

REPUBLIC OF INDONESIA
KEMENTERIAN KEHUTANAN

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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
Justice and Constitutional Development, Department of/ Justisie en Staatkundige Ontwikkeling, Departement van			
R. 1263	Special Investigating Units and Special Tribunals Act (74/1996) (the Act): Regulations in the Schedule with reference to the Act	42729	4

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 1263

26 SEPTEMBER 2019

**SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT NO. 74 OF
1996**

I, Ronald Ozzy Lamola, Minister of Justice and Correctional Services, under the powers vested in me by section 11 of the Special Investigating Units and Special Tribunals Act (Act No. 74 of 1996) (the Act), hereby, after consultation with the Head of the Special Investigating Unit and the President of the Special Tribunal, make regulations in the Schedule with reference to the Special Investigating Unit and the Special Tribunal appointed in terms of the Act.

Given under my hand at Pretoria on this the 17th day of
September..... Two Thousand and Nineteen.

**R.O. LAMOLA****MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**



GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R.

2019

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT No. 74 of 1996 REGULATIONS

The Minister of Justice and Correctional Services has under section 11 of the Special Investigating Units and Special Tribunals Act No. 74 of 1996, and after consultation with the Head of the Special Investigating Unit and the Tribunal President appointed by Proclamation No. R. 118 of 31 July 2019, made the regulations in the Schedule.

SCHEDULE**ARRANGEMENT OF REGULATIONS**

- 1. Definitions**
- 2. Seat of the Tribunal**
- 3. Administrative staff of the Tribunal**
- 4. Financial support to the Tribunal**
- 5. Civil proceedings**
- 6. Interested party**
- 7. Recording of proceedings**
- 8. Taking of oath**
- 9. Informing Person of right to be assisted by Legal Representative and Privilege against Self-Incrimination**
- 10. Confidentiality**
- 11. Offence and penalty**
- 12. Repeal of Regulations**
- 13. Rules of procedure**
- 14. Title and commencement**

Definitions

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

“department” means the Department of Justice and Constitutional Development;

“officer” means any person in the service of the Department who has been designated or seconded to the Special Tribunal;

“Head of the Special Investigating Unit” means the Head of the Special Investigating Unit appointed under section 3(1) of the Act;

“Member” means the member of the Special Tribunal appointed by the President in terms of Proclamation No. R.10 of 2019;

“Minister” means the Minister of Justice and Correctional Services;

“Secretary” means the person responsible for the administrative support and case-flow management of the Special Tribunal;

“Tribunal” means the Special Tribunal established by the President of the Republic of South Africa in terms section 2(1)(b) of the act read with Proclamation No. R. 118 of 2001;

“the Act” means the Special Investigating Units and Special Tribunals Act No. 74 of 1996 as amended;

“Tribunal President” means the Tribunal President appointed in terms of section 7(2) of the Act read with Proclamation No. R.10 of 2019.

Seat of the Tribunal

2. The seat of the Tribunal shall be at the Booyens Magistrates Court, Johannesburg provided that the Tribunal President may schedule hearings of the Tribunal at any seat of the High Court or Magistrates Court in the Republic for purposes of enhancing access to justice.

Administrative staff of the Tribunal

- 3.1 The Minister shall, after consultation with the Tribunal President, appoint or designate suitably qualified officers on such terms and conditions as he may deem fit, to assist the Tribunal in carrying out its functions.
- 3.2 The Tribunal President shall appoint any of the designated officials as the Secretary of the Tribunal.

Financial support for the Tribunal

4. The Minister shall, after consultation with the Minister of Finance, ensure that adequate funds are made available to the Tribunal to carry out its functions.

Civil Proceedings

- 5.1 The jurisdiction of the Tribunal is limited to civil proceedings emanating from any investigation of any particular Special Investigating Unit in terms of section 2 (1) (b) of the Act.
- 5.2 The words '**civil proceedings**', wherever they appear in the Act, including in the preamble and in sections 2(1)(b), 4(1)(c), 5(1)(b), 5(5) and 8 (2) of the Act, shall include civil proceedings for any relief for the recovery of any damages or losses and the prevention of potential damages or losses which may be suffered by a state institution under section 4(1)(c) of the Act, in the form of:

-
- (a) an application for a restraint order which may, in an appropriate case, be brought *ex parte* to the Tribunal for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates;
 - (b) an application for a preservation order which may, in an appropriate case, be brought *ex parte* to the Tribunal for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates;
 - (c) an application for a forfeiture order where a preservation of property order is in force and the order forfeiting to the state all or any of the property that is subject to the preservation of property order is legally competent;
 - (d) action proceedings for recovery of any damages or losses suffered by a state institution concerned; or
 - (e) declaratory, interdictory or other forms of relief ancillary to any relief granted by the Tribunal.
- 5.3 The Tribunal may grant relief subject to such conditions and exceptions as may be specified in the order.
- 5.4 The rules of evidence applicable in civil proceedings shall apply to civil proceedings brought in terms of the Act.

Interested party

6. An interested party contemplated in section 8 (2) of the Act means any party who, or which, has a direct and substantial interest in any judgment or order the Tribunal may make in any proceedings instituted before it in terms of the Act, or who or which may be prejudiced if any such judgment or order is carried into effect.

Recording of Proceedings

- 7(1)(a) The proceedings of the Tribunal shall be recorded in the manner determined by the Tribunal President or a member of the Tribunal.
- (b) Any person appointed or designated to record the proceedings of the Tribunal shall, at the outset, take an oath or make an affirmation in the following terms:
- "I, AB., declare under oath/affirm that I shall faithfully and to the best of my ability record the proceedings of the Special Tribunal and related matters as instructed by the Tribunal President or member presiding at a sitting of the Special Tribunal."*
- 7(2)(a) The proceedings of the Special Investigating Unit in terms of section 5(2)(c) of the Act shall be recorded in the manner determined by the Head of the Unit: Provided that the person to be questioned must be warned in advance of any audio or audio-visual recording of such proceedings.

- (b) Any person appointed or designated to record the proceedings of the Special Investigating Unit in terms of section 5(2)(c) of the Act shall, at the outset, take an oath or make an affirmation in the following terms:

"I, A.B., declare under oath/affirm that I shall faithfully and to the best of my ability record the proceedings of the Special Investigating Unit and related matters as instructed by the Head of the Special Investigating Unit or the member delegated thereto by him or her."

- (c) Any person who has been questioned as contemplated in section 5(2)(c) of the Act-
- (i) may apply in writing to the Head of the Special Investigating Unit to have the record transcribed; and
 - (ii) shall be entitled to a copy of the transcript of the proceedings concerned upon payment, in advance, of the cost of the transcription of the said record.

- 7(3) Any person who transcribes the record of the proceedings of the Tribunal or of a Special Investigating Unit shall, upon completion of the transcription, take an oath or make an affirmation in the following terms:

"I, A.B., declare under oath/affirm that I have fully and to the best of my ability transcribed the whole of the record of the proceedings of the Special Tribunal/Special Investigating Unit that was handed to me. "

Taking of Prescribed Oath or Affirmation

8. All the evidence before the Tribunal shall be under oath or affirmation to be administered in a prescribed manner.

Informing Person of right to be assisted by Legal Representative and Privilege against Self-Incrimination

- 9(1) For purposes of sections 5 (2) (b) or (c) and 6 (3) (a) or (c) of the Act, the person concerned shall include but not be limited to the following persons:
- (a) any person who is reasonably suspected to be in possession of relevant real, documentary or any other form of evidence pertaining to an investigation contemplated under section 4 (1) (a) of the Act;
 - (b) any person who is the subject matter of an investigation envisaged under section 4 (1) (a) of the Act; or
 - (c) any other person who is in possession and/or has under his/her control books, documents or objects which may form part of the evidence envisaged under section 4 (1) (b) of the Act.

- 9(2) The person concerned must be informed—
- (a) of his or her right to be assisted by a legal representative; and
 - (b) of the privilege against self-incrimination, of the possibility that he or she may be compelled to answer self-incriminating questions and of the possible consequences of answering such self-incriminating questions.

Confidentiality

- 10.(1) No person shall unlawfully possess, communicate or publish any matter, information, evidence or reports obtained, compiled, drafted or generated by the Special Investigating Unit unless with the expressly written permission of the Head of the Unit.
- (2) No person within the employ of the Special Investigating Unit shall communicate to any person any matter, information or evidence which may have come to his or her knowledge in connection with any investigation of the Special Investigating Unit, or allow or permit any other person to have access to any records, matter, information or evidence of the Special Investigating Unit except by order of the Tribunal or the High Court except to the extent necessary in the performance of his or her functions with the Special Investigating Unit where such matter, information or record is disclosed or referred to in any pleadings or papers or reports or evidence in any proceedings instituted in the Special Tribunal or any court.

Offence and Penalty

11. Any person who contravenes the provisions of these regulations shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three months or to both a fine and such imprisonment.

Repeal of Regulations

- 12(1) The Regulations published under Government Notice No. R. 360 of 14 March 2003 are hereby repealed.

(2) These regulations may be added to, varied or amended from time to time.

Rules of Procedure

13. The Tribunal President may in terms of section 9 (1) (a) of the Act, by means of rules, determine the procedures of the Special Tribunal.

Title and Commencement

14. These shall be called the regulations of the Special Investigating Units and Special Tribunals and shall come into effect on publication in the Gazette.



ISAZISO SIKAHULUMENI

UMNYANGO WEZOBULUNGISWA KANYE NOKUTHUTHUKISWA KOMTHETHOSISEKELO

IMITHETHOZIMISO YE-SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS

ACT No. 74 ka-1996

UNgqongqoshe Wezobulungiswa kanye Nezokuhlunyeleliswa Kwezimilo ngaphansi kwesigaba se-11 se-*Special Investigating Units and Special Tribunals Act* No. 74 ka-1996, futhi emuva kokuqaliswa kokuxoxisana neNhloko Yophiko Olusemqoka Lokuphenya, kanye noMongameli weNkantolo oqokiwe, ngeeSaziso No. R. 118 somhla zingama-31 ku-Julayi ka-2001, wenze imithethozimiso kuSheduli.

ISHEDULI**UKUHLELEKA KWEMITHETHOZIMISO**

- 1. Izincazelo**
- 2. Ukuhlala kweNkantolo**
- 3. Abasebenzi Bezokuphatha Benkantolo**
- 4. Ukwesekwa Kwenkantolo ngokwezimali**
- 5. Amacala omphakathi**
- 6. Uhlaka olunentshisekelo**
- 7. Ukurekhodwa kwamacala**
- 8. Ukufunga**
- 9. Ukwazisa Umuntu ngelungelo lokusizwa Ngomele Ezomthetho kanye
Nelungelo lokuthi engazifaki ecaleni**
- 10. Ubumfihlo**
- 11. Icala kanyenhlawulo**
- 12. Ukuchithwa kweMithethozimiso**
- 13. Imithetho yenqubo**
- 14. Isihloko kanye nokuqaliswa**

Izincazelo

1. kule mithethozimiso, ngaphandle uma isimo siveza ngokunye —

“umnyango” kusho uMnyango Wezobulungiswa kanye Nokuthuthukiswa koMthethosisekelo;

“isikhulu” kusho noma yimuphi umuntu osebenzayo eMnyangweni oqokiwe noma owesekiwe eNkantolo Esemqoka ukuthi ahlinzeke ukweseka kuKhomishana;

“Inhloko Yegatsha Lophenyo Olusemqoka ” kusho Inhloko Yegatsha Lophenyo Olusemqoka eqokwe ngaphansi kwesigaba sesi-3(1) soMthetho;;

“Ilunga” kusho ilunga Inkantolo Esemqoka eqokwe nguMongameli ngokweSimemezelo se-R10 ka-2019;

“uNgqongqoshe” kusho UNgqongqoshe Wezobulungiswa kanye Nezokuhlunyeleliswa Kwezimilo;

“Umabhalane” kusho umuntu obhekele ukweseka kokuphathwa kanye nokuphathwa kokuHlelwa kwamacala Enkantolo Esemqoka;

“Inkantolo” kusho Inkantolo Esemqoka eqokwe nguMongameli ngokweSimemezelo R118 ka-2001;

“uMthetho” kusho Amagatsha Okuphenya Okusemqoka kanye *Special Tribunals Act* No. 74 ka-1996;

“Umongameli Wenkantolo” kusho Umongameli Wenkantolo oqokwe ngokweSimemezelo R10 ka-2019; kanye

Ukuhlala kweNkantolo

2. Ukuhlala kweNkantolo Esemqoka kumele kube e-Booyens Magistrates Court e-Johannesburg lapho uMongameli Wenkantolo engashedula amacala eNkantolo Esemqoka kunoma yikuphi ukuhlala kweNkantolo ePhakeme noma iNkantolo kaMantshi kuRiphabhulikhi ngezinhloso zokwenza ncono ukutholakala kobulungiswa.

Abasebenzi Bezokuphatha Benkantolo

- 3.1 UNgqongqoshe kumele, emuva kokuxoxisana noMongameli weNkantolo, aqoke izikhulu ezifanele ngokwemigomo kanye ngemibandela enjalo ayibona ifanele, ukusiza iNkantolo ukuthi yenze imisebenzi yayo.
- 3.2 Umongameli weNkantolo kumele aqoke noma yiziphi izikhulu ezifanele njengoMabhalane beNkantolo.

Ukwesekwa Kwenkantolo ngokwezimali

4. UNgqongqoshe kumele, emuva kokuxoxisana noNgqongqoshe wezeziMali, aqinisekise ukuthi imali iyatholakala ukuthi iNkantolo Esemqoka yenze imisebenzi yayo.
- 5.1 Indawo yokusebenza yeNkantolo inomkhawulo emacaleni omphakathi asuselwa ophenyweni lwanoma yiliphi igatsha Elisemqoka Lokuphenya ngokwemigomo yesigaba sesi-2 (1)(b) soMthetho..

5.2 Amagama '**Amacala omphakathi**' njengokuba evela kusethulo soMthetho kanye nasezigabeni 2(1)(b), 4(1)(c), 5(1)(b), 5(5) kanye 8 (2) soMthetho kusho ukukhululeka okuhlanganisa ukuba ncono kwanoma yimuphi umonakalo noma ukulahlekelwa kanye nokuvimbela umonakalo noma ukulahlekelwa okungenzeka isikhungo sombuso esingakuthola esigabeni sesi-4(1)(c) soMthetho:

(a) ngokufaka isicelo somyalelo wokuvimbela, eceleni elifanele, lilethwe ku *ex parte* eNkantolo ukuvimbela noma yimuphi umuntu, ngokwemibandela enjalo kanye nokuvunyelwa njengokuba kungacaciswa emyalelweni, ekubhekaneni nganoma iyiphi indlela nanoma iyiphi impahla umyalelo omaqondana nayo;

(b) ngesicelo somyalelo wokugcina, eceleni elifanele, lingalethwa ku *ex parte* eNkantolo ukuvimbela noma yimuphi umuntu, ngokwemibandela enjalo kanye nokuvunyelwa njengokuba kungacaciswa emyalelweni, ekubhekaneni nganoma iyiphi indlela nanoma iyiphi impahla umyalelo omaqondana nayo;

(c) ngesicelo somyalelo wokulahlekelwa lapho umyalelo wokugcinwa kwempahla usebenza kanye nomyalelo wokulahlekelwa embusweni yonke noma noma iyiphi impahla engaphansi komyalelo wokugcinwa ifanele ngokomthetho;

(d) ngamacala okubuyisa noma yikuphi ukumosheka kanye nokulahlekelwa okwenzekile kwesikhungo sombuso okukhulunywa ngaso; noma

(e) ngokwazisa,, ukuphikisa noma ezinye izindlela zokukhokhelwa yinkantolo okuvunyelwe yiNkantolo.

5.3 Inkantolo Esemqoka ingavumela ukukhululeka uma izimo ezinjalo kanye nokuvunyelwa njengokuba kungacaciswa emyalelweni.

5.4 Imithetho yobufakazi esebenza emacaleni omphakathi kumele isebenze emacaleni omphakathi alethiwe ngokwemigomo yoMthetho.

Uhlaka olunentshisekelo

6. Uhlaka olunentshisekelo okukhulunywe ngalo esigabeni sesi-8(2) soMthetho kusho noma yiluphi uhlaka, olunentshisekelo ngqo kanye nenkulu kunoma isigwebo noma umyalelo Inkantolo engawenza ngaphambi kwayo ngokwemigomo yoMthetho, noma oluzobandlululwa uma isigwebo noma umyalelo onjalo wenziwa.

Ukurekhodwa kwamacala

7. (1)(a) Amacala Enkantolo Esemqoka kumele arekhodwe ngendlela enqunywe nguMongameli Wenkantolo noma ilunga leNkantolo Esemqoka.

(b) Noma yimuphi umuntu oqokwe ukuthi arekhode amacala Esemqoka, kumele aqale afunge noma enze isiqinisekiso ngendlela elandelayo:

"Mina, AB., ngiyafunga ngaphansi komfungisi/ngiyaqinisekisa ukuthi kumele ngirekhode amacala aseNkantolo Esemqoka kanye nezinto ezifanayo njengokuba ngiyalelwe nguMongameli weNkantolo noma ilunga elisemqoka leNkantolo Esemqoka."

- 7 (2).(a) Amacala Egatsha Lophenyo Olusemqoka ngokwemigomo yesigaba sesi-5(2)(c) soMthetho kumele arekhodwe ngendlela enqunywe yeNhloko Yegatsha: Uma loyo ozobuzwa kumele axwayiswe ngaphambilini uma kunanoma yikuphi ukurekhoda kwamacala anjalo.
- (b) Noma yimuphi umuntu oqokiwe kuthi arekhode amacala Egatsha Lophenyo Olusemqoka ngokwemigomo yesigaba sesi-5(2)(c) soMthetho kumele aqale afunge noma enze isiqinisekiso ngendlela elandelayo:

"Mina, AB., ngiyafunga ngaphansi komfungisi/ngiyaqinisekisa ukuthi kumele ngirekhode amacala Egatsha Lophenyo Olusemqoka kanye nezinto ezifanayo njengokuba ngiyalelwe Yinhloko Yegatsha Lophenyo Olusemqoka noma ilunga elisemqoka elithunywe yiyo."

(c) Noma yimuphi umuntu obuziwe njengokuba kushiwo esigabeni sesi-5(2)(c) soMthetho—

(i) ungasebenza ngokubhalela Inhloko Yegatsha Lophenyo Olusemqoka ukuthi irekhodwe liqoshwe ngokubhala; futhi

(ii) kumele akwazi ukuthola irekhodi eliqoshwe ngokubhala lapho ekhokha izindleko zokuqopha ngokubhala irekhodi.

7(3) Noma yimuphi umuntu oqopha ngokubhala irekhodi amacala Enkantolo Esemqoka noma Igatsha Lophenyo Olusemqoka, kumele, ekuqedeni ukuqapha ngokubhala enze isifungo noma isiqinisekiso ngendlela elandelayo:

"Mina, AB., ngiyafunga ngaphansi komfungisi/ngiyaqinisekisa ukuthi kumele ngiqophe ngokubhala lonke irekhodi lamacala Enkantolo Esemqoka enginikwe lona."

Ukwenza isifungo esinqunyiwe

8. Bonke ubufakazi ngaphambi kweNkantolo kumele ukufungelwa noma ukuqinisekiswa kwabo kuphathwe ngendlela efanele.

Ukwazisa Umuntu ngelungelo lokusizwa Ngomele Ezomthetho kanye Nelungelo lokuthi engazifaki ecaleni

9. (1) Ngezinhloso zezigaba 5 (2) (b) noma (c) kanye 6 (3) (a) noma (c) soMthetho, umuntu okukhulunywa ngaye kumele kuhlenganise kodwa kungaba namkhawulo kubantu abalandelayo:

(a) noma yimuphi umuntu ngokufanele osolwa ukuthi unobufakazi obuyiqiniso, obuqoshiwe noma olunye uhlobo maqondana nophenyo okukhulunywe ngalo ngaphansi kwesigaba sesi-4 (1) (a) soMthetho;

13.1 (b) noma yimuphi umuntu uphenyo olungaye ophakanyiswe ngaphansi kwesigaba sesi-4 (1) (a) soMthetho; noma

(c) noma yimuphi umuntu onezincwadi, imiqulu noma izinto ezingaba yingxenye yobufakazi obuphakanyiswe ngaphansi kwesigaba sesi-4 (1) (b) soMthetho.

9(2) Umuntu oqondene kumele aziswe—

(a) ngamalungelo akhe okusizwa ngummeli wezomthetho; kanye

(b) nangelungelo lokungazifaki ecaleni, ukuthi engaphoqeleka ukuthi aphendule imibuzo ezokwenza ukuthi abe necala kanye nokuthi kuzoba yimiphi imiphumela uma ephendula imibuzo emfaka ecaleni.

Ubumfihlo

10. (1) Akekho umuntu okumele abe noma axoxe noma ashicilele noma yiluphi udaba kanye/noma ulwazi noma ubufakazi kanye noma imibiko ethathwe noma ehlanganiswe kanye noma ebhalwe kanye noma lukhishwe Yigatsha Elisemqoka Lokuphenya ngaphandle uma evunyelwe Yinhlalo Yegatsha.

(2) Akekho umuntu oqashwe Yigatsha Elisemqoka Lokuphenya okumele akhulume nanoma yimuphi umuntu noma yiluphi udaba noma ulwazi alwaziyo maqondana nanoma yikuphi ukuphenya Kwegatsha Elisemqoka Lokuphenya, noma avumele noma yimuphi umuntu ukuthi akwazi ukuthola noma yimaphi amarekhodi Egatsha Elisemqoka Lokuphenya ngaphandle uma kunomyalelo weNkantolo Esemqoka noma iNkantolo Ephakeme, noma kufanele ekwenzeni kwakhe imisebenzi yakhe Negatsha Elisemqoka Lokuphenya lapho udaba olunjalo, ulwazi noma irekhodi luiveziwe noma kukhulunywe ngalo kunoma yiziphi izicelo noma amaphepha noma imibiko noma ubufakazi kunoma yimaphi amacala aqalwe eNkantolo Esemqoka noma yinoma iyiphi inkantolo.

Icala kanye nenhlawulo

11. Noma yimuphi umuntu ophambana nemihlinzeko yale mithethozimiso kumele atholakale enecala futhi isijeziso sakhe yinhlawulo noma ukuboshwa isikhathi esingedluli izinyanga ezintathu noma kokubili ukukhokha inhlawulo kanye nokuboshwa.

Ukuchithwa kweMithethozimiso

12(1) Imithethozimiso ezishicilelwe ngaphansi kweSaziso sikaHulumeni No. R. 360 somhla ziyi-14 kuMashi ka-2003 zichithiwe lapha.

(2) Le mithethozimiso ingengezwa, ihlukaniswe noma ichibiyelwe ngokuhamba kwesikhathi.

Imithetho yenqubo

13 Umongameli Wenkantolo ngokwemigomo yesigaba 9 (1) (a) soMthetho, ngokwemithetho, enganquma inqubo Yenkantolo Esemqoka.

Isihloko kanye nokuqaliswa

14 Lena kumele ibizwe ngemithethozimiso Yegatsha Lophenyo Olusemqoka kanye neNkantolo Esemqoka futhi kumele iqale ukusebenza emuva kokushicilelwa kuSomqulu.