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PRESIDENT'S OFFICE

No. 1874. 20 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 74 of 1996: Special Investigating Units and Special Tribunals Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1874. 20 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 74 van 1996: Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996.

Act No. 74, 1996 SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996

ACT

To provide for the establishment of Special Investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public, and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.

(English text signed by the President.)
(Assented to 6 November 1996.)

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

Definitions

1. In this Act, unless the context otherwise indicates—

(i) "public money" means any money withdrawn from the National Revenue Fund or a Provincial Revenue Fund, as contemplated in the Constitution, and any money acquired, controlled or paid out, by a State institution; (i)

(ii) "regulation" means a regulation made under section 11; (iii)

(iii) "rules" means the rules made under section 9(1); (ii)

(iv) "Special Investigating Unit" means a Special Investigating Unit established under section 2; (iv)

(v) "Special Tribunal" means a Special Tribunal established under section 2; (v)

(vi) "State institution" means any national or provincial department, any local government, any institution in which the State is the majority or controlling shareholder or in which the State has a material financial interest, or any public entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992). (vi)

President may establish Special Investigating Units and Special Tribunals

2. (1) The President may, whenever he or she deems it necessary on account of any of the grounds mentioned in subsection (2), by proclamation in the *Gazette*—

(a) (i) establish a Special Investigating Unit in order to investigate the matter concerned; or

(ii) refer the matter to an existing Special Investigating Unit for investigation; and

(b) establish one or more Special Tribunals to adjudicate upon justiciable civil disputes emanating from any investigation of any particular Special Investigating Unit:

Provided that if any matter referred to in subsection (2) falls within the exclusive competence of a province, the President shall exercise such powers only after consultation with or at the request of the Premier of the province concerned.

(2) The President may exercise the powers under subsection (1) on the grounds of any alleged—

(a) serious maladministration in connection with the affairs of any State institution;

(b) improper or unlawful conduct by employees of any State institution;

(c) unlawful appropriation or expenditure of public money or property;

(d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
(e) intentional or negligent loss of public money or damage to public property;
(f) corruption in connection with the affairs of any State institution; or
(g) unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

(3) The proclamation referred to in subsection (1) must set out the terms of reference of the Special Investigating Unit, and such particulars regarding the establishment of the Special Investigating Unit or the Special Tribunal as the President may deem necessary.

(4) The President may at any time amend a proclamation issued by him or her in terms of subsection (1).

Composition of Special Investigating Unit

3. (1) The President must appoint a judge or acting judge of the Supreme Court of South Africa, as head of a Special Investigating Unit established by him or her.

(2) The Head of a Special Investigating Unit may, from time to time, appoint as many other fit and proper persons to the Special Investigating Unit as in his or her opinion are necessary for the effective functioning thereof.

(3) Officers in the Public Service may be seconded to the service of a Special Investigating Unit in terms of any law regulating such secondment.

(4) A member of a Special Investigating Unit shall hold office for the duration of the existence of such Special Investigating Unit: Provided that—
(a) a member may at any time resign;
(b) the appointment of a member for a specified period or task shall terminate at the end of such period or on completion of such task;
(c) the Head of a Special Investigating Unit may at any time remove any member from office if there are sound reasons for doing so; and
(d) the Head of a Special Investigating Unit must stand down from such office if the President, in consultation with the Judicial Service Commission, so requests.

(5) *(a)* A member of a Special Investigating Unit who is not a judge and whose remuneration is not defrayed from public money, may be paid such remuneration, including allowances for subsistence and travelling expenses incurred by him or her in the performance of his or her functions in terms of this Act, as the Minister of Justice in consultation with the Minister of Finance may determine.

(b) A member of a Special Investigating Unit who is a judge or whose remuneration is defrayed from public money, may be paid such allowances in respect of his or her service as such member, including allowances for subsistence and travelling expenses incurred by him or her in the performance of his or her functions in terms of this Act, as the Minister of Justice in consultation with the Minister of Finance may determine.

Functions of Special Investigating Unit

4. (1) The functions of a Special Investigating Unit are, within the framework of its terms of reference as set out in the proclamation referred to in section 2(1)—
(a) to investigate all allegations regarding the matter concerned;
(b) to collect evidence regarding acts or omissions which are relevant to its investigation and, if applicable, to institute proceedings in a Special Tribunal against the parties concerned;
(c) to present evidence in proceedings brought before a Special Tribunal;
(d) to refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
(e) to perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
(f) from time to time as directed by the President to report on the progress made in the investigation and matters brought before the Special Tribunal concerned;

(g) upon the conclusion of the investigation, to submit a final report to the President; and

(h) to at least twice a year submit a report to Parliament on the investigations by and the activities, composition and expenditure of such Unit.

(2) A Special Investigating Unit must, as soon as practicable after it has obtained evidence referred to in subsection (1)*(d)*, inform the relevant prosecuting authority thereof, whereupon such evidence must be dealt with in the manner which best serves the interests of the public.

Powers of Special Investigating Unit

5. (1) Subject to this Act and the regulations, the Head of a Special Investigating Unit may determine the procedure to be followed in conducting an investigation.

(2) For the performance of the functions referred to in section 4, a Special Investigating Unit may—

(a) through a member require from any person such particulars and information as may be reasonably necessary;

(b) order any person by notice in writing under the hand of the Head of the Special Investigating Unit or a member delegated thereto by him or her, addressed and delivered by a member, a police officer or a sheriff, to appear before it at a time and place specified in the notice and to produce to it specified books, documents or objects in the possession or custody or under the control of any such person: Provided that the notice shall contain the reasons why such person's presence is needed;

(c) through a member of the Special Investigating Unit, administer an oath to or accept an affirmation from any person referred to in paragraph *(b)*, or any person present at the place referred to in paragraph *(b)*, irrespective of whether or not such person has been required under the said paragraph to appear before it, and question him or her under oath or affirmation.

(3)*(a)* The law regarding privilege as applicable to a witness subpoenaed to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (2): Provided that a person who refuses to answer any question on the ground that the answer would tend to expose him or her to a criminal charge, may be compelled to answer such question.

(b) No evidence regarding any questions and answers contemplated in the proviso to paragraph *(a)*, shall be admissible in any criminal proceedings, except in criminal proceedings where such person stands trial on a charge of perjury or on a charge contemplated in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(4) Any person appearing before a Special Investigating Unit by virtue of subsection (2)*(b)* and *(c)*, may be assisted at such examination by a legal representative.

(5) A Special Investigating Unit may institute civil proceedings in a Special Tribunal if, arising from its investigation, it has obtained evidence substantiating any allegation contemplated in section 2(2).

(6)*(a)* Upon the establishment of a Special Investigating Unit the Head of such Unit must provide the Public Protector with a copy of the proclamation referred to in section 2(1).

(b) The Head of a Special Investigating Unit may refer any matter which, in his or her opinion, could best be dealt with by the Public Protector, to the Public Protector and the Public Protector may, if he or she deems it appropriate, refer any matter which comes to his or her attention and which falls within the terms of reference of a Special Investigating Unit, to such Unit.

(7) If, during the course of an investigation, any matter comes to the attention of the Head of the Special Investigating Unit which, in his or her opinion, justifies the institution of legal proceedings by a State institution against any person, he or she may bring such matter to the attention of the state attorney or the institution concerned, as the case may be.

(8)*(a)* The Head of a Special Investigating Unit may issue a suspension order or

interdict if he or she has reasonable grounds to believe that any delay which may occur if an application for such order or interdict is made to a Special Tribunal, may cause serious and irreparable harm to the interests of the public.

(b) Any suspension order or interdict issued under paragraph *(a)* must be confirmed by the Special Tribunal concerned within 48 hours after it has been issued or within such extended period as may be granted by the Special Tribunal, and shall lapse failing such confirmation.

(c) Any affected party—

(i) must as soon as practicable be informed of; and

(ii) may at any time apply to the Special Tribunal concerned for the setting aside of,

a suspension order or interdict issued under paragraph *(a)*.

Entering and search of premises and attachment and removal of books, documents or objects by Special Investigating Unit

6. (1) Any member of a Special Investigating Unit or a police officer authorised thereto by a member of the Special Investigating Unit may, for the purposes of performing the functions and exercising the powers mentioned in sections 4 and 5, and subject to the provisions of this section, enter and search any premises on or in which anything connected with an investigation is or is suspected to be.

(2) The entry and search of any premises under this section must be conducted with strict regard to decency and order, including the protection of a person's right to—

(a) respect for his or her dignity;

(b) freedom and security; and

(c) his or her personal privacy.

(3) A member or police officer contemplated in subsection (1) may, subject to the provisions of this section—

(a) inspect and search the premises concerned, and there make such enquiries as he or she may deem necessary;

(b) examine any book, document or object found on or in the premises;

(c) request information regarding such book, document or object from the owner or person in control of the premises or from any person in whose possession or control that book, document or object is, or who may reasonably be expected to have the necessary information;

(d) make copies of or take extracts from any book or document found on or in the premises;

(e) attach anything on or in the premises which has a bearing on the investigation;

(f) if he or she wishes to retain anything contemplated in paragraph *(e)* for further examination or for safe custody, remove it from the premises against the issue of a receipt: Provided that any book, document or object so removed and which is not intended to be presented as evidence in subsequent proceedings before a Special Tribunal or a court of law, must be returned as soon as practicable after the purpose for which it was removed, has been achieved: Provided further that if there is no person present to receive the receipt when it is issued, it must be affixed to a prominent place on the premises.

(4) Any person from whom information is required in terms of subsection (3)*(a)* and *(c)* may be assisted in supplying the information by his or her legal representative and must be so informed before being required to give such information.

(5) *(a)* Subject to subsection (6), the premises referred to in subsection (1) shall only be entered by virtue of an entry warrant issued by a member of a Special Tribunal, magistrate or judge of the Supreme Court, other than the Head of the Special Investigating Unit concerned, if it appears to such member, magistrate or judge from information on oath that there are reasonable grounds for believing that any book, document or object which may have a bearing on the investigation—

(i) is in the possession or under the control of any person or on or in any premises within the area of jurisdiction of such Special Tribunal, magistrate or judge; and

(ii) cannot reasonably be obtained in any other manner.

(b) A warrant referred to in subsection (1) may be issued on any day and shall be of force until—

(i) it is executed;

(ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or

(iii) the expiry of one month from the day of its issue,

whichever may occur first.

(c) A person executing a warrant under this section must, at the commencement of such execution, identify himself or herself to the person referred to in the warrant or the owner or the person in control of the premises and hand to such person a copy of the warrant: Provided that if no such person is present, he or she must affix a copy of the warrant to the premises at a prominent and visible place.

(6) Subject to subsections (2), (3)*(f)*, (7), (8), (9) and (10), any member of a Special Investigating Unit or a police officer at the request of such a member, may, without an entry and search warrant, enter and search any premises for the purpose of attaching and removing, if necessary, any book, document or object—

(a) if the person or persons who are competent to consent to the entering and search for and seizure and removal of any book, document or object consent to such entering, search, seizure and removal of the book, document or object concerned; or

(b) if he or she, on reasonable grounds believes—

(i) that a warrant will be issued to him or her under subsection (5) if he or she were to apply for such warrant; and

(ii) that the delay in obtaining such a warrant would defeat the object of the entry and search.

(7) An entry and search under this section must be executed by day unless the execution thereof by night is justifiable and necessary.

(8) *(a)* A person who may lawfully under this section enter and search any premises may use such force as may be necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person must first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(b) The proviso to paragraph *(a)* does not apply where the person concerned is on reasonable grounds of the opinion that any book, document or object which is the subject of the search may be destroyed, disposed of or tampered with if the provisions of the said proviso are first complied with.

(9) If during the execution of a warrant or search under this section, a person claims that any book, document or object found on or in the premises contains privileged information and refuses the inspection or removal of such book, document or object, the person executing the warrant may request the secretary of the Special Tribunal which has jurisdiction or his or her delegate, to cause that book, document or object to be attached and removed in the manner prescribed by the rules for safe custody until such Special Tribunal has made a ruling on the question whether or not the information in question is privileged.

(10) The member or police officer referred to in subsection (6) must identify himself or herself at the request of the owner or the person in control of the premises.

Composition of Special Tribunal

7. (1) A Special Tribunal established under section 2(1) consists of a judge of the Supreme Court, as Tribunal President, and such additional members as may be appointed under subsection (3).

(2) The Tribunal President must be appointed by the President after consultation with the Chief Justice of South Africa.

(3) Additional members of the Tribunal may be appointed by the President from the ranks of—

(a) judges or acting judges; and
(b) magistrates and advocates or attorneys of the Supreme Court of South Africa who have been involved in the administration of justice for a period of at least seven years.

(4)(a) The President may only appoint a serving judge or magistrate as a member of the Tribunal after consultation with the Chief Justice or the Magistrates Commission, as the case may be.

(b) Judges of different divisions of the Supreme Court may be appointed to the Special Tribunal concerned.

(5) A member of a Special Tribunal shall hold office for the duration of the existence of such Special Tribunal or for such period as the President at his or her appointment may determine: Provided that—

(a) a member may at any time relinquish such office; and
(b) a member must stand down from such office if the President, in consultation with the Judicial Service Commission, so requests.

(6) The provisions of section 3(5) shall apply with the necessary changes in respect of any person appointed under subsections (2) and (3).

(7) (a) A Special Tribunal must be assisted in the performance of the administrative work incidental to its functions by one or more officials in the Department of Justice, designated by the Minister of Justice after consultation with the Tribunal President.

(b) The Tribunal President must appoint an official designated in terms of paragraph (a) as the secretary of the Special Tribunal.

Powers and functions of Special Tribunal

8. (1) A Special Tribunal shall be independent and impartial and perform its functions without fear, favour or prejudice and subject only to the Constitution and the law.

(2) A Special Tribunal shall have jurisdiction to adjudicate upon any civil dispute brought before it by a Special Investigating Unit or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to—

(a) issue suspension orders, interlocutory orders or interdicts on application by such Unit or party; and
(b) make any order which it deems appropriate so as to give effect to any ruling or decision given or made by it.

(3) A Special Tribunal may subpoena or cause to be subpoenaed any person to appear before it, and, if applicable, to submit to it any book, document or object, as specified in the subpoena, which may be relevant to the matter before it.

(4) If any person—

(a) subpoenaed to attend any proceedings as a witness or to produce any book, document or object, fails without reasonable excuse to obey the subpoena and it appears from the return of the person who served such subpoena, or from evidence given under oath, that—
  (i) the subpoena was served upon the person to whom it is directed; or
  (ii) he or she is evading service; or
(b) who has attended proceedings as a witness in obedience to a subpoena fails to remain in attendance,

the Special Tribunal may issue a warrant directing that he or she be arrested and brought before the Special Tribunal at a time and place stated in the warrant or as soon thereafter as practicable.

(5) A person arrested under any such warrant may be detained thereunder in any prison or lock-up or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing his or her presence as a witness or to produce any book, document or object at the proceedings concerned: Provided that any member of the Special Tribunal may release him or her on a recognisance with or without sureties for his or her appearance to give evidence or to produce any book, document or object as required.

(6) If a person who has entered into any recognisance in terms of subsection (5) for his or her appearance to give evidence at such proceedings or to produce any book,

document or object, fails without reasonable excuse so to appear or to produce such book, document or object, he or she shall, apart from the forfeiture of his or her recognisance, be guilty of an offence and liable upon conviction to a fine, or to imprisonment for a period not exceeding three months.

(7) Any party may appeal against a ruling, decision or order of a Special Tribunal to the Provincial Division of the Supreme Court which has jurisdiction and such an appeal shall be deemed to be an appeal against a decision by a single judge of the Supreme Court: Provided that no appeal shall lie against any ruling, decision or order which, if made by the Supreme Court, would not be subject to appeal.

Procedure and evidence

9. (1) *(a)* Subject to this Act and the regulations, a Tribunal President may make rules to regulate the conduct of proceedings in such Special Tribunal, including the process by which proceedings are brought before the Special Tribunal, and the form and content of that process.

(b) The Tribunal President may amend or repeal any rule made by him or her.

(c) Any rule made, or amendment or repeal thereof by the Tribunal President must be published in the *Gazette*.

(2) The Tribunal President may from time to time—

(a) from among the members appointed to the Special Tribunal designate a member or members to adjudicate upon any matter before the Tribunal: Provided that if he or she will not himself or herself be presiding over a sitting of the Tribunal, the member presiding at such sitting must be a judge;

(b) determine the location or locations for the holding of sittings by the Tribunal.

(3) A Special Tribunal may, in consultation with the parties appearing before it, take any steps in relation to the hearing of a matter before it which may lead to the expeditious and cost-saving disposal of the matter, including the abandonment of the application of any rule of evidence.

(4) Evidence to prove or disprove any fact in issue may be adduced in writing or orally, but the Special Tribunal may order that evidence must be adduced orally if it deems it necessary in the interest of justice.

(5) No person shall testify before, or be questioned by, a Special Tribunal unless the oath or affirmation which is usually administered or accepted in a court of law, has been administered to or accepted from such person by the Special Tribunal or, if evidence is to be given by such person through an interpreter, by the Special Tribunal through the interpreter.

(6) A Special Tribunal must cause a record of its proceedings to be kept.

(7) The process of a Special Tribunal shall run throughout the Republic, and its judgments and orders shall, subject to the rules, be executed in any area in like manner as if they were judgments or orders of the division of the Supreme Court having jurisdiction in such area.

Hearings of Special Tribunal to be open to public

10. (1) Subject to subsection (2), the hearings of a Special Tribunal shall be open to the public.

(2) If a Special Tribunal, in any proceedings before it, is satisfied that—

(a) it will be in the interest of justice; or

(b) there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

it may direct that such proceedings or any part thereof be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or at any part thereof: Provided that any interested or affected person and his or her legal representative who has material interest in the proceedings concerned shall be entitled to remain present throughout the proceedings.

(3) An application for proceedings to be held behind closed doors may be brought by a person referred to in subsection (2)*(b)* and such application shall be heard behind closed doors.

(4) A Special Tribunal may at any time review a decision taken in terms of subsection (2).

(5) If a Special Tribunal directs under subsection (2)*(b)* that the public or any category thereof shall not be present at any proceedings or part thereof, the Tribunal may—

(a) direct that no information relating to the proceedings, or any part thereof, shall be published in any manner;

(b) direct that no person may, in any manner, publish any information which may reveal the identity of any witness or party in the proceedings;

(c) give such directions in respect of the records of the proceedings as may be necessary to protect the identity of any witness or party:

Provided that the Tribunal may authorise the publication of such information as it may deem just and equitable.

Regulations

11. (1) The Minister of Justice may, after consultation with the Heads of such Special Investigating Units and Special Tribunals as may be in existence at that stage, make regulations regarding any matter not in conflict with this Act, which is reasonably necessary in order to promote the efficiency of Special Investigating Units and Special Tribunals established in terms of this Act.

(2) Any regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

(3) Any regulation which may result in financial expenditure by the State must be made in consultation with the Minister of Finance.

Offences and penalties

12. (1) Any person who—

(a) wilfully interferes with, or hinders or obstructs a Special Investigating Unit in the performance of, any of its functions in terms of this Act;

(b) refuses to answer any question put to him or her by, or to produce any book, document or object to a Special Investigating Unit, after having been required to do so in terms of this Act;

(c) fails to comply with a directive contemplated in section 10(5)*(a)* or *(b)*;

(d) does anything in relation to a Special Tribunal which, if done in relation to a court of law, would constitute contempt of court; or

(e) destroys any article or disposes of any assets relating to, or in anticipation of, any investigation or proceedings in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years.

(2) Any person who—

(a) fails without reasonable excuse to appear before a Special Investigating Unit after having been duly ordered to do so in terms of section 5(2)*(b)*; or

(b) has been duly subpoenaed to attend any proceedings before a Special Tribunal or to produce any book, document or object, and who fails without reasonable excuse to obey such subpoena,

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

Liability of Special Investigating Unit

13. (1) Any Special Investigating Unit shall be a juristic person.

(2) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply with the necessary changes in respect of a Special Investigating Unit, and in such application a reference in that Act to "the Minister of the department concerned" shall be construed as a reference to the Head of the Special Investigating Unit concerned.

(3) No member of a Special Investigating Unit shall be liable in his or her personal capacity in respect of anything done by him or her in good faith in the course of performing the functions or exercising the powers of such Special Investigating Unit in terms of this Act.

Application of Act to Commissions of Inquiry

14. (1) The President may, in respect of any Commission of Inquiry—

(a) appointed by him or her prior to the commencement of this Act; or

(b) appointed by any other executive authority prior to the commencement of this Act, upon the request of such executive authority,

and if the objects of such Commission can in his or her opinion better be achieved by a Special Investigating Unit and a Special Tribunal, by proclamation in the *Gazette* dissolve such Commission and establish a Special Investigating Unit and a Special Tribunal in its palce in terms of this Act: Provided that the provisions of section 2(3) and (4) shall apply with the necessary changes in respect of the proclamation referred to in subsection (1): Provided further that any matter set down for a hearing by such Commission may, if the interested parties consent thereto, be continued and concluded as if such Commission had not been dissolved.

(2) Any finding, ruling or order made by that Commission shall be deemed to be a finding, ruling or order by the Special Tribunal established for such Special Investigating Unit: Provided that any party that feels aggrieved by any such finding, ruling or order may within 90 days after the Commission has been dissolved in terms of subsection (1) apply to the Supreme Court for the setting aside thereof.

(3) If the Supreme Court is satisfied that a party has been prejudiced by such a finding, ruling or order, the Court must set aside such finding, ruling or order and refer the matter back to the Special Tribunal to be dealt with anew.

Short title

15. This Act shall be called the Special Investigating Units and Special Tribunals Act, 1996.