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TERMS OF REFERENCE
OF THE
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
TO THE
COMMISSION OF INQUIRY INTO ALLEGATIONS OF SPYING AGAINST
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS,
MR B T NGCUKA

1. The Commission shall inquire into, make findings, report on and make recommendations concerning the following:
 - Whether at any stage prior to 1994, the National Director of Public Prosecutions, Mr B T Ngcuka, was -
 - (a) registered with the security branch or any other security service of any pre-1994 government as an agent under the code name RS452 or under any other code name; and
 - (b) acting as an agent for the Security Police and/or National Intelligence Service of any pre-1994 government.
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 one month or as soon as possible thereafter.
4. The Commission shall have the power to publish 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. 66, 2003

**COMMISSION OF INQUIRY INTO ALLEGATIONS OF SPYING AGAINST THE NATIONAL
DIRECTOR OF PUBLIC PROSECUTIONS, MR B T NGCUKA**

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 Allegations of Spying Against the National Director of Public Prosecutions, Mr B T Ngcuka, 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 Eighteenth day of September, Two Thousand and Three.

Mabo Murti

PRESIDENT

By Order of the President-in-Cabinet:

Penner Macana

MINISTER OF 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 Allegations of Spying Against the National Director of Public Prosecutions, Mr B T Ngcuka;
"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 Allegations of Spying Against the National Director of Public Prosecutions, Mr B T Ngcuka 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 Allegations of Spying Against the National Director of Public Prosecutions, Mr B T Ngcuka 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, 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
 - (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.

PROKLAMASIE
van die
PRESIDENT VAN DIE REPUBLIEK VAN SUID-AFRIKA

No. R. 66, 2003

KOMMISSIE VAN ONDERSOEK NA BEWERINGS VAN SPIOENASIE TEEN DIE NASIONALE DIREKTEUR VAN OPENBARE VERVOLGINGS, MNR B T NGCUKA

Kragtens die bevoegdheid my verleen by artikel 1 van die Kommissiewet, 1947 (Wet No. 8 van 1947), verklaar ek hierby dat die bepalinge van daardie Wet van toepassing is op die Kommissie van Onderzoek na Bewerings van Spioenasie teen die Nasionale Direkteur van Openbare Vervolgings, Mnr B T Ngcuka, en vaardig ek hierby die regulasies in die Bylae vervat met betrekking tot genoemde Kommissie uit.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad, op hede die

Agtiende dag van September Tweeduisend en Drie.



PRESIDENT

Op las van die President-in-Kabinet:



MINISTER VAN DIE KABINET

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 die verrigting van sy werksaamhede behulpsaam te wees;
"dokument" hetsy in elektroniese vorm of andersins, ook 'n boek, pamflet, aantekening, lys, omsendbrief, plan, plakkaat, publikasie, tekening, foto, prent, data, skyf, hardeskyf of opname;
"Kommissie" Kommissie van Onderzoek na Bewerings van Spioenasie teen die Nasionale Direkteur van Openbare Vervolgings, Mnr B T Ngcuka;
"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, A.B., verklaar onder eed/bevestig en verklaar –

- (a) dat ek getrou en na my beste vermoë die verrigtinge van die Kommissie van Onderzoek na Bewerings van Spioenasie teen die Nasionale Direkteur van Openbare Vervolgings, Mnr B T Ngcuka, 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 verrigtinge 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, A.B., 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 na Bewerings van Spioenasie teen die Nasionale Direkteur van Openbare Vervolgings, Mnr B T Ngcuka, 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 om toegang tot stukke van die Kommissie te verkry nie, met inbegrip van enige aantekeninge, 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 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 ople of van hom 'n plegtige verklaring 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. (1) Niemand wat voor die Kommissie verskyn mag weier om 'n vraag te antwoord wat aan hom/haar gestel word omdat die antwoord hom/haar kan inkrimineer of omdat hy/sy by strafregtelike verrigtinge waarby hy/sy aangekla word deur sodanige antwoord benadeel sal word nie.
 - (2) Geen getuienis aangaande vrae en antwoorde soos beoog in subregulasie 9(1), en geen getuienis aangaande enige feit of inligting wat bekend word as gevolg van enige sodanige vrae of antwoorde, mag toegelaat word in enige strafregtelike verrigtinge nie, behalwe in strafregtelike verrigtinge waar die betrokke persoon aangekla word van 'n misdryf ingevolge artikel 6 van die Kommissiewet, 1947 (Wet No. 8 van 1947), of regulasie 17.
 - (3) Enige getuie wat voor die Kommissie verskyn, kan deur 'n persoon onder 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.
 - (4) Enige getuie kan herondervra word deur sy/haar regsverteenwoordiger met die doel om die getuienis deur die getuie tydens ondervraging gelewer, te verduidelik.
10. 'n Getuie wat voor die Kommissie verskyn, kan deur 'n advokaat of prokureur bygestaan word.

11. 'n Beampte, prokureur of advokaat deur die Voorsitter daartoe aangewys, kan by die aanhoor van getuienis by die ondersoek aanwesig wees en getuienis en argumente wat op die ondersoek betrekking het, aanvoer.
12. Wanneer die Kommissie op getuienis of inligting aan hom voorgelê, oortuig is dat die Kommissie se ondersoek enige bestaande, ingestelde of hangende regsproses of enige ondersoek wat ingevolge die bepalings van enige wet ingestel is, nadelig kan raak, word getuienis wat relevant is tot sodanige regsproses of ondersoek op 'n wyse deur die Kommissie hanteer dat daardie regsproses of -ondersoek nie daardeur nadelig geraak word nie.
13. (1) Die Voorsitter, 'n lid of 'n beampte kan vir doeleindes van die ondersoek met 'n lasbrief, te alle redelike tye en sonder voorafgaande kennisgewing of met die kennisgewing wat hy of sy geskik ag, enige perseel betree en besigtig en enige dokument of voorwerp wat op sodanige perseel is, opeis en in beslag neem.

(2) Enige betreding op of deursoeking van enige perseel ingevolge hierdie regulasie word gedoen met streng voorbehoud van welvoeglikheid en orde, met inbegrip van:
 - (i) die reg van 'n persoon tot, eerbied vir en die beskerming van sy of haar waardigheid;
 - (ii) die reg van 'n persoon tot vryheid en sekuriteit; en
 - (iii) die reg van 'n persoon tot sy of haar persoonlike privaatheid.

- (3) Behoudens subregulasie (4), kan die perseel bedoel in subregulasie (1), slegs betree word uit hoofde van 'n lasbrief uitgereik in Kamers deur 'n landdros, streeklanddros of regter van die regsgebied waarin die perseel geleë is.
 - (4) 'n Lasbrief kan soos bedoel in subregulasie (1) deur 'n regter uitgereik word ten opsigte van 'n perseel geleë in 'n ander regsgebied, indien hy of sy dit geregverdig ag.
 - (5) 'n Lasbrief soos vermeld in subregulasie (1) kan slegs uitgereik word indien dit vir die landdros, streeklanddros of regter uit inligting verstrek onder eed of plegtige verklaring blyk wat die behoefte ten opsigte van die ondersoek, aan 'n deursoeking en beslaglegging ingevolge hierdie regulasie is dat daar redelike gronde is om te glo dat enige dokument of voorwerp bedoel in subregulasie (1) wel op of in sodanige perseel is of vermoedelik op of in sodanige perseel is.
14. Niemand mag sonder die skriftelike toestemming van die Voorsitter –
- (1) 'n dokument wat in verband met die ondersoek deur enige persoon aan die Kommissie voorgelê is, versprei of die inhoud of 'n gedeelte van die inhoud van so 'n dokument publiseer nie; of
 - (2) enige dokument, met inbegrip van enige verklaring, wat bestem is om aan die Voorsitter voorgelê te word, insien of onderwyl dit na die Voorsitter geneem of aan hom versend word, onderskep nie.
15. Niemand mag, behalwe vir sover dit by die uitvoering van die Kommissie se opdrag nodig is, die verslag van die Kommissie of 'n tussentydse

verslag of 'n afskrif of 'n gedeelte daarvan of inligting met betrekking tot die oorweging van getuienis deur die Kommissie publiseer of aan iemand vir publikasie anders verstrek voor die verstryking van 'n period van 14 dae nadat dit aan die President voorgelê is nie: Met dien verstande dat die President publikasie van enige sodanige verslag kan magtig voordat sodanige periode verstryk het.

16. Niemand mag die Voorsitter of 'n lid van die Kommissie beledig, neerhaal of verkleineer of die verrigtinge of die bevindings van die Kommissie benadeel nie.

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; 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 twaalf maande.
-

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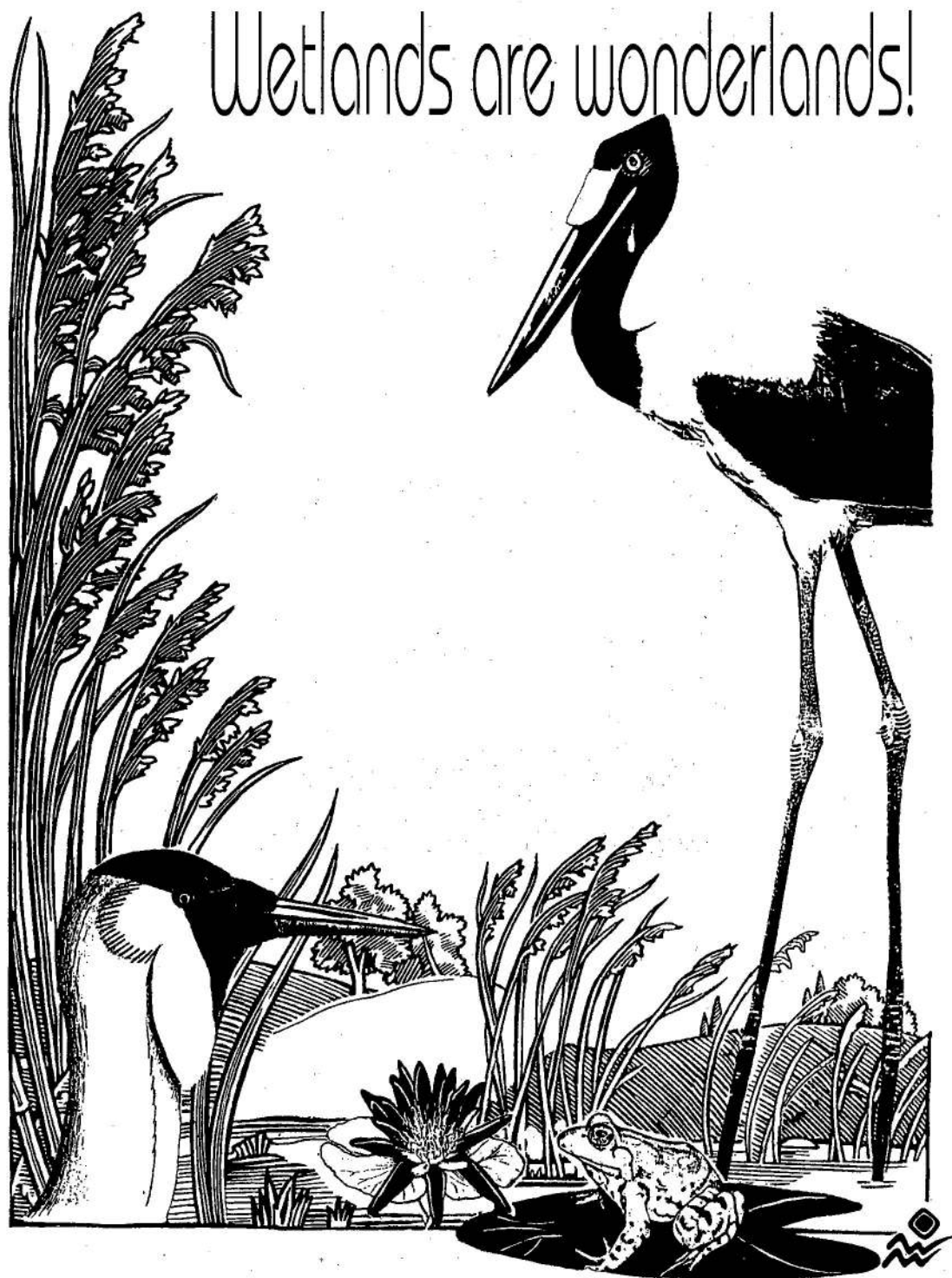
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