALADMINISTRATION, VIOLENCE OR INTIMIDATION IN THE DEPARTMENT OF
CORRECTIONAL SERVICES**

The Commission's terms of reference are as follows:

1. To inquire into and report on:
 - (a) alleged incidents, of corruption relating to:
 - (i) the procurement of goods and services for the Department of Correctional Services;
 - (ii) the recruitment and appointment, promotion and dismissal of employees for the Department of Correctional Services;
 - (iii) the treatment of prisoners;
 - (iv) dishonest practices and illicit relationships between employees and prisoners leading to unlawful activities;

- (b) alleged incidents of non-adherence to departmental policy and deviation from national norms and standards;
 - (c) alleged incidents of violence or intimidation against employees of the Department which affect the proper functioning of the Department;
 - (d) the extent of implementation of recommendations of past investigations relating to the Department;
2. To make recommendations as to steps that can be taken in order to prevent the future occurrence of such incidents.
 3. To make recommendations as to steps that can be taken against any employee who in terms of the findings of the Commission is implicated in impropriety against the employer.
 4. Although these terms of reference apply generally to the Department of Correctional Services, the Commission is required to prioritise its inquiry by focussing on the prisons in the order listed hereunder.
 - (a) Pietermaritzburg Management Area;
 - (b) Durban Westville Management Area;
 - (c) Ncome Management Area;
 - (d) Johannesburg Management Area;
 - (e) Pollsmoor Management Area;
 - (f) Pretoria Management Area;
 - (g) St. Albans Management Area; and
 - (h) Leeuwkop Management Area.
 5. To inquire into and report on any other matter which in the Commission's opinion is relevant to the terms of reference of the Commission.
 6. These terms of reference may be added to, varied or amended from time to time.

7. The Commissioner shall be subject to and conducted in terms of the provisions of the Commissioner's Act 1947, (Act no8 of 1947), as amended.
8. The Commissioner shall commence with his duties forthwith.

KENNISGEWING 2103 VAN 2001

Kennis word hiermee gegee dat die President sy Edele Regter T.S.B. Jali aangestel het as voorsitter van 'n Kommissie van Onderzoek van beweerde insidente van korrupsie, wanadministrasie, geweld of intimidasie indie Departement van Korrektiewe Dienste, met die volgende terme van verwysing -

TERME VAN VERWYSING

van die

PRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

aan

**KOMMISSIE VAN ONDERSOEK VAN BEWEERDE INSIDENTE VAN KORRUPSIE,
WANADMINISTRASIE, GEWELD OF INTIMIDASIE IN DIE DEPARTEMENT VAN
KORREKTIEWE DIENSTE**

Die Kommissie se terme van verwysing is die volgende:

1. Om ondersoek in te stel na en verslag te doen oor:

(a) beweerde insidente van korrupsie met betrekking tot:

- (i) die verkryging van goedere en dienste vir die Departement van Korrektiewe Dienste;
- (ii) die werwing, aanstelling, bevordering en ontslag van werknemers in die Departement van Korrektiewe Dienste;
- (iii) die behandeling van gevangenes;
- (iv) oneerlike praktyke en ongeoorloofde verhoudings tussen werknemers en gevangenes wat lei tot onwettige aktiwiteite.

(b) beweerde insidente van nie navolging van departementele beleid en afwyking van nasionale norme en standaarde;

- (c) beweerde insidente van geweld of intimidasie teen werknemers van die Departement wat die behoorlike funksionering van die Departement affekteer;
 - (d) die omvang van die implementering van aanbevelings van vorige ondersoeke met betrekking tot die Departement.
2. Om aanbevelings te maak met betrekking tot stappe wat geneem kan word ten einde die toekomstige voorkoms van sodanige insidente te verhoed.
 3. Stappe wat geneem kan word teen enige werknemer wat in terme van die bevindinge van die Kommissie, geïmpliseer is in onbehoorlike optrede teen die werkgewer.
 4. Alhoewel hierdie terme van verwysing in die algemeen van toepassing is op die Departement van Korrektiewe Dienste, word van die Kommissie verwag om sy ondersoek te prioritiseer deur te fokus op die gevangenis in die volgorde hieronder gelys:
 - (a) Pietermaritzburg Bestuurs Area;
 - (b) Durban Westville Bestuurs Area;
 - (c) Ncome Bestuurs Area;
 - (d) Johannesburg Bestuurs Area;
 - (e) Pollsmoor Bestuurs Area;
 - (f) Pretoria Bestuurs Area;
 - (g) St. Albans Bestuurs Area;
 - (h) Leeuwkop Bestuurs Area.
 5. Onderzoek in te stel na en verslag te doen oor enige ander aangeleentheid wat na die Kommissie se mening relevant is tot die van die Kommissie.
 6. Hierdie terme van verwysing mag uitgebrei word of van tyd tot tyd gewysig word.

7. Die Kommissie sal onderworpe wees aan die Kommissie Wet 1947, (Wet no 8 van 1947), soos gewysig.
 8. Die Kommissaris sal onmiddellik met sy werksaamhede begin.
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