

GOVERNMENT NOTICE**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R. 317

1 April 2005

**APPOINTMENT OF A COMMISSION OF INQUIRY INTO THE MANDATE
AND LOCATION OF THE DIRECTORATE OF SPECIAL OPERATIONS**

The President has under section 84(2)(f) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), appointed a Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations, with the terms of reference set out in the Schedule and appoint the Honourable Justice S V Khampepe as Chairperson and only member of the said Commission.

SCHEDULE

1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following, taking into consideration the Constitution and relevant legislation, policies and guidelines:
 - (a) The rationale behind the establishment of the DSO and its location;
 - (b) The mandate of the DSO and an evaluation of the implementation thereof;
 - (c) The systems for management, control, communication, oversight and accountability by the DSO;
 - (d) The accountability, effectiveness, efficiency and oversight in respect of the intelligence operations of the DSO;
 - (e) The Constitutional and legislative mandates of the South African Police Service (SAPS) and the intelligence agencies, with particular reference to their roles in respect of organised and high level priority crimes;
 - (f) The systems for coordination and cooperation between the SAPS and the intelligence agencies on the one hand and the DSO on the other;
 - (g) The efficacy of coordinating systems that exist between the above structures (DSO and the SAPS), including matters related to (1) the rationalisation of resources; (2) approaches to and standards related to training (3) minimising undue duplication; (4) the coordination of operations; (5) priority setting mechanisms; (6) liaison with foreign law enforcement and

- intelligence structures and where relevant private sector entities;
and (7) the impact of locating investigators and prosecutors
within the National prosecuting Authority; and
- (h) The need to review the present legislative framework and to
make recommendations on; (a) remedial actions, if any, to
address deficiencies identified in line with the terms of reference;
(b) various options regarding the suitable location of the DSO,
including the appropriate legislative framework.
2. These terms of reference may be added to, varied or amended from
time to time.
3. The Commission shall commence with its duties forthwith and must
report within three months or as soon as possible thereafter.
4. The Commission shall have the power to provide the President with
interim reports.
5. The Commission shall be subject to and be conducted in terms of the
provisions of the Commissions Act, 1947 (Act No 8 of 1947), as
amended, and the regulations published thereunder.

PROCLAMATION

*by the
President of the Republic of South Africa*

No. R. 16, 2005**COMMISSION OF INQUIRY INTO THE MANDATE AND LOCATION OF THE
DIRECTORATE OF SPECIAL OPERATIONS**

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 the said Act shall be applicable to the Commission of Inquiry into the Mandate and Location of the Directorate of Special Operations, 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 Pretoria on this Twenty-second day of March Two Thousand and Five.

T. M. MBEKI**President**

By Order of the President-in-Cabinet:

Z. S. T. SKWEYIYA**Minister of the Cabinet**

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 the Mandate and Location of the Directorate of Special Operations;
"document" includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture, data, disc, harddrive or recording;
"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 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 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, 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 the Mandate and Location of the Directorate of Special Operations 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, 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 the Mandate and Location of the Directorate of Special Operations 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 notes, 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 or her 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. (1) No person appearing before the Commission may refuse to answer any question on the grounds that the answer could incriminate him or her or that he or she may be tried on a criminal charge and may be prejudiced at such trial by the answer.
- (2) No evidence regarding questions and answers contemplated in subregulation (1), and no evidence regarding any fact or information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947), or regulation 17.
- (3). 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.
- (4) Any witness may be re-examined by his or her legal representative for the purpose of explaining the evidence given by the witness during his or her examination.
10. Any witness appearing before the Commission may 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 or article 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 –
 - (i) a person's right to, respect for and the protection of his or her dignity;

 - (ii) the right of a person to freedom and security; and

 - (iii) the right of a person to his or her personal privacy.

 - (3) Subject to subregulation (4), the premises referred to in sub-regulation (1) may be entered only by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises are situated.

- (4) 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) A warrant referred to in subregulation (1) may be issued only if it appears to the magistrate, regional magistrate or judge from information revealed under 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 to believe that any document or article referred to in subregulation (1) is on or at such premises or suspected to be on or at such premises.
14. No person shall without the written permission of the Chairperson -
- (1) 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.
 - (2) 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, resist 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
 - (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.