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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 44, 2007

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), have been made in respect of the affairs of the Department of Correctional Services (hereinafter referred to as the "Department");

AND WHEREAS the Department suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and justiciable civil disputes emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act any -

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by officers and/or employees of the Department;
- (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) offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences were committed in connection with the affairs of the Department; 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,

which have taken place between 1 January 2000 and the date of publication of this Proclamation and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, in relation to the said matters in the Schedule, for the purpose of the recovery of any losses suffered by the Department.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-second day of November Two thousand and seven.

T. M. MBEKI
President

By Order of the President-in-Cabinet:

B. S. MABANDLA
Minister of the Cabinet

SCHEDULE

1. The procurement of goods and services by or on behalf of the Department without compliance with the Department's -
 - (a) policies, procedures, prescripts, directives, guidelines or standing instructions (hereinafter collectively referred to as the "prescripts"); and
 - (b) procurement and provisioning systems or supply chain management systems prescribed by applicable legislation,in a manner that was not fair, competitive, transparent, equitable and/or cost-effective and payments made in respect thereof.
2. The failure by officials and employees of the Department to disclose that they had a direct or indirect interest in the suppliers and service providers used by the Department, which represented a conflict of interest.
3. The failure by the officials and employees of the Department to disclose to the Department that they were engaged in unauthorised business activities for remuneration outside the scope of their employment under the Public Service Act, 1994 (Proclamation No. 103 of 1994) or the Correctional Services Act, 1998 (Act No. 111 of 1998).
4. The conduct of -
 - (a) suppliers and service providers to the Department; and
 - (b) officials and employees of the Department,which has resulted or may result in a loss of, damage to or a lack of control over public money, public property or other resources of the Department and any conduct directed at or promoting the aforementioned.
5. False or inflated claims by, or on behalf of officials and employees of the Department from certain medical aid schemes.
6. The theft or misuse of property and resources of the Department by officials and employees of the Department.
7. Illegal or irregular practices in terms of which officials and employees of the Department received or solicited benefits from other officials and employees of the Department or from members of the public in connection with the execution of their duties or the failure to execute their duties.
8. The conduct of officials and employees of the Department which was aimed at

influencing or hampering any investigation or the destruction of evidence.

9. The intimidation of officials and employees of the Department or members of the public by officials or employees of the Department with the aim to conceal corrupt or other unlawful practices within the Department.
10. Acts of undue influence and extortion committed by officials and employees of the Department with regard to members of the public and other officials or employees of the Department.
11. Fraud committed by officials and employees of the Department to the detriment of the Department.

PROKLAMASIE
van die
President van die Republiek van Suid-Afrika

No. R. 44, 2007

WET OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE, 1996 (WET No. 74 VAN 1996): VERWYSING VAN AANGELEENTHEID NA BESTAANDE SPESIALE ONDERSOEKEENHEID EN SPESIALE TRIBUNAAL

AANGESIEN bewerings soos beoog in artikel 2(2) van die Wet op Spesiale Ondersoekeenhede en Spesiale Tribunale, 1996 (Wet No. 74 van 1996) (hierna die “Wet” genoem), gemaak is in verband met die aangeleenthede van die Departement van Korrektiewe Dienste (hierna die “Departement” genoem);

EN AANGESIEN die Departement verliese gely het wat verhaal kan word;

EN AANGESIEN ek dit nodig ag dat gemelde bewerings ondersoek en beregbare siviele geskille voortspruitend uit sodanige ondersoek bereg moet word;

DERHALWE verwys ek hierby, kragtens artikel 2(1) van die Wet, die aangeleenthede in die Bylae vir ondersoek na die Spesiale Ondersoekeenheid ingestel by Proklamasie No. R. 118 van 31 Julie 2001 en bepaal dat, vir die doeleindes van die ondersoek van daardie aangeleenthede, die opdrag van die Spesiale Ondersoekeenheid is om soos beoog in die Wet, ondersoek te doen na enige -

- (a) ernstige wanadministrasie in verband met die aangeleenthede van die Departement;

- (b) onbehoorlike of onregmatige optrede deur beamptes of werknemers van die Departement;
- (c) onregmatige bewilliging of besteding van publieke geld of eiendom;
- (d) onwettige, onreëlmatige of nie-goedgekeurde verkrygende handeling, transaksie, maatreël of praktyk wat op Staatseiendom betrekking het;
- (e) opsetlike of nalatige verlies van publieke geld of skade aan publieke eiendom;
- (f) misdryf bedoel in Dele 1 tot 4, of artikel 17, 20 of 21 (vir sover dit op voornoemde misdrywe betrekking het) van Hoofstuk 2 van die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004, in verband met die sake van die Departement; of
- (g) onwettige of onbehoorlike optrede deur enige persoon wat ernstige benadeling vir die belange van die publiek of enige kategorie van die publiek veroorsaak het of kan veroorsaak,

wat plaasgevind het tussen 1 Januarie 2000 en die datum van publikasie van hierdie Proklamasie, en om die bevoegdhede en werksaamhede wat deur die Wet aan die Spesiale Ondersoekeenheid toegewys of opgedra is uit te oefen of te verrig in verband met die genoemde aangelentheid in die Bylae, vir doeleindes van die verhaal van enige verliese wat deur die Departement gely is.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die Twee-en-twintigste dag van November Tweeduisend-en-sewe.

T. M. MBEKI

President

Op las van die President-in-Kabinet:

B. S. MABANDLA

Minister van die Kabinet

BYLAE

1. Die aanskaffing van goedere en dienste deur of namens die Departement sonder nakoming van die Departement se –
 - (a) beleid, prosedures, voorskrifte, direktiewe, riglyne of staande instruksies (hierna gesamentelik na verwys as die “voorskrifte”); en
 - (b) aanskaffing en voorsieningsisteme of voorsieningskanaal-bestuursbeleid soos voorgeskryf deur toepaslike wetgewing,op ‘n wyse wat nie redelik, mededingend, deursigtig, billik en/of koste effektief was nie en betalings wat in verband daarmee gemaak is.
2. Die versuim van beamptes en werknemers van die Departement om te openbaar dat hulle ‘n direkte of indirekte belang gehad het in die leweransiers of diensverskaffers wat deur die Departement gebruik was, wat ‘n konflik van belange daargestel het.
3. Die versuim van beamptes en werknemers van die Departement om aan die Departement te openbaar dat hulle gemoeid was in ongemagtigde besigheidsaktiwiteite teen betaling buite hulle diensbestek kragtens die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994) en die Wet op Korrektiewe Dienste, 1998 (Wet No. 111 van 1998).
4. Die optrede van –
 - (a) leweransiers en diensverskaffers aan die Departement; en
 - (b) beamptes en werknemers van die Departement,wat aanleiding gegee het of aanleiding kon gegee het tot ‘n verlies van, skade aan of die afwesigheid van kontrole oor publieke geld, publieke eiendom of ander hulpbronne van die Departement en enige optrede wat gerig was op of bevordering van die voorafgaande.
5. Valse en oordrewe eise deur, of namens beamptes of werknemers van die Departement vanaf sekere mediese skemas.
6. Die diefstal of misbruik van eiendom of hulpbronne van die Departement deur beamptes of werknemers van die Departement.
7. Onwettige of onregmatige praktykte waarkragtens beamptes of werknemers van die Departement voordele ontvang het of uitgelok het van ander beamptes of werknemers

van die Departement of van lede van die publiek in verband met die uitvoering van hulle pligte of nalate om hulle pligte uit te voer.

8. Die optrede van beamptes of werknemers van die Departement wat gerig was op beïnvloeding of belemmering van enige ondersoek of die vernietiging van bewysmateriaal.
 9. Die intimidasie van beamptes of werknemers van die Departement of lede van die publiek deur beamptes of werknemers van die Departement wat daarop gerig is om korrupte of ander onregmatige praktyke in die Departement te verberg.
 10. Dade van onbehoorlike beïnvloeding en afpersing wat gepleeg is deur beamptes of werknemers van die Departement teenoor lede van die publiek en ander beamptes of werknemers van die Departement.
 11. Bedrog wat gepleeg is deur beamptes of werknemers van die Departement tot die nadeel van die Departement.
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